

Cambridge University Press 0521622824 - Philosophy and the Law of Torts Edited by Gerald J. Postema Index More information

## Index

```
advertence-based theory (of responsibility),
   84-7, 91, 102, 106, 119
agency, 14, 28, 82-7, 92-3, 104, 160-1, 190,
   198-9, 204-8
aggregative liability, 240
at-fault-pool, 17, 117-18, 226-31
avoidability conception (of responsibility), 81,
   85-8, 91-7, 103, 119, 122, 129
bi-polarity, 149-50; see also tort law, bilateral
   structure of,
blameworthiness, 72, 84, 87-8, 91-2, 95-6,
burden of proof, 215-6, 232-7, 240-4; see
   also evidentiary standards
capacity/opportunity principle, 88, 91
causation requirement, 16-17, 162-3, 193,
   175, 176, 214-22, 229, 236, 245-6, 258
common law, 1, 89, 96, 113, 176, 191-2, 214,
   246, 253-5, 271, 311-13, 318-19, 341;
   history of torts in, 253-6
compensation, as aim of tort law, 8, 32-42,
   116-18, 134-7, 143-4, 150-3, 226, 145,
   278, 302-8, 313-16
convention, 11, 44, 64
corrective justice, 7, 9-20, 65, 92, 101, 108,
   116-17, 120, 122-3, 130, 131-4, 138,
   152–72, 173–5, 177, 179–82, 183–5, 192,
   194-5, 197-208, 209-13, 214-16,
   221–237, 246–7, 252–4, 302–8, 310–16,
   319, 321
culpability, 3-4, 6, 8, 76-9, 121, 161, 222,
   249
custom, 44-5, 48-51, 64-5
```

action-responsibility, 73, 80-4, 87-8, 91, 94

```
deontological, 18, 75-81, 121-2
DES cases, 215, 221, 226, 234-9, 244
descriptive jurisprudence, vs. normative
  jurisprudence, 183, 192-4
deterrence, as an aim of tort law, 18-19, 116,
   132, 143–53, 265–8, 277–8, 304–6, 308
distributive justice, relation to corrective
   justice, 8-9, 14, 90, 168-9, 197-200, 208
due care standard, 3-4, 11, 30-7, 42-65, 102,
   108, 116, 216, 220, 323
duty, of due care, 42, 219-20; of non-
   injuriousness, 216, 218-21; of non-injury,
   216, 222-31, 236-7; qualified vs.
   unqualified, 218-20; relational vs. non-
   relational, 217-18, 223, 231
economic analysis of law, 4-5, 86, 186,
   189-97, 201-2, 210-14, 251, 260-70,
   273 - 5
enterprise liability, 6, 31, 33, 39-42; see also
   market-share liability
equality, 12, 89-90, 152-7, 159-61, 250-2,
   266; moral, 12, 261; transactional, 169-70
evidentiary standards, 216, 226, 232-5, 240-4,
   248
excuse, 57, 106, 309-10, 320
foreseeability, 48, 51, 88-101, 138;
   reasonable, 48, 51, 94, 98, 102–05, 162–4
functional explanation, 3, 201-2, 211; see also
   functionalism
functionalism, 131-4, 139-52, 168-9, 279
Hand formula, 7,19, 43-5, 49, 52, 64-5, 70,
   105, 113-14, 181, 205-6, 263-4, 273,
   311 - 12
```



Cambridge University Press
0521622824 - Philosophy and the Law of Torts
Edited by Gerald J. Postema
Index
More information

336 INDEX

harm, accidental 24, 27–8, 31, 37, 40; causing vs. failing to prevent, 195; foreseeability of, 88–101, 103–6; intentional, 85; magnitude of, 37, 45, 49–50; nonnegligent, 39–41; proximity of, 116; reciprocity of, 33–8; unintentional, 72–81, 85, 93–6

impossibility theorem (Arrow), 281–4 interpretive theory, 23–45, 193–4

joint liability, 239-40

Kantian theory, 22-33, 44-55, 66, 274

liberalism (liberal ideal), 24, 206–8 libertarian, 8, 10, 22; conception of responsibility 82–90, 110, 119, 121–2, 198–201

liberty interests, 6-7, 55, 264-7

majority voting paradox, 285, 290–8 market-share liability, 17, 215, 226, 233–40, 248 mass tort, 17, 214–17, 226, 231–2, 245, 248 moral luck, 94–5, 139, 162, 221–2, 229

moral responsibility, 6, 86, 103, 200 negligence liability, 2–6, 30–42, 137, 143,

no-fault compensation schemes, 210, 286

objective standards, 55, 135, 161–2, 260–2 outcome responsibility, 73–4, 79–97, 103–110, 114–130, 198–202, 206

Pareto principle, 268–9, 283, 287, 304 path dependence, 19–20, 290–1

pluralism, *see* plurality of values plurality of values, 15, 150, 277–80, and ch.8 *passim* political conception (of responsibility), 90 positive analysis (of tort law), 18, 250–70 proximate cause, 95–6, 99, 118, 136–9, 162–3, 166–7, 277

reasonable forseeability, *see* foreseeability reasonable person standard, 3, 6,10, 51–4, 60–2, 71, 102, 127–8, 136–8, 161–2, 173, 274, 309, 311–12 reciprocity, 14, 115, 206 recourse, 222–3

risk, creation, 54, 74, 77, 111; imposition, 25–34, 37–9, 42; ownership, 223; jointly created, 109–15; reciprocity of, 33–8

security interests, 6, 23–4, 41–8, 50–8, 62–3, 266–9, 271

sequenced argument, 280, 291, 301–2, 308–17; *see also* sequenced choice sequenced choice, 296–301

social insurance compensation schemes, 118, 139, 144, 150, 169, 223, 227–8, 231, 302–3; see also No-fault compensation schemes

strict liability, 2, 6, 30–42, 66, 72, 81, 89, 115, 128, 185, 199, 219

subjective standards, 261–2; *see also* objective standards

theory, relation to practice, 163–72, 184 tort law, bilateral structure of, 1–8, 182, 188, 196, 201–2; *see also* bi-polarity; core or basic features of, 1–2, 15–16, 134–7, 185, 210