

Discussion Questions for Week 5

Torts I : Theory

1. The “Hand rule” for determining negligence standards was introduced in the famous case of *United States v. Carroll Towing*. What were some of the details of this case? Explain how Judge Hand articulated his negligence standard. Are there circumstances where this standard might not be efficient?
2. The famous 1972 *Harvard Law Review* article by Calabresi and Melamed proposes an approach for determining remedies for the violation of a property right. These rules are compactly summarized in *legalese* as “trespass should be the regime for boundary crossings in settings of low transactions costs, nuisance in settings of high transactions costs”. Explain what this means and provide one example of each such setting. Be sure to tie your answers to the Coase Theorem. What are some reasons why one might not want to use the C-M idea in all cases (Hint: see the discussion on pages 68-72 of Posner).
3. The Polinsky & Shavell paper completely summarizes the economic theory of punitive damage awards. Why do the authors believe that such awards are justified in some cases and not in others. How would they compute punitive damages in cases in which such damages were justified? The authors are particularly controversial in their view that no punitive damage award was justified in the famous *Exxon Valdez* case. What is their argument? Why do you think large punitive damages (\$5 billion) were actually assessed in this case?
4. The “English Road cases” (such as *Butterfield v. Forrester* and *Davies v. Mann*) provide valuable insights into the issue of sequential precautions. Explain the details of these two cases and then describe why the law sometimes has adopted a “last clear chance” approach to liability determination. (Note: The English Road cases are summarized as part of a longer paper about contributory liability that I have included on the website – there is no need to read all of this paper).
5. The case of *Palsgraf v. Long Island Railway Company* is frequently studied as an example of the law’s seeking to define “proximate causation” in liability cases. Explain the finding in this case and describe whether this sort of finding will lead to efficient or inefficient precautions in similar cases
6. Some economists have suggested that the law should permit a “market for torts”. In this market an injured party would be able to sell the rights to his/her claim to someone else. Such sales are illegal currently under laws that ban “champerty”. What would be the advantages of a market for torts? What would be the disadvantages?
7. The BP oil spill caused considerable damage to the Gulf Coast. How should compensatory damages for this injury be determined? How broad a view should we take of such damages? For example, should people who (mistakenly as it turned out) canceled vacations to Miami be compensated? Finally, should BP pay punitive damages for the spill? If so, what should the punitive multiplier be?