

The Economic Analysis of Tort Law

Abstract

In the presented thesis I discuss the economic analysis of tort law. The economic analysis of law can be described as the application of economic theory – primarily microeconomics and the basic concepts of welfare economics – to examine the formation, structure, processes, and economic impact of law and legal institutions. The economic analysis of tort law can help understand the impact of tort liability on individuals' behavior, why some areas of human activity are governed by negligence or strict liability, or why, in some cases, the amount of damages is limited.

First two chapters describe the economic approach to law as such, they serve as an introduction into this field of study and present the most important methodological approaches. In the first chapter, I also discuss the basic tendencies that have shaped the economic analysis of law throughout its development. Second chapter then discusses some of the fundamental concepts of the economic analysis of law, namely the assumption of rational action, the concept of transaction costs, the efficiency criterion, the importance of the Coase theorem, and the distinction between property rules and liability rules. Following the examination of the concept of economic efficiency, an alternative approach based on the idea of coordination of individuals' plans is presented.

The first two chapters are followed by six chapters focused on the economic analysis of tort law. The third chapter deals with the law of torts as such, its functions and the main justifications of tort liability, namely the economic approach and the theory of corrective justice. These two theories are supplemented by a less known approach to tort law based on the principle of coordination. In the following chapter I discuss the most salient question of the economic analysis of tort law, i.e., the choice between negligence and strict liability as two distinctive liability regimes. The chapter deals not only with the different incentives that

these two regimes create, but it also relates to the recent debate in the Czech Republic concerning the question whether the negligence standard should be objective or subjective.

The chapters that follow discuss selected topics from the area of tort law. The fifth chapter analyzes the concept of prevention. In addition to the basic definition of the duty of prevention in tort law, I focus on the special duty of prevention according to which some person must act to protect another. The subject-matter of the sixth chapter is vicarious liability. Not only this chapter discusses the economic aspects of vicarious liability, it also presents a comparative overview of this liability regime in selected jurisdictions. Chapter seven is devoted to the concept of causation in tort law. The final chapter discusses specific aspects of damages, its amount, manner as well as the extent, and also focuses on some special cases, including recovery of non-pecuniary damages, pure economic loss, and punitive damages. A brief conclusion follows.

Key words: economic analysis of law, tort law, negligence, strict liability, damages