



# Theoretical Perspectives on Torts

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Konomark  
Most rights sharable

Why have  
tort law?

If we're going to  
have it, how should  
we choose its rules?  
What's the design  
principle?

## Feminist Perspective

- Leslie Bender
  - A Lawyer's Primer on Feminist Theory and Tort, 38 J. of L. Educ. 3 (1988)
  - *(We read part of this earlier in the semester.)*

## Law and Economics Perspective

- Richard Posner
  - Federal circuit judge (7th) and law professor (Chicago). He wrote *Speakers of Sport v. ProServ*.
- Guido Calabresi
  - Federal circuit judge (2d) and law professor (Yale)
- Ronald Coase
  - The most famous. He argued that if there are no transaction costs and people can contract, then different legal rules lead to the same outcome for society.
- Many others ...

## Guido Calabresi's Efficiency Goal

The minimization of the costs of accidents, the costs of avoidance, and the costs of administration (including error costs).

## Guido Calabresi's Athens and Sparta

**Athens:** People pay for their own accidents.  
\$400 for car (\$200 price + \$200 insurance)  
\$250 to not buy car (bus fare, etc.)

**Sparta:** Accidents paid for from general fund.  
\$200 for car  
\$250 to not buy car (bus fare, etc.)

## Guido Calabresi's Athens and Sparta

Efficient

**Athens:** People pay for their own accidents.  
\$400 for car (\$200 price + \$200 insurance)  
\$250 to not buy car (bus fare, etc.)

→ You won't buy the car.

**Sparta:** Accidents paid for from general fund.  
\$200 for car  
\$250 to not buy car (bus fare, etc.)

Inefficient

→ You will buy the car.

## Guido Calabresi's Athens and Sparta

A  
\$4  
\$2  
Sp  
\$2  
\$2

*Therefore (according to this analysis), the courts ought to choose the rule that makes people responsible for their own accidents, as this rule leads to an efficient result.*

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nd.

## Guido Calabresi's Athens and Sparta

A  
\$4  
\$2  
Sp  
\$2  
\$2

The main idea here is that there is wisdom in getting the proper alignment of incentives. In particular, putting the burden of liability on the party who is in the position to avoid the accidents at the least cost.

efficient result