

# On the Efficiency of Negligence Rule\*

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## Abstract

In the law and economics literature there are three different versions of negligence rule which have been discussed. These three versions are: (i) Injurer is liable for the entire loss if negligent, and not liable if nonnegligent. Injurer is negligent if his care level is below the due care level, otherwise nonnegligent. (ii) Injurer is liable for the incremental loss if negligent, and not liable if nonnegligent. Injurer is negligent if his care level is below the due care level, otherwise nonnegligent. (iii) Injurer is liable for the incremental loss if negligent, and not liable if nonnegligent. Injurer is negligent if there exists a precaution which could have been taken but was not, and which would have brought about reduction in expected loss of a magnitude greater than the cost of precaution; otherwise nonnegligent. In the literature it is taken for granted that all three versions of negligence rule are efficient. A careful analysis, however, shows that version (iii) is not efficient. This version, in fact, is not efficient even for the unilateral case. Efficiency of version (i) was established by Brown. Efficiency of version (ii) for the unilateral case was shown by Kahan; efficiency for the bilateral case is established in this paper.

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