

Abstract

When tort liability and regulation are jointly applicable, judges have a tendency to be more demanding than regulators. Liability standards are generally more stringent than regulatory ones: violation of a regulatory standard is normally considered negligence *per se* while compliance with regulation does not automatically relieve the injurer of tort liability. While under an imperfectly working tort liability system – i.e. a tort law system whose prevention function is undermined by judgment proof or disappearing defendants – injurers take too little precaution, it will still often be the case that only major violations (and not minor violations) are rewarding. Mathematically, this will occur when the injurer's expected expenses function exhibits two local minima, one at the socially optimal level of care and the other below that level. Regulation set below the optimal level can make the latter unfeasible, thereby enabling liability to induce socially optimal outcomes.