

Strict liability and the aims of Tort Law

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PROPOSITIONS RELATING TO THE DISSERTATION

STRICT LIABILITY AND THE AIMS OF TORT LAW: A DOCTRINAL, COMPARATIVE, AND NORMATIVE STUDY OF STRICT LIABILITY REGIMES

Alexandru Daniel On

1. Strict liability norms are non-universal, in the sense that primary duties and entitlements take other forms than the *all against all* form that is characteristic to fault-based norms. The characteristic subject of a strict liability rule is not the individual *qua individual*, but the individual *qua member of a group or class*. The types of duties that make up the primary level of strict liability wrongs are: (a) duties owed by members of a group or class to all others; (b) duties owed by all persons to members of a group or a class of persons; and (c) duties owed by members of a group or class to members of another group or class.
2. Strict liability norms typically link tortfeasors and victims by way of two connected relationships held together by a nexus point (whereas in fault-based liability the ascription of liability is more direct, the relationship between victim and tortfeasor is unmediated). This mediated structure is what allows strict liability regimes to bypass judgments regarding the quality of the defendant's behaviour. The locus of the wrong or, in other words, the problem that the liability rule is trying to address, is not in the behaviour of the tortfeasor but in the nexus point, which is always somewhat removed and independent from the tortfeasor's decision-making process. There is, therefore, a sort of "imputability distance" implied in all strict liability wrongs.
3. Rules of strict liability cluster around an ideal type, where the prima facie case involves proving: a non-behavioural wrong, causation, and damage; and a limited number of defences, including contributory negligence and *force majeure*. Most strict liability rules are instantiations of this ideal type. There are also some strict liability rules that do not follow the ideal type but may, nevertheless, be explained by their relation to it. "Absolute" forms of liability, for instance, presuppose more limited defences than the ideal type, whereas fault-based liability with a reversed burden of proof allows an additional defence to the ideal type (the defendant may escape liability by proving that he/she was not at fault).
4. There are strong similarities between the French and the English legal systems with regard to the definition of primary duties and their correlative entitlements in the areas of: product liability, liability for nuclear accidents, the vicarious liability of employers for the acts of their employees, liability for nuisance, and liability for trespass to land.
5. The French and the English legal systems diverge with regard to the definition of primary duties and their correlative entitlements in the areas of: liability for the acts of things, liability for the acts of another (when that other is not an employee), liability for road traffic accidents, liability for damage caused by animals, liability for acts of interference with movable property, and liability for defamation.
6. The *telos* of tort law is the just reparation of interpersonal wrongs (corrective justice) *and* the just allocation of primary responsibility duties in society (distributive justice).
7. In the practice of tort law, the aims of distributive and corrective justice are ordered in a serial (or lexicographical) manner: in a first stage, the definition of primary entitlements and duties specifies the requirements of distributive justice; then, in a second stage, after a primary entitlement is violated and its correlative duty breached, tort law specifies the requirements of corrective justice by creating (and enforcing) a remedial layer of rights and obligations.
8. Defining what counts as a *civil wrong* is a matter of distributive justice.
9. Strict liability is better suited than fault-based liability to deal with problems arising out of the complex modern interactions triggered by current issues such as climate change, the privatization of digital space, and the development of artificial intelligence. Adopting strict liability will probably not solve these new problems humanity is faced with, but the redistribution that comes with enacting new strict liability rules can at the very least morph our perception, reframing these as problems we face not apart, as uncoordinated individuals, but in common, as members of groups, collectives and communities.
10. Whenever you feel insecure about your research methods or you find some small error in your published work, try to remember that the man who invented the field of formal logic also believed that women have fewer teeth than men.