

Torts



A tort is any wrong or injury done to another for which the injurer is liable. The analysis and cases in this section will be restricted to unintentional torts. These are situations in which your behavior has unintended harmful consequences. A tort is an externality; it is a harm that passes outside the market mechanism. Tort law determines property rights in the externality. If you are liable for the harm, then the victim has a right not to be harmed. When the tortfeasor is liable, the injurer may be required to internalize the harm by paying damages or paying for precautions that reduce damages. When the injurer is not liable for the harm, it is the victim who may engage in precautionary expenditures.

The Coase Theorem suggests that there would be no need for tort law if injurers and potential victims could costlessly contract. This is, of course, impractical in most situations. The uncertain nature of the harm and the uncertainty of the victim may it difficult for parties to contractually internalize an accidental injury. In some circumstance, however, we do contractually assume risks and relieve injurers of damages. A liability rule allocates risk between the injurer and the victim. If the potential injurer and the victim can negotiate the allocation of risk, this can sometimes supersede the statutory rule. For example, the potential victim may relieve the potential injurer of all liability in return for compensation or the right to receive the potential injurer's services. There are circumstances, however, where the courts do not permit the victim to release the injurer from liability. This is particularly true with respect to contracts of adhesion which we previously examined.

Precaution on the part of either the victim or the injurer can reduce the cost of damages. Equating the marginal cost of precaution with the resulting marginal reduction in damages should determine the efficient level of precaution.

There are various types of rules that can be used to determine liability. The two main categories of rules are strict liability and negligence. Under a rule of strict liability you are liable for all harm to others, regardless of your level of precaution. Thus a rule of strict liability forces the injurer to internalize the full cost of the harm. Since the injurer is reimbursed for all damages, the victim has no incentive to take precaution. If the accident can be more cheaply avoided by the victim, then it is more efficient for society if the victim engages in precaution. The opposite of strict liability is no liability. With strict liability there is no incentive for the injurer to take precaution. The victim must now consider the cost of precaution and the avoidable damages.

The following table summarizes the three rules.

| | Injurer | Victim |
|-------------------|---------------------------------|---------------------------------|
| Strict liability | Incentive to take precaution | No incentive to take precaution |
| No liability | No incentive to take precaution | Incentive to take precaution |
| Simple Negligence | Incentive to take precaution | Incentive to take precaution |