

ABSTRACT

This paper studies the relative social welfare of rules for imposing liability and apportioning damages among potentially insolvent actors. In the model, each of two actors chooses an input level that yields private benefits but imposes an external cost, the size of which depends on the input choices of both actors. Social welfare is the sum of private benefits less the external cost. Each legal rule apportioning the external cost between the two actors (and a passive "victim") defines a class of two-person games $\Gamma(s_1, s_2)$ parameterized by the exogenously given solvencies of the two actors. An actor's solvency represents the assets it has available to fund its share of the external cost.

For each of three legal rules--negligence with joint and several liability (with contribution), strict liability with joint and several liability (with contribution) and strict liability with non-joint, several only liability--we study how the equilibria of the game vary with the initial solvencies of the parties. Given joint and several liability, neither negligence nor strict liability dominates the other rule in welfare terms (or in terms of unfunded liability) over all possible pairs (s_1, s_2) of solvency. Similarly, given strict liability, neither joint and several liability nor non-joint, several only liability dominates the other rule in welfare terms (or in terms of unfunded liability).

The model is motivated by the problems of apportionment of the clean-up costs of hazardous waste sites under the Comprehensive Environmental Response, Compensation, and Liability Act.