The Structure of Efficient Liability Rules

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Abstract

The purpose of this paper is to analyze the structure of efficient liability rules. The notion of a liability rule is defined here in a very general framework. The most important result of the paper shows that the subclass of the efficient liability rules is characterized by the conjunction of two conditions, namely, the condition of negligence liability and the requirement of non-reward for over-nonnegligence. Negligence liability requires that if one party is exactly nonnegligent and the other party is negligent then the negligent party must be fully liable. The requirement of non-reward for over-nonnegligence requires that if one party is exactly non-negligent and the other party is over-nonnegligent then the over-nonnegligent party's liability share must not be less than what it would be if both parties were exactly nonnegligent.

In tort law, as a general rule, no distinction is made as to whether a person takes the due care or more than the due care. An analysis of this feature shows that it cannot be explained solely in terms of efficiency. However, if one considers the subclass of efficient rules satisfying monotonicity, a condition which can be interpreted as formalization of an aspect of fairness, then it turns out that every liability rule in the subclass has the property of making no distinction between the due care and more than the due care. On the basis of this result it is argued that the tort law feature of making no distinction between the due care and more than the due care is partly grounded in fairness and partly in efficiency.

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