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Chapter 1 : Justification of Liability Limitation in International Carriage of Goods | Dr. Rimantas Daujotas

Debate: Justiï¬•cation and Liability in War Jeff McMahan Philosophy, Rutgers University I. THE CHALLENGE M ORAL responsibility for an unjust threat, or a threat of wrongful harm, is.*

According to the Bible, everyone has sinned and continually fall short of the glory of God, 1 and the consequence of sinning is death. Given that everyone has sinned and is destined for death, can you be saved? Or, can your salvation come from good works? The answers to these questions will help you make sense of justification and sanctification. God set you apart from wrongdoings to be more like Him and Jesus Christ. Although a sinner is forgiven and made righteous by justification through faith in Christ, sin continues to remain but it is one thing for sin to remain in you and quite another for you to remain in sin. This is where sanctification comes in. Sanctification begins with justification. And, while justification is a one-time act of God, sanctification is a continual process until you are taken to be with the Lord. Once the sinner is justified through faith in Jesus Christ, the faith must produce outward results, which is good works. So, how can you produce good works? Justification is a one-time act of God, which makes it complete and finished. To be justified, your good works are immaterial. To be sanctified, your good works are a necessary evidence of your faith in Christ, which the Holy Spirit enables you to do as you continually die everyday in your sin. Justification gives you the privilege as well as the boldness to enter heaven. Sanctification gives you the meekness for heaven, and allows you to fully take joy in abiding there. Understanding the differences between justification and sanctification may seem like an academic study of religion that could intimidate believers of the Christian faith, whether new or old. However, learning the distinction between the two terms could help you strengthen your faith and grow in your Christian walk. If you like this article or our site. Please spread the word.

Chapter 2 : Difference between Justification and Sanctification | Difference Between

If necessity is external to liability to defensive harm (about which I raised reservations above), then even with the addition of the honour-based justification, externalism still faces implausible implications.

I argue that such an account faces serious problems: Most importantly, externalism implies that threateners can be liable to suffer gratuitous harm. I take this to be an unattractive consequence of the view. Introduction Let us begin with a case: She has two options, both of which she knows will be effective. She can 1 retreat from the confrontation without risk or cost and alert the police, who will then be able to subdue Threatener without harming him, or 2 stand her ground and kill Threatener in self-defence. Some believe that Victim is justified in standing her ground and killing Threatener. They believe that, because of the threat he poses, Threatener is liable to suffer defensive harm. To say that a individual is liable to be harmed is to say that harming him would not wrong him nor violate his rights, and so he would not be justified in defending himself. This paper considers whether victims can justify what appears to be unnecessary defensive harm by reference to an honour-based justification. The honour-based justification suggests that when a victim is threatened, there are two threats she faces: The primary purpose of this paper is to argue that the honour-based justification faces serious problems. The paper proceeds as follows. Section 2 considers the relationship between necessity and liability. Section 3 advances what I take to be the most plausible version of the honour-based justification. Section 4 raises two worries with the honour-based justification: Section 5 question what is meant by an honour-based justification in the first place. Internalism holds that necessity is an internal condition of liability to defensive harm: If internalism is true, and Victim nonetheless stands her ground, this seems to imply that Threatener is, amongst other things, 1 wronged, 2 owed compensation, and 3 permitted to engage in counter-defence against Victim by hypothesis, Victim is now posing a threat to which Threatener is not liable. These implications hold, absent other arguments. Given what some take to be the implausibility of these implications, externalism denies that necessity is internal to liability, though it may bear on the all-things-considered permissibility of defensive action. Given that this still means that victims act wrongly in these cases, externalism remains somewhat intuitively implausible. Despite its apparent intuitive implausibility, one reason for endorsing internalism about necessity is that liability justifications seem to be instrumental: This is what distinguishes liability-based justifications from desert-based justifications, which hold that imposing harm on a culpable individual is valuable as an end in itself. It is for this reason that Jeff McMahan is an internalist: Let us consider what the externalist says about liability. So on proportionate means externalism, threateners are permitted to non-harmfully prevent themselves from suffering harm; yet, because their victims have not forfeited their rights not to be defensively harmed, threateners may not harmfully prevent themselves from suffering harm. However, it must follow that, were a threatener unable to non-harmfully defend herself in a case of unnecessary defensive harm and yet were the victim to nonetheless proceed with such unnecessary action, the threatener must suffer some gratuitous harm. Namely, the amount of harm which was not necessary. Even when the threatener can and may non-harmfully prevent himself from suffering unnecessary harm, he remains liable to suffer such gratuitous harm. This is a disturbing consequence of the view. Persons have the right to not be gratuitously harmed. There is no instrumental purpose to be served in the forfeiture of that right. We might question how, on proportionate means externalism, liability is distinct from desert. After all, it seems that threateners are liable to suffer gratuitous harm. The proportionate means externalist might reply that, whilst necessity is not internal to liability, an effectiveness condition is internal to liability. This means that an instrumental purpose must still, potentially, be served in cases of unnecessary defensive harm. An Honour-based Justification of Defensive Harming Despite its theoretical plausibility, the internal necessity condition seems to have some counterintuitive implications: Even the external necessity condition implies that a victim acts wrongly if she engages in unnecessary defensive harming. However, consider the following case: There is nothing she can do to stop him from continuing to rape her. The only way Eric can stop Fran breaking his wrist is to quickly break her wrist first. All of these facts are known by both Fran and Eric. As it stands, the necessity condition seems implausible. It is important

to clarify four ways in which harm might be justified even if it will not avert the unjustified threat faced by a victim. A harm may be justified on the grounds that: Because we are discussing the last of these justifications, we must be careful to bracket out the proceeding considerations. It is therefore reasonable to suppose that the victim is permitted to assert or vindicate her equal moral status her honour by violent resistance, even if doing so will not avert the physical threat she cases. To put it another way, perhaps when a victim is threatened there are two threats she faces: The honour-based justification is appealing because it allows the internalist and externalist to explain why victims may sometimes employ what would otherwise be unnecessary or ineffective harm. Frowe has recently made two refinements to the view: We will consider these in turn. This justification goes too far. Consider the following case. Victim is of a persecuted minority race. Threatener is planning to flick Victim in the ear because he thinks that she is less worthy of equal moral consideration. The harm to Victim will be minor including, let us suppose, the psychological harm. Fran inflicts no harm upon Eric during the rape. On Tuesday, Fran sees Eric in a bar having a drink. In summary, victims face two threats: Against the Honour-Based Justification I think both of the alterations made above, whilst necessary for the honour-based justification, are unsuccessful. I argue against them in reverse order. She faces a dilemma. It seems reasonable to suppose that it occurs when threateners begin to act on their intention to do what will wrong their victim. It could be argued that it begins with the formation of the intention itself. Perhaps it could be suggested that the harm of rape cannot be disaggregated as I suggest i. However, this does not seem quite right either. Other things equal, it appears that a longer rape must be more harmful than a shorter rape. What might not change is the wronging of the victim. But this is exactly the point: At this stage, whilst the honour-based justification might not permit defensive harming, it may still permit what appears to be unnecessary harming ex post. As suggested in 3. Victim can 1 retreat, or 2 engage in defensive action, killing Threatener. It seems implausible that Victim may kill Threatener merely in defence of her honour. If internalism concerning necessity is correct, and Victim nonetheless stands her ground by killing Threatener, this means that she wrongs Threatener to the extent of a harm that would be equivalent to the harm of death, minus the harm of a broken leg. Threatener may harm Victim in counter-defence to the extent that is proportionate to harm [deathâ€"broken leg]. This is because agents are permitted counter-defence against unjustified threats which, by hypothesis, Victim is now subjecting Threatener to. Harm [deathâ€"broken leg] is an awfully large harm. One way of understanding harm [deathâ€"broken leg] is on the following preference-based view. Begin by considering how much life one would give up in order to avoid the harm of a broken leg. Plausibly, one might give up one month of their life in order to not suffer such a harm. If the badness of death is that future good which one would be denied through dying, harm [deathâ€"broken leg] might be thought of as the harm of being killed in one months time from nowâ€"this is equivalent to the harm of death, minus the harm of a broken leg. Even with the honour-based justification in place, internalism concerning necessity has massive intuitive implausibility when justifying what appears to be substantial unnecessary harm. Again, I would like to stress that these implications hold, absent additional arguments that do not concern the honour-based justification. Before turning to how proportionality relates to externalism, let me illustrate the problem for internalism further. What can be drawn from what is said above is that there is a difference between that harm which Threatener unjustifiably threatens to inflict upon Victim the harm of death , and that harm which Victim unjustifiably threatens to inflict upon Threatener the unnecessary harm, [deathâ€"broken leg]. She still commits a grave wrong. The case unfolds as above, except that Bystander is watching. Bystander cannot stop Threatener from attacking Victim. Victim chooses option 2 , and stands her ground and is about to kill Threatener. Bystander is now faced with the following three options: The only difference with respect to unjustified harm between choosing options A and B is the justifiable harm of a broken legâ€"all other harm is, by hypothesis, unjustified. This is because option C is the option whereby everyone receives only the harms to which they are liable. Even with the addition of an honour-based justification, the internalist still faces implausible implications. Things do look a little better for externalism, for it does not imply that Victim wrongs Threatener or that Threatener is permitted counter-defence. However, if externalism concerning necessity is correct and Victim nonetheless stands her ground, this does imply that Victim acts, all-things-considered, impermissibly to an extent that would be equivalent to unjustifiably

threatening to cause someone to suffer harm [deathâ€”broken leg]. If necessity is external to liability to defensive harm about which I raised reservations above , then even with the addition of the honour-based justification, externalism still faces implausible implications. Accordingly, even with the honour-based justification, the difference in wrongdoing between Threatener and Victim is smaller than necessary to rule out, on internalism, substantial counter-defence on the part of Threatener and, on externalism, substantial impersonal wrongdoing. What is Honour Anyway?

Chapter 3 : Justification for strict liability: by Dan Rushbrook on Prezi

Vicarious liability has lacked the agreeable and undisputable rationale which can legally justify imposing this liability. The main obstacle which all justifications have been confronted with is.

Justification of Liability Limitation in International Carriage of Goods Tuesday June 30th, Introduction All major transport conventions which regulate the international carriage of goods consist of liability limitation clauses. In some views of practitioners, limitation of liability can be treated as a strange and improper clause or it can even be treated as illegal, because it causes inequality and injustice between parties to a contract. However, when it comes to an international carriage of goods, situation is quite different. First of all, it must be noted that international carriage of goods is regulated by international transport conventions, which are enacted into legal system or signed by a large number of countries around the globe. An international convention is a result of many years of deliberations and debate by all commercially active countries which delegate and express various opinions of their own commercial and financial subjects, institutions and trade associations. Secondly, states which sign or enact such international conventions into their legal system, do it voluntarily and, thirdly, laws, practice and customs of international carriage of goods evolved, is evolving and will evolve in accordance with the needs and reality of commercial trade. For these same reasons, liability limitation clauses were not implied by some kind of independent authority, but brought up and agreed by commercial world. So in order to answer if limitation of the recovery of economic loss arising out of the loss of or damage to goods incurred during on the occasion of their carriage can be justified â€" reasons, current regulation and legal problems should be analysed. Reasons of liability limitation One of the main questions in liability limitation of economic loss topic is the reasons of such clauses. First of all, commercial practice is always trying to avoid loss and is pursuing profits. For the same reasons, in practice of international carriage of goods, all participants are aware of dangers of international carriage, whether it is a carriage by sea, air, road or rail. Economic interests forced participants of such business to find a solution which could be advantageous for all parties. The beginning of carriage of goods business in inland waterways and evolution of such business practice brought rather simple but practical agreements â€" such as taking precautions and care of goods shipped. Shipper was liable to pack goods or take other actions to avoid any loss or damage to the goods and the carrier was liable to take proper care of goods while in transit. However, such practice was not economically effective for international trade. Longer distances meant greater risks of loss or damage for a carrier which led to significant freight amounts and insurance costs. Higher freight and insurance costs led to an increase in prices of goods and stagnation of import or export business. A situation like this was not suitable for any of participants in international trade. It was obvious that the main issue was the allocation of risks and mainly all risk was carried by the carrier. Such limitation led to lower freight which consequently led to lower insurance costs and lower prices of goods. Whereas it was an issue of international trade, such an objective could only be achieved by international conventions. There are four main international transport conventions which deal with carriage of goods and sets liability limits for the recovery of loss arising out of the loss of or damage to goods incurred during the occasion of their carriage. However, it should be noted that all transport conventions set different liability limits and reflect different communities of interest among different transport modes. In addition, all countries have their own interests while drafting international agreements and, not surprisingly, intense debate and conflict of interests always exists between countries which have economical advantage or commercial intensions in shipping, or insurance or import and export markets. For these reasons it can be argued that liability limits can be an indicator of current situation and the distribution of economic powers in international trade market. There are four main international conventions which regulate international carriage of goods by sea â€" the Hague rules [3] of and the updated version, known as the Hague-Visby rules [4] updated and amended in and , the Hamburg rules [5] of and the Rotterdam rules [6] of however not yet in force and will come into force one year after ratification by the 20th UN Member state. Albeit all of these conventions set different liability regimes, the Hague-Visby rules are most widely used in international carriage of goods by sea, not only because standard forms of charterparties

and bills of lading often incorporate the Hague-Visby rules but also because of well established case law which means consistency and predictability â€" an issue which is of great importance to commercial trade. Limitation of the recovery of economic loss is found in all of these conventions. In addition, the U. In the aforementioned case, a container which held 76 bales of cotton cloth was shipped from Africa to Savannah, Georgia by Monica the shipper. While in transit, goods were damaged and the shipper brought a claim to District Court claiming the loss. Finally, court held that each of the 76 bales of cloth stowed inside the container was a separate package for COGSA purposes. Hague-Visby rules sets limits of liability to Therefore, a substantial increase of liability amounts can be observed under these conventions and Furthermore, although it is often argued that aforementioned liability limits are too low and unfair to shippers, SDR limits are made in accordance with average cargo values and a rate of probable loss or damage to cargo. Thereby, it can be argued that such a small rate of loss in international carriage of goods by sea can justify the SDR limits. Moreover, international rules also set the obligation to declare the nature and value of goods if they are of expensive nature. Another worth mentioning regulative body which works in addition to aforementioned international rules on liability limitation in sea carriage industry is the London convention [14]. This convention generally limits claims that may arise in commercial use of a ship and covers a multitude of claims that may arise in a course of operating ship. It permits ship-owners and salvors to limit their liability by establishing a limitation fund or by raising a defence [15]. While in transit, a cargo was damaged and quantity of wet damaged cargo 7 or 12 tons was segregated and disposed of. However, the owner of the cargo claimed that some wet damaged kernels were not segregated, and were discharged along with the apparently sound cargo. In addition, the owner alleged that up to tons of cargo had to be discharged by bulldozers, and, as a result, suffered an increased number of broken kernels. This issue of definition was of a great importance to the outcome of the case and the limitation of liability. Two possible interpretations were brought by litigants. So court therefore decided in favour of the carrier and stated that a claim for consequential loss was not a claim in respect of economically damaged goods and Article IV 5 a is suitable for claim in respect of lost or damaged goods, and a claim for loss or damage in connection with those lost or damaged goods, but in the second part of the clause the weight of those lost or damaged goods is then taken as the limit. In addition, limits of liability would be unpredictable and would cause uncertainty in commercial carriage market. Therefore an observation can be made that international carriage of goods by sea is constantly evolving and legislative body of rules, sometimes controversial conventions makes their legal framework rather problematic [20]. In addition, it can be stated that there would always exist interpretational issues, because it would be naive to expect the shippers and carriers to abide the rules as they are and not to try to shift the liability limits in one way or another. Carriage of goods by land transport and the wilful misconduct rule Liability limits also apply to carriage of goods by road and rail. Such a big difference in figures may be explained by the difference in nature of goods transported by sea and land, where in sea carriage, for example, a kilo of commodity goods costs very little compared with TV sets or computers carried on land transport. Nevertheless, there is a unit limitation in sea carriage which could sometimes lead to much higher liabilities than in other modes of transport [23]. In addition, the average cargo value of freight seems low relative to the limitation of liability. For example, in intra-EU market the road freight of average cargo value is about 1. An important question of when the carrier can not limit his liability arises constantly in all modes of carriage. The wilful misconduct rule in one form or another is found in a majority of rules which regulate the carriage of goods. However, is should be noted that interpretation of such rule should be in accordance with the law of the court or tribunal which seized the case [25]. An example can by made by TNT Global SpA v Denfleet International Ltd [26] case, where a driver of a loaded truck fell asleep at the wheel in Italy and crashed the truck causing damage to the cargo. A question arose before the court whether felling a sleep while driving is a wilful misconduct, because there should be also an intention or a failure or an omission proved. The Mercantile Court judge stated that a driver who fell asleep at the wheel must have appreciated that he was sleepy before actually falling asleep and that his decision to continue to drive in such circumstances was reckless and constituted wilful misconduct. Argumentation made in aforementioned case can be of great importance in similar cases not only in carriage of goods on road, but also in other cases concerning different

modes of carriage, because the wilful misconduct rule can have a significant role in the outcome of the case and the assessment of liability limits. Differences in carriage of goods by air Carriage of goods by air is regulated by a complex body of international rules. However, most important are the Warsaw Convention [28] with a lot of amendments and the Montreal Convention [29]. The Montreal Convention is essentially a tidying up exercise which consolidates and modernises, where needed, the Warsaw Convention and related instruments [30]. In addition, specific cargo like luggage also brought up specific issues concerning the loss of or damage to it. Non-material damage could not be claimed under other conventions of international carriage. For example, in a case of Siemens v. Schenker [33] , which had brought a lot of discussion among practitioners, a cargo consisted of two packages containing integrated electronic components and because of a total loss of the contents of one package, the other also was valueless, so the court assessed the damages to the full value of the equipment and refused to allow the carrier to limit its liability, but, luckily, after the appeal, court decided that the limits should be based upon the weight of the whole shipment. Aforementioned case can also be a great example of the argument stating that limitation of liability is necessary to international carriage of goods because of the viability brought to the carrier, who can be aware of its exposure without having to open boxes or parcels [34]. Multimodal carriage and the future Since the production of international carriage conventions, trading countries discussed the idea of one uniform carriage convention which could regulate multimodal carriage of goods. Containerization and a notable increase of door-to-door carriage in the last few decades [35] was one of the main causes of such debate. However, notwithstanding numerous attempts to make such convention available, there are no such regulative body. Furthermore, there is no uniform liability regime in multimodal carriage and, as mentioned above, all transport conventions set different liability limitations. In addition, there are no consensus among practitioners and members of international trade in whether such uniform liability is in need and would it benefit the process of international trade. However, such a system should solve the questions of burden of proof and exemption clauses [37]. Principle states that if loss or damage can be localised to one particular stage of the multimodal transport where, according to an applicable international convention or national law, another limit of liability would apply, then such loss or damage shall be determined by reference to such convention or national law. Therefore, shippers could rely on greater liability amounts in various transport conventions. However, this principle also did not avoid criticisms among practitioners, who argued that it is therefore not capable of providing legal certainty and predictability, because parties have to opt-in such clause and there is no harmonised regime on which parties can rely in the absence of an express agreement. Consequently, problems stemming from the mandatory nature of international conventions covering multimodal transport to a lesser or greater extent remain unsolved [38]. In addition, an observation can be made that international rules which regulate the carriage of goods are historically self adjusting so that fairness and equality can be retained. However, liability limitation for the recovery of loss arising out of the loss of or damage to goods remains an arguable issue and since the international trade figures are increasing every year, the debate on liability limits would probably continue. Consequently, even higher liability limits could evolve. Indira Carr,Peter Stone; p. Tana F. European Commission ; [14] Convention on Limitation of Liability for Maritime Claims, London convention [15] Third-party liability of classification societies: Are Shippers Better Off? In Uganda Proceedings Papers: The journal of international maritime law vol 15, ; [24] The economic impact of carrier liability on intermodal freight transport. European Commission [25] Road transport. Alex Losy, Nicholas Grief. CIM in Force. EU commission, final report.

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Justification for strict liability: Strict liability: Strict liability offences are offences where the defendant must be proved to have done the actus reus and to have done it voluntarily, there is no need to prove mens rea for at least part of the actus reus, and there is no 'due diligence' or defence of mistake available.

Negligent misstatements[edit] A negligent misstatement takes the form of conduct or words that mislead a person to act to his or her detriment; [28] if conduct, it may take the form either of omission or of commission. There are, as has already been noted, three main delictual remedies: The various delictual actions are not mutually exclusive. It is possible for a person to suffer various forms of harm at the same time, which means that a person may simultaneously claim remedies under more than one action. The harm must take the form of patrimonial loss. The conduct must take the form of a positive act or an omission or statement. The conduct must be wrongful: There must be causation both factual and legal. For the former, the conduct must have been a sine qua non of the loss; for the latter, the link must not be too tenuous. Harm or loss[edit] One obvious prerequisite for liability in terms of the law of delict is that the plaintiff must have suffered harm; in terms of the Aquilian action, that harm must be patrimonial, which traditionally meant monetary loss sustained due to physical damage to a person or property. Now, however, patrimonial loss also includes monetary loss resulting from injury to the nervous system and pure economic loss. A plaintiff may claim compensation both for loss actually incurred and for prospective loss, including, for instance, the loss of earning capacity, future profits, income and future expenses. Conduct[edit] Delictual harm is usually caused, if not always directly, [31] by human conduct. Delictual conduct includes positive acts and omissions and statements. One of the reasons why the law distinguishes between different forms of conduct is that this affects the way the courts deal with the question of wrongfulness. Courts tend to be stricter when considering whether omissions or statements are wrongful. These terms are usually interchangeable. Whether or not conduct is wrongful is a question of social policy; the court is required to make a value judgment as to its acceptability. The principle to be applied is one of objective reasonableness. Objectively reasonable conduct accords with the legal convictions or boni mores of the society. When a court holds that conduct is wrongful, it makes a value judgment that, in certain categories of cases, particular people should be responsible for the harm they cause. This involves a balancing of the interests of the plaintiff, the defendant and of society in general. In determining whether or not conduct is objectively reasonable, the courts apply certain well-established rules of thumb. These are determined by the nature and consequences of the conduct: Conduct is usually wrongful if it causes harm to person or property. In the absence of a defence or any other factor, the harm caused is actionable. Where the conduct takes the form of omissions or negligent statements, it is usually not wrongful even if physical harm results. The courts scrutinise such cases very carefully, as special factors need to exist for liability to arise. Where harm takes the form of nervous shock, the conduct is again not wrongful unless special reasons exist to warrant liability. In all instances the court will consider possible defences. Some of these are aimed at showing that the conduct was not unlawful. Examples include self-defence, necessity, justification, statutory authority and consent. Omissions[edit] An omission, as noted previously, is not prima facie wrongful, even when physical damage is caused. An omission will be considered wrongful only if there was a duty to act positively to prevent harm to the plaintiff. The existence of a legal duty to act positively depends on the legal rather than the moral convictions of the community. The following are examples of how this standard is met: Psychiatric injury[edit] Nervous or psychiatric injury is sustained through the medium of the eye or the ear without direct physical impact: For patrimonial loss to be actionable in the case of emotional shock, it must have been intentionally or negligently inflicted. The objective-reasonableness test may be satisfied by looking at the foreseeability of such an injury. There are six established principles: Mental harm must arise. It must not have been a trivial emotional experience. If an intention to shock is established, intention limits the ambit of the claim. In the alternative, it must be negligently inflicted. Injury by shock must in either case be foreseeable. The injured party must be foreseeable. There must be some relationship or proximity between him and the injurer, or else some special knowledge on the part of the latter. Defences[edit] A distinction should be drawn

between defences aimed at the wrongfulness element and defences which serve to exclude fault. They are practical examples of circumstances justifying a prima fade infringement of a recognised right or interest, according to the fundamental criterion of reasonableness. They are another expression of the legal convictions of the society. Consent[edit] Consent to injury, or Volenti non fit injuria , is a full defence; if successful, there is no delict. As a general defence, it can take two forms: There are five requirements for the defence of consent: In addition, the consent must not have been socially undesirableâ€"not seduction, or murder for insurance purposes; and the consent must not have been revoked. Necessity and private defence[edit] Necessity is conduct directed at an innocent person as a result of duress or compulsion, or a threat by a third party or an outside force. Private defence or self-defence is conduct directed at the person responsible for the duress or compulsion or threat. There is, therefore, an important distinction between the two. In cases of necessity and private defence, the question is this: Under which circumstances would the legal convictions of the community consider it reasonable to inflict harm to prevent it? The test is objective. The role of the person against whom the defensive conduct is directed is an important factor in determining whether defence or necessity is being pled. An act of necessity is calculated to avert harm by inflicting it on an innocent person, whereas an act of defence is always directed at a wrongdoer. A person acts in "self-defence" when he defends his own body against unlawful attack by someone else. The violence used in defence must not exceed what is reasonably necessary to avert the threatened danger: The attack must have been unlawful. The defensive conduct must have been directed at the attacker. The defence must have been necessary to protect the threatened interests. It must have been reasonable: An act of defence is justified only if it was reasonably necessary for the purpose of protecting the threatened or infringed interest. An act of necessity may be described as lawful conduct directed against an innocent person for the purpose of protecting an interest of the actor or of a third party including the innocent person against a dangerous situation, which may have arisen owing to the wrongful conduct of another or the behaviour of an animal, or through natural forces. Two types of emergency situations may be found: Accountability[edit] A person cannot be at fault if he does not have the capacity to be at fault. This involves two questions: The enquiry is purely subjective, focusing on the capacity of the specific individual, and is concerned with the mental, not the physical, capacity of a person. Animus iniuriandi is the intention animus to injure iniuria someone. It is the same as dolus in criminal law. The test for intention is subjective. One must intend to injure; and know that it is wrongful onregmatigheidsbewussyn. One must distinguish between how the act was committed intention ; and why the act was committed motive. Defences[edit] There are several defences excluding intent: Ignorance as to the wrongful character of the conduct, or a mistaken belief in the lawfulness of the conduct, excludes intent on the part of the defendant. In an extreme case one may be provoked to a degree of anger which renders one doli et culpae incapax. In other instances, provocation may serve to rebut the presumption of animus iniuriandi or as a ground for justification. The defence of jest is directed at the first aspect of intention: The sole criterion is whether or not the defendant subjectively and in good faith meant the conduct to be a joke. In exceptional circumstances a person may be intoxicated to such an extent that he or she lacks the capacity to be to formulate an intention and therefore to be at fault. If an intoxicated person is found to have had capacity, it is still possible to prove that either of the two aspects of intention is absent. The principles applicable to instances of intoxication apply equally to cases involving emotional distress. An insane person cannot be held accountable for his or her conduct. Youth may indicate lack of accountability. Negligence[edit] Negligence culpa occurs where there is an inadequate standard of behaviour. The conduct is tested against what the reasonable person in the position of the defendant would have foreseen and what he would have done to avoid the consequences. Culpa is partly an objective and partly a subjective concept. The reasonable person is placed in the position of the defendant. The test comprises three elements: The standard was well-articulated in Kruger v Coetzee: For the purposes of liability culpa arises if a a diligens paterfamilias in the position of the defendant i. Conduct is therefore negligent if a reasonable person in the same position as the defendant would have foreseen the possibility of harm, and would have taken steps to avoid it, and if the defendant failed to take such steps. Foreseeability[edit] The first element of the foreseeability criterion is that the possibility of harm to others must have been reasonably foreseeable:

Chapter 5 : justification of strict liability Essays & Research Papers

Strict Liability is very important topic of law of Tort. About this Channel. This channel is created with an aim to share the legal and technical knowledge with the students and legal fraternity.

Explanation[edit] The executive and legislative branches of modern states enact policy into laws which are then administered through the judicial system. Judges also have a residual discretion to excuse individuals from liability if it represents a just result. When considering the consequences which are to be imposed on those involved in the activities forming the subject matter of the common law or legislation , governments and judges have a choice: To be excused from liability means that although the defendant may have been a participant in the sequence of events leading to the prohibited outcome, no liability will attach to the particular defendant because they belong to a class of person exempted from liability. In some cases, this will be a policy of expediency. Hence, members of the armed forces , the police or other civil organizations may be granted a degree of immunity for causing prohibited outcomes while acting in the course of their official duties, e. Others are excused by virtue of their status and capacity. Others may escape liability because the quality of their actions satisfied a general public good. For example, the willingness to defend oneself and others, or property from injury may benefit society at large. Whilst the jurisprudential importance of the distinction between justification and excuse defenses is clear, legally they have the same effect, acquittal, and there is an ongoing debate about whether the distinction makes any practical difference. An exculpation is a defense in which a defendant argues that despite the fact they committed and are guilty of the crime , tort , or other wrong and have a liability to compensate the victim, they should be exculpated because of special circumstances that operated in favor of the defendant at the time they broke the law. Defense of infancy This is an aspect of the public policy of parens patriae. In the criminal law, each state will consider the nature of its own society and the available evidence of the age at which antisocial behavior begins to manifest itself. Some societies will have qualities of indulgence toward the young and inexperienced and will not wish them to be exposed to the criminal law system before all other avenues of response have been exhausted. Hence, some states have a policy of doli incapax and exclude liability for all acts and omissions that would otherwise have been criminal up to a specified age. Thereafter, there may be a rebuttable presumption against the use of criminal sanctions except in more serious cases. Other states leave discretion to prosecutors to argue or the judges to rule on whether the child understood that what was being done was wrong. The status of minor may also excuse liability in the civil law for contract , tort and other legal situations during which liabilities would otherwise attach to the infant. Where there is only minimal understanding, transactions entered into will be void, i. When understanding grows in line with age, the law switches from excuse to exculpation, and transactions may be voidable, i. Hence, it would not be appropriate to allow a child knowingly to deceive innocent retailers or service providers into supplying value, and then allow him or her to avoid liability to pay a reasonable sum of money for those goods or services. This is a balancing of political and commercial interests. Punishment is only justified morally if the person understands that what was done was wrong and accepts the judgment of society as part of the process of expiation and rehabilitation. Hence, as with parens patriae, the state accepts the person as being in need of care, and offers or requires medical treatment instead of subjecting such people to the stress of having to undergo a trial as to liability. Settled insanity is defined as a permanent or "settled" condition caused by long-term substance abuse and differs from the temporary state of intoxication. In some United States jurisdictions "settled insanity" can be used as a basis for an insanity defense , even though voluntary intoxication can not, if the "settled insanity" negates one of the required elements of the crime such as mens rea. Automatism This criminal defense straddles the divide between excuse and exculpation. For example, a diabetic suffering a hypoglycaemic attack will not be liable for any loss or damage caused. To that extent, it borrows from the policy excuse favoring those who are suffering from a mental illness, but allows the full trial as to liability to proceed. For a detailed comparative law discussion, see automatism case law Self-defense is, in general, some reasonable action taken in protection of self. An act taken in self-defense often is not a crime at all; no punishment will be imposed. To qualify, any defensive force must be

proportionate to the threat. Use of a firearm in response to a non-lethal threat is a typical example of disproportionate force; however, such decisions are dependent on the situation and the applicable law, and thus the example situation can in some circumstances be defensible, Generally because of a codified presumption intended to prevent the unjust negation of this defense by the trier of fact. Exculpations[edit] Duress in criminal law and in contract law In this situation, the defendant has actually done everything to break the law and intended to do it to avoid some threatened or actual harm. Thus, some degree of liability already attaches to the defendant for what was done. The extent to which this defense should be allowed, if at all, is a simple matter of public policy. A state may say that no threat should force a person deliberately to break the law, particularly if this breach will cause loss or damage to a third person. Alternatively, a state may take the view that even though people may have ordinary levels of courage, they may nevertheless be coerced into agreeing to break the law and this human weakness should have some recognition in the law. This is a legal as well as a political decision. In the civil law, duress is similarly only an exculpation, rendering contracts and other transactions voidable, and offering only minor mitigation in the calculation of the amount of any damages payable. Mistake of fact in criminal law and in mistake in contract law The fundamental policy operating here is ignorantia juris non excusat , i. This would unduly encourage the lazy and the deceitful to trade on their ignorance real or otherwise. Thus, only mistakes relating to the factual basis of what is being attempted can form this defense and, in the majority of situations, it will only offer limited benefit to a defendant of ordinary capacity since the state owes no general duty to save citizens from the effects of their own ignorance or stupidity. Nevertheless, there may be limited circumstances in which people may honestly believe things that either prevent them from forming the requisite mens rea or from reaching an ad idem agreement. Provocation This is an example of a purely mitigatory defense in that, in the few situations when it is allowed to operate, it only reduces the level of criminal liability. In most legal systems, it cannot extinguish liability. It is a natural part of human nature that people get angry when they are provoked. But the state has a positive interest in maintaining good order and therefore, no matter what is done or said, people are not supposed to react violently or to cause loss or damage. Even though certain forms of physical contact or particular words might cause even reasonable people to become seriously annoyed, the state cannot sanction or justify retaliation. Thus, in most aspects of the law, any loss of control is taken to be an aggravating factor that, in the criminal law or the law of intentional torts, might well lead to an increase in sentencing, or the award of punitive or exemplary damages.

Chapter 6 : Excuse - Wikipedia

Justification Of Strict Liability. Topics in Criminal Law May 25, Abstract Strict liability crimes require no culpable mental state and present a significant exception to the principle that all crimes require a conjunction of action and mens rea.

Sourabh Prakash Ahirwar Vicarious liability may be imposed on a person for loss or injury resulting from the wrongdoing of another person, even though the person who is vicariously liable may not have been personally at fault. Vicarious liability in tort arises by virtue of the relationship between the wrongdoer and the person who is vicariously liable. The modern justification of vicarious liability is justified by the principle of loss distribution. In the great majority of cases an employer who has to pay damages for the tort of his servant does not in fact have to meet these facilities out of his own pocket. The cost of liabilities is distributed over a large section of the community, and spread over some period of time. This occurs partly because of the practice of insurance and partly because most employers are anyhow not individual but corporation. Where the employer insures against his legal liabilities he will charge the cost of insurance to the good and services which he produces. In general this cost will be passed on by the employer in the form of higher prices to the consumer. The consumer himself may also be able to play his part in spreading the cost in his turn, because not all consumer are themselves individuals. Liability of employers for torts that their employee committed without asking them always considers whether the act is negligent or unlawful. First, the vicarious liability regime allows the plaintiff to obtain compensation from someone who is financially capable of satisfying a judgment. The plaintiff benefits greatly from the doctrine of vicarious liability, which allows access to the deep pockets of the employer even when the employer is blameless in any ordinary sense. Second, a person, typically a corporation, who employs others to advance its own economic interest should in fairness be placed under a corresponding liability for losses incurred in the course of the enterprise. Third, the regime promotes a wide distribution of the tort losses since the employer is a most suitable channel for passing them on through liability insurance and higher prices. Fourth, vicarious liability is also a coherent doctrine from the perspective of deterrence. Given that it the employer will be held liable it has every incentive to encourage its employees to perform well on the job and to discipline those who are guilty of wrongdoing. It is rooted in the tort theory of enterprise liability. Imposes liability for losses created by the activity on person who benefits from it. Enterprise Liability â€”employer is in the best position to know or atleast find out overall cost of accident associated with business proves too much. Assumes that person who has introduced risk should be capable of managing risks to reduce or prevent harm to others. Vicarious liability give the employer an incentive to discover which employee are likely to cause harm to other so that the employer can control them or sack them, if necessary. It raises the incentives for vicarious liability encourages accident prevention by giving an employer a financial interest in encouraging his employees to take care for the safety of others. Fair and Efficient Compensation allowed Plaintiff to seek compensation from a deep-pocket defendant who not only is able to absorb and spread losses but has also introduced a risk into the community that has materialized in harm to Plaintiff. The role of insurance-Insurance effect to the principle of loss distribution, in that the loss is spread across a number of people, who each pay premiums to an insurance company. Two conditions must be met: Special relationship between primary tortfeasor and the person to be held vicariously liable such as Employer-Employee, Principal-Agent, Master-Servant relationship. Only the latter gives rise to an employment relationship. Whether tortfeasor is an employer or independent contractor depends on a functional inquiry. The servant of course is also liable. A multitude of very ingenuous reasons have been offered for vicarious liability of a master: He has selected the servant and trusted him, and so should suffer for his wrongs, rather than an innocent stranger who has had no opportunity to protect himself. A plaintiff has a choice to bring against both master and servant as joint tortfeasors. The liability arises even though the servant acted against the express instructions, and no benefit for the master. The liability of master or master-servant relationship arises when following essentials are present: The servant committed the tort in course of employment. A servant is a person employed by another to do work under the direction and control of his master. As a general rule a master is liable for its servant torts not for his independent contractor. If a tort was

committed by an employee but not in the course of employment, the employer may still be liable if the situation involved a non-delegable duty. Though the servant is under the control of his master regarding of manner of his doing the work, there are many cases in master cannot control his servant. The control test developed from a series of cases that emphasised the degree of control that could be exercised over a worker. A servant is a person subject to the command of his master as to the manner in which he shall do his work. If this should be the only control test this allow the state authority and municipal corporation escape from liability of wrongful act of their servants like house-surgeons and engineers. The application of the test meant that, for a long time, employers were not considered to be vicariously liable for the actions of their professional staff where those actions involved the exercise of professional skill. Cassidy v Ministry of Health [] 1 All ER , The hospital authorities were held liable when due to the negligence of the house surgeon and other staff, during post-operation treatment let the plaintiff hand was rendered useless. Referring to the liability of hospital authorities, Denning L. The doctor who treated a patient in the Walton hospital can say equally like the crane driver and ships captainâ€¦. If there is a lapse from on the part of the surgeon, etc. The traditional control test was found to be unsatisfactory as the exclusive means of determining who was an employee: Technological developments and increased specialisation in the workplace have meant that an employee often exercises a degree of skill and expertise inconsistent with the notion of being subject to the control of the employer. Control is therefore now regarded as having more to do with the right of the employer to exercise control, rather than the actual exercise of it. It engaged a band to provide music in the hall. The agreement provided that the band should not infringe copyright, and that the band would be liable for damages and costs caused by any such infringement. The defendant did not know, and had no reasonable grounds for suspecting, that the infringement was to take place. Decision-The band is Employee of defendant and defendant is liable for infringement. Has an opportunity of profiting from sound management decisions, charges different amount for different jobs, Invoices the employer rather than is paid regularly. Send substitute to do the work, spend a large amount of expenses of the work, and is not dependent on one or few clients. He was paid at mileage rates, and was obliged to buy the truck through a financial organization associated with Ready Mixed. Latimer was obliged to meet the costs of maintenance, repair and insurance of the truck. It relied upon the role played by the worker within the organisation for which the work was performed: It is often easy to recognize a contract of service when you see it, but difficult to say wherein the difference lies. This test provides flexibility necessary to deal with varying types of employment relationships and the changing nature of work practices. Shortly after he left them, he wrote a textbook on business management and submitted the manuscript to Stevenson Jordan and Harrison a firm of publishers. He died before the book was published. Macdonald and Evans claimed that the book was written while Evans-Hemming was their employee, and so they owned the copyright in the work under s. The book was divided into five sections. The first section consisted of the text of three public lectures that Evans-Hemming had given while employed by Macdonald and Evans. The Court of Appeal held that he had given these lectures as an independent contractor. As Denning LJ said: The lectures were, in a sense, part of the services rendered by Mr Evans-Hemming for the benefit of the company. But they were in no sense part of his service. It follows that the copyright in the lectures was in Mr E. The second section was written in its final form while Evans-Hemming was employed by Macdonald and Evans. The Court of Appeal held that he wrote the second section as an employee, and hence the copyright in the second section was in Macdonald and Evans. Cooke J referred to these factors and said that the fundamental test was:: Irving under series of service. Irving was under a series of contract providing her skill under fixed remuneration. Irving did not provide her own tools or risk her own capital, nor did her opportunity of profit depend in any significant degree on the way she managed her work. Irving and the company for time off, sick pay or holidays. Degree of responsibility for investment and management- The company might specify the persons to be interviewed, the questions to be asked, the order in which questions should be asked and recorded, how answers were to be recorded and how she should probe for answers. Within the period specified for completion of a survey, however, she was normally free to work when she wanted, could undertake similar work for other organizations, and could not be moved by the company from the area in which she had agreed to work. Cooke-Cooke J referred to these factors and said that the

fundamental test was: There is no exhaustive list of considerations relevant to determining this question, and no strict rules about the relative weight the various considerations should carry in a particular case Decision-As Mrs. Irving appeal by the Minister was right in concluding that Mrs Irving was employed by the company under a series of contracts of service, and the appeal accordingly must fail. A Principal lacks control over how work is done. B Contractor best situated to prevent risks associated with work. Further, the imposition of liability for independent contractors encourages employers to seek out and contract with financially responsible contractors who can meet any damages awarded against them Distributing the loss It has been suggested that a principal who engages an independent contractor may not necessarily be better able to spread the cost of the damage. The principal may not be in a position to pass on the loss in the form of higher prices, and may not be covered by insurance against damage caused by the negligence of an independent contractor. Principal is vicariously liable for torts of an independent contractor where the duties in question were non delegable either at common law or under statute. A non-delegable duty is a duty imposed by the common law upon a person who has undertaken responsibility for the person or property of another who is in a position of special vulnerability. The special duty arises because the person on whom it is imposed has undertaken. The care, supervision or control of the person or property of another or is so placed in relation to that person or his property as to assume a particular responsibility for his or its safety, in circumstances where the person affected might reasonably expect that due care will be exercised. Consequently, although a principal is not vicariously liable for loss or injury caused by an independent contractor, he or she may be personally liable if the conduct of the independent contractor constitutes a breach of a non-delegable duty owed by the principal to the injured person. The duty is said to be non-delegable because it cannot be met by simply delegating the task to a competent person. Factors under which an employer can be held liable for the tort of Independent contractor are- If an employer the doing of an illegal act, or subsequently ratifies the same, he can be made liable for such an act. The reason for such an liability is that employer himself is a part to the wrongful act, along with the independent contractor, and, therefore, he is liable as a joint tortfeasor. An employer can be liable for the act of an independent contractor in case of strict liability. He case of Extra-hazardous work which has been entrusted to an independent contractor, in the case of breach of statutory duty. After about a fortnight, the service line was snapped and the agriculturist who was working in the field, from whose meter the electricity is diverted injured and file a suit against the electricity board. The court held the chief trustee of temple and agriculturist under his knowledge electricity is diverted were held liable.

Chapter 7 : South African law of delict - Wikipedia

Introduction. All major transport conventions which regulate the international carriage of goods consist of liability limitation clauses. In some views of practitioners, limitation of liability can be treated as a strange and improper clause or it can even be treated as illegal, because it causes inequality and injustice between parties to a contract.

Strict Liability Running Head: Strict liability offenses make it a crime simply to do something, even if the offender has no intention of violating the law or causing the resulting harm. Strict liability is based philosophically on the presumption that causing harm is in itself blameworthy regardless Pages: When he noticed that the nail gun was assembled improperly he decided to sue the manufacture of the product, Eagle Tools Inc. Under strict liability, the manufacture has a liability to make sure that all the products that they sell are in working and safe conditions. While this product fits the requirements that strict liability Pages: As the majority of criminal offences are created by statute, Parliament will usually indicate the kind of mens rea required for the offence by inserting specific mens rea Pages: I personally am unbiased either way regarding this topic, for any and all concerns I feel are legitimate. In this world there are many regular civilians Pages: Queen Meheux Spring Strayer University Strict Liability exists in the criminal context as well as civil, it is a legal responsibility for any damages and losses caused by a person or organization due to the act which is defined a fault in the criminal law term. Strict Liability, especially product liability is well known in tort law, of course criminal law Pages: With expert discussion of proof requisites and defenses, it covers all the elements of each tort actionable under Alabama law. It provides the information necessary to determine if there is a case and what is needed to prove or defend it. Alabama Tort Law not only provides up-to-date coverage of relevant case law Pages: TYPE indicates that a question is new, modified, or unchanged, as follows. N A question new to this edition of the Test Bank. The extreme risk of an activity is a primary basis for imposing strict liability. Evaluate the concept of strict liability. Strict liability is the legal responsibility levied on a person or company for certain damages or injury even if they were not at fault. Strict liability can even apply even if the person or company did not physically commit any act to cause the actual injury. Corporations can be held liable for the defects of their product even if they did not know about the problem or harm it could Pages: It is shown that strict liability outperforms negligence with respect to risk allocation and the probability that a desired level of care is met by the auditor if competitive liability insurance markets exist. Furthermore, our model explains the existence of insurance contracts containing obligations a type of contract often observed in liability insurance markets. Jim knew the liquid was vodka because driving while intoxicated is a strict liability offense. This case resolved the privity dilemma and articulated the rationale upon which the total transition from special warranty to strict liability in tort would ultimately be made. What is strict liability in tort? Products liability claims can be based on negligence, strict liability, or breach of warranty of fitness depending on the jurisdiction within which the claim is based. Many states have enacted comprehensive products liability statutes. The law apportions torts into three classes: It is possible that the injured party could be either an employee or a stranger, and the employer can be held vicariously liable in both situations. Vicarious liability can only Pages: This means that there is no general duty of care in tort to act in order to prevent harm occurring to another. Products containing inherent defects that cause harm to a consumer of the product, or someone to whom the product was loaned or given, are the subjects of products liability suits Product Liability Law. If a person s is injured while properly using a product that is defective, they have a right to file a claim against the company Pages: On the other hand, James states that justification by god is done threw good works. The Old Testament taught the same Pages: Is There Any Difference in the Principle? In some countries, this is a strict liability if the damage can be attributed to a specific party. The principle of liability applies to environmental damage and imminent threat of damage resulting from occupational activities, where it is possible to establish a causal link between the damage and the activity in question. The essential characteristic of a liability Pages: It deals with liability that may arise from accidents caused by the defective or dangerous condition of the premises. Trespassers A trespasser is someone who enters without invitation and their presence is unknown by the occupier and if known is in subject to in a

practical way such as a padlock or a verbal warning. Trespass is a strict liability tort so the nature is irrelevant. Sometimes a lawful visitor can become a trespasser: Limit as to area e. Therefore, Wood should recover damages even Pages: The Jewish culture had been educated in the law and yet the Gentile culture was being instructed that the law was death. The Jewish community was confused and aghast that God would justify sinners. Nonetheless that is exactly Pages: This is the heart of the Gospel and the core of what Christianity is all about. The churches of Galatia were founded by Paul himself Acts They seem to have been composed mainly of converts from heathenism 4: Wolfson is right when saying that it should not be his responsibility. How can it be decided that the responsibility of a reckless driver even if intoxicated be taken away from that driver and put solely on the establishment, I personally do not think this is right. However some people believe otherwise. A lot of people who do believe that The Dram Shop Laws are a good Idea believe this simply because "Strict dram shop liability laws may be an effective way to reduce

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Chapter 8 : Justifications for imposing strict and absolute liability | ALRC

ï»¿Justification by faith or justification by wor " Justification is a term that describes the event whereby persons are set or declared to be in right relation to god." Justification by god is presented by Paul to be done only when you have faith and not because of your good deeds/works.

As part of a criminal defense strategy, a defendant may seek to present evidence which includes justifications, excuses, or mitigating factors concerning criminal acts. Justification If a defendant can present a successful justification for his actions, he will be fully cleared from criminal liability. In other words, society accepts that his otherwise criminal act as appropriate under the circumstances. Here are several examples: Self-defense and defense of others, as well as defense of property providing deadly force is not used. Crime prevention with use of deadly force usually restricted to dangerous felonies. Necessity â€" where a person causes harm in order to prevent an even greater harm to society i. Reasonable mistake of fact. Here are some examples of excuse defenses: Duress or coercion â€" where the defendant commits the criminal act under threat of immediate bodily harm or death. Duress can never be used to justify homicide. Involuntary Intoxication â€" if the defendant became intoxicated through no fault of his own i. Entrapment â€" if the criminal act originated with an inducement from law enforcement, the defendant would be acquitted. Infancy â€" today, many criminal statutes set a certain minimal age for criminal liability usually 13 or Mitigating Factors If mitigating factors are present, the defendant will not be acquitted, but he may be charged with a lesser offense. Voluntary intoxication â€" this may negate some specific intent or premeditation to commit a crime. Mistake, reasonable or unreasonable, can serve as mitigating factor by negating specific the intent required for some crimes. Heat of passion â€" where the defendant commits a crime while provoked. Imperfect self-defense â€" if the defendant applies deadly force, making an honest but unreasonable mistake that such force is necessary for self-defense, he may be guilt of voluntary manslaughter instead of murder. How Can an Attorney Help? An attorney may examine and recommend various excuses, justifications, and mitigating factors that may decrease criminal liability.

Chapter 9 : Justification Definition

The imposition of strict or absolute liability is a departure from a fundamental protection of the criminal law. The Strict and Absolute Liability Report concluded that the imposition of strict liability may be justified:where it is difficult to prosecute fault provisions;to overcome 'knowledge of law' issues, where a physical element incorporates a reference to a.