

Chapter 2

1. Discuss the manner in which tort law internalizes externalities. What are its advantages and disadvantages compared to government regulation?
2. Courts in tort cases, when deciding on compensation, are not allowed to consider evidence about a victim's income or whether or not she has insurance to cover her injuries. Does this rule make economic sense?
3. Discuss the following quote: "As a theoretical matter, the systems of strict liability and negligence begin from opposite points of view. The basic question with a system of strict liability always takes the form, is it fair to let one party gain an advantage at the expense of the other.... The negligence system tends to ignore the relationship between the parties and asks only of each taken in isolation, is there any reason to believe that he should not have acted as he did, where the harm that ensues is itself never taken as that reason." (Richard Epstein (1980) *A Theory of Strict Liability*, The Cato Institute, p. 133.)
4. Indicate whether the following statement is true or false: "Strict liability means that the injurer is responsible for the full economic consequences of any accidents that he or she causes. This cannot be socially optimal because the injurer has no incentive to be careful since he or she will be liable regardless of how much care he or she took."
5. A rule of strict liability clearly dominates a rule of no liability in the unilateral care accident setting, but either may be preferred in a bilateral care accident setting. Explain why.
6. Suppose that juries tend to systematically overcompensate accident victims in tort cases. Which rule, strict liability or negligence, would be more efficient regarding incentives for efficient injurer care in this situation? Explain.
7. One measure of damages for an accidental loss is medical expenses. Do these costs necessarily restore the injured person to the pre-accident state? Why might damages for "pain and suffering" be justified as part of full, compensatory damages?
8. Defamation of character is a tort. Richard Posner notes that "The law treats written defamations (libel) more harshly than oral (slander)." Does this make economic sense? (Richard Posner, 2003, *Economic Analysis of Law*, 6th Edition, New York: Aspen, p. 209)