This collection of contemporary essays by a group of well-known philosophers and legal theorists covers various topics in the philosophy of law, focusing on issues concerning liability in contract, tort, and criminal law. The book is divided into four sections. The first is a conceptual overview of the issues at stake in a philosophical discussion of liability and responsibility. The second, third, and fourth sections present, in turn, more detailed explorations of the roles of notions of liability and responsibility in contracts, torts, and punishment.

The collection not only presents some of the most challenging work being done in legal philosophy today, it also demonstrates the interdisciplinary character of the field of philosophy of law, with contributors taking into account recent developments in economics, political science, and rational choice theory. This thought-provoking volume will help to shed light on the underexplored ground that lies between law and morals.

This volume will prove of great interest to philosophers of law, moral philosophers, political philosophers, and legal theorists.
Cambridge University Press
0521392160 - Liability and Responsibility: Essays in Law and Morals
Edited by R. G. Frey and Christopher W. Morris
Frontmatter
More information

Cambridge Studies in Philosophy and Law

Liability and responsibility
Cambridge Studies in Philosophy and Law

General Editor: Jules L. Coleman
(Yale Law School)

Advisory Board
David Gauthier (University of Pittsburgh)
David Lyons (Cornell University)
Richard Posner (Judge in the Seventh Circuit Court of Appeals, Chicago)
Martin Shapiro (University of California, Berkeley)

This exciting new series will reflect and foster the most original research currently taking place in the study of law and legal theory by publishing the most adventurous monographs in the field as well as rigorously edited collections of essays. It will be a specific aim of the series to traverse the boundaries between disciplines and to form bridges between traditional studies of law and many other areas of the human sciences. Books in the series will be of interest not only to philosophers and legal theorists but also to political scientists, sociologists, economists, psychologists, and criminologists.

Other Books in the Series
Jeffrey G. Murphy and Jean Hampton: Forgiveness and mercy
Stephen R. Munzer: A theory of property
Liability and responsibility
Essays in law and morals

Edited by
R.G. FREY and CHRISTOPHER W. MORRIS
BOWLING GREEN STATE UNIVERSITY

CAMBRIDGE UNIVERSITY PRESS
CAMBRIDGE
NEW YORK  PORT CHESTER  MELBOURNE  SYDNEY
Contents

Preface
List of contributors ix

Introduction, R.G. Frey and
Christopher W. Morris 1

Part I: Responsibility: some conceptual problems
1 Can responsibility be diminished?
Anthony Kenny 13
2 Intention and side-effects, John Finnis 32
3 Attempting the impossible, Alan R. White 65

Part II: Consent, choice, and contracts
4 Beyond foreseeability: consequential damages in the law of contract,
Richard A. Epstein 89
5 Rights and remedies in a consent theory of contract, Randy E. Barnett 135
6 A bargaining theory approach to default provisions and disclosure rules in contract law,
Jules L. Coleman, Douglas D. Heckathorn, and Steven M. Maser 173

Part III: Risk, compensation, and torts
7 Theories of compensation, Robert E. Goodin 257
8 Liberty, community, and corrective justice, Ernest J. Weinrib 290
Contents

9 Risk, causation, and harm, Glen O. Robinson 317

Part IV: Punishment
10 Retributive hatred: an essay on criminal liability and the emotions, Jeffrie G. Murphy 351
11 A new theory of retribution, Jean Hampton 377
12 Punishment and self-defense, George P. Fletcher 415
Preface

This volume of essays is based upon a conference on liability and responsibility sponsored by the Department of Philosophy of Bowling Green State University in 1988. Other invited essays have been added.

Our aims in holding a conference on the theme of liability and responsibility in law and morals were twofold. First, we hoped that our participants, from different viewpoints and with different emphases, would be able to shed light on this most troublesome area of interconnection between law and morals. The whole concept of responsibility in morals is a difficult one, and problems there seep into and infect the discussion of liability in law. In order to avoid a scattering of essays upon all sorts of issues to do with responsibility and so to focus our considerations, we decided to concentrate upon four areas. One, of course, had to be conceptual in character, even though all contributors could be expected in part to be attempting conceptual clarification; the remaining three areas – contract, torts, and punishment – we chose because some of the most interesting work being done in legal philosophy today occurs there.

Our second aim in holding our conference, and in inviting additional contributions, was to show the interdisciplinary character of much of the work in our four areas of concentration. No longer is it true that moral philosophers and legal theorists generally go about their business in ignorance of work done in economics, political science, and rational choice theory, and we hoped that our participants and contributors
Preface

would make this manifest in their discussions. This is not to disparage conceptual analysis, which remains the centrally important tool of the philosopher; it is simply to acknowledge that application and analysis no longer remain apart, assigned to different disciplines, with different standards of argumentation and rigor.

A great many people helped us in holding our conference and preparing this volume, especially among the graduate students, staff, and faculty of the Department of Philosophy at Bowling Green, and we are grateful to them all. Our series editor, Jules Coleman, deserves special mention for his constant advice and encouragement. Our Cambridge editor, Terence Moore, proved particularly forthcoming and helpful.

Bowling Green, Ohio

R.G.F.

C.W.M.
Contributors

Randy E. Barnett, Professor of Law and Norman and Edna Freehling Scholar, Chicago-Kent College of Law

Jules L. Coleman, John A. Garver Professor of Jurisprudence and Philosophy, Yale Law School

Richard A. Epstein, James Parker Hall Distinguished Service Professor of Law, University of Chicago

John Finnis, Professor of Law and Legal Philosophy, University of Oxford

George P. Fletcher, Professor of Law, Columbia University

Robert E. Goodin, Professorial Fellow of Philosophy, Research School of Social Sciences, Australian National University

Jean Hampton, Professor of Philosophy, University of California, Davis

Douglas D. Heckathorn, Associate Professor of Sociology and Economics, University of Missouri, Kansas City

Anthony Kenny, Warden, Rhodes House, University of Oxford

Steven M. Maser, Professor, Atkinson Graduate School of Management, Willamette University

Jeffrie G. Murphy, Professor of Law and Philosophy, Arizona State University

Glen O. Robinson, John C. Stennis Professor of Law, University of Virginia
Contributors

Ernest J. Weinrib, Professor of Law and Special Lecturer in Classics, University of Toronto

Alan R. White, Professor of Philosophy, University of Hull

R.G. Frey, Professor of Philosophy, Bowling Green State University

Christopher W. Morris, Associate Professor of Philosophy, Bowling Green State University