

Uncertainty Regarding Interpretation of the 'Negligence Rule' and Its Implications for the Efficiency of Outcomes*

Abstract

There are two ways that the negligence rule is interpreted. Under one interpretation a negligent injurer is liable for the entire harm to the victim; and under the other interpretation a negligent injurer is liable only for that part of the harm which can be ascribed to his negligence. Both these versions are efficient. However, if there is uncertainty regarding whether the court will be employing the full liability version or the incremental liability version for determining the liability of a negligent injurer, notwithstanding the fact that both the versions are efficient, inefficiency is possible. In the paper necessary and sufficient conditions for efficiency are derived when there is uncertainty regarding the interpretation of the negligence rule.

Keywords: Negligence Rule; Full Liability; Incremental Liability; Standard Version; Incremental Version; Uncertainty Regarding Interpretation of Negligence Rule; Necessary and Sufficient Conditions for Efficiency.

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