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Robert D. Cooter

Ariel Porat

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Disgorgement Damages for Accidents

Robert Cooter and Ariel Porat

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Disgorgement Damages for Accidents

by

Robert Cooter* and Ariel Porat**

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rcooter@law.berkeley.edu

porata@post.tau.ac.il

Under the usual tort rules, damages for an accident equal the victim's loss (compensation). This paper departs from current law by proposing damages equal to the injurer's gain from untaken precaution divided by the probability of liability (disgorgement damages for accidents, or DDA). DDA is the minimum liability necessary to provide injurers with efficient incentives for care. DDA is smaller than compensation, so it typically induces more activity by injurers and less activity by victims. Calculating DDA generally requires different information than compensation. Consequently, some imperfections in information cause courts to distort incentives for care under compensatory damages and not DDA, while others have the opposite effect. Furthermore, the smaller size of damages under DDA compared to compensation can shrink or magnify the distortion in incentives for care caused by court and injurer errors. We distinguish three forms of DDA with different information requirements and the same incentive effects.

* Robert Cooter is Herman Selvin Professor of Law, University of California at Berkeley.

** Ariel Porat is Alain Poher Professor of Law at Tel Aviv University, and Fischel-Neil Distinguished Visiting Professor of Law at the University of Chicago Law School.

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Readers with comments should address them to:

Professor Ariel Porat
porata@post.tau.ac.il

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