TORT LAW

Each regulation implies that a large amount of people will be involved in the process, so that passing or repealing the law could have both good or bad effects on one’s own life.

That’s when it comes to regulation content
According to Marshall…

It may prove useful to ask each person how much they are willing to pay to benefit from this process (in case they would benefit of any amendment to the law), or to avert any ensuing damage (in case changes could be of any damage).

If our research will have a positive outcome, we could point out that these changes are for good and represent a significant improvement from an economic point-of-view.
The theory of economic efficiency suffers from the influence of 3 main limits:

1. This theory stems from the prominence of consequences, thus losing the chance of an analysis of each regulation based on non-consequential criteria, such as the criterion of justice;

2. It is based on the assumption that the appropriate values to express the assessment of efficiency are those of each person and they are revealed by their own actions;

3. It also gives for granted that the best method to measure the intensity of preferences is to observe people willingness to pay.
An alternative to *Marshall* point-of-view is the theory of efficiency developed by the Italian economist *Pareto*

He avoids comparing one’s individual benefit or loss focusing on the concept of “improvement” as a change that produce benefit for the entire society
THE TORT IS:

an intentional or unpremeditated behaviour contrary to the law

the system of tort liability allows to establish the responsibility of any individual for those damages caused by his behaviour and to understand what are the criteria to measure it
The compensation as a way to force a potential perpetrators of abuse to take on the costs involved with the victims, it is a legal mechanism that leads to efficient solutions through the internalization of externalities.

According to the author there are 3 basic reasons why certain acts, even if they import a cost to other individuals, are not considered unlawful acts:

1) whether the behaviours set a transfer rather than a net cost;
2) if they impose a cost that is not worth to do away with the remedy offered by regulations;
3) if they can be better controlled by a regulation that establishes property rights instead of giving tort liability.
Causality

- Example of the tree that fell on a trolley bus moving injuring some passengers.

  the plaintiff lost the case, because the act of driving faster did not increase the *ex ante* probability that the tree fell on the trolleybus.

  The reason for which recognize compensation is to provide incentives not to engage in actions, that could impose a cost to others.
ANOTHER EXAMPLE……

two hunters who mistake the third for a deer and shoot at the same time

A solution to the problem of hunters it is the fact that it integrated the inappropriate payment of ex post damages with an ex ante penalty for the reckless use of firearms in circulation: that is, fine hunters in case of double bullet.

So, hunting without due care is an activity that seems fair to punish even in cases where you just missed the hunting companion, therefore, not causing any damage.
The case where the technical management of an enterprise of the nuclear reactor making a mistake, the result will be the release of a radioactive gas, which will lead to an increased incidence of cancer in the area, estimated the increase from 10 to 11 cases a year.

Is it to be considered responsible the manager of the reactor?

….. The plaintiff in a civil action proposed in a system of common law would have lost the case since it has to show that the chances that the defendant is guilty are greater rather than not.
There is a famous case that has been addressed in a similar manner, although the roles of plaintiffs and defendants were overturned.

- The object of the dispute were some complications due to a fertility drug DES, which affected some of the daughters of women who had assumed.

- Complications occur after a minimum of 10 years.

The Court resolved the controversy by condemning the drug companies to pay damages as a percentage of market share held, thus combining the defendants as it has previously been suggested to the actors.
The aim of the economic analysis on what concerns responsibilities for illicit acts is not to remove all the risks, but to achieve a proper level of precautions as well as a proper level of risk.

EFFICIENT ACCIDENTS

Efficient accidents are those whose precaution would cost more than that is worth it.
EXAMPLE

We are flying on a small aircraft, which has the potential for causing physical harm to other people. The probability that this will happen depends on the precautions we take.

the principle of **objective responsibility** is in force that is to say we are responsible for damage caused by our actions.
Hand Formula

This formula states that a party should be deemed negligent if he fails to take all the precautions that a rational person would have taken if both responsible and victim.

The principle of objective responsibility and the Hand formula conflict
In conclusion……

we can say that the more non- verifiable precautions affect the event, the more the objective responsibility system seems to be preferable to the negligence one, as the objective responsibility encourages to take the external costs into consideration while deciding on the non-observable precaution
SO FAR

we have analyzed cases in which only one of the parties could take precautions

BUT

There are some cases in which the probability that they will happen depends on the decisions taken by both parties involved.

CASE OF CAR CRASHES
SIMPLIFYING

Case of accidents between cars and tanks, where only the car will get damaged

IF A LAW

- NOT PROVIDE FOR ANY FORM OF RESPONSIBILITY
  - the drivers will have an efficient behaviour because they will be charged of full cost of the accident
  - tank driver haven’t an efficient behaviour because they will not get any damage

IF WE APPLYING THE PRINCIPLE OF OBJECTIVE RESPONSIBILITY TO TANK DRIVER
  - tank driver will be charged of the car’s damage cost
  - car driver will not be encouraged to take any precaution
RULE OF NEGLIGENCE SOLVES THE PROBLEMS

The same effect is achieved by a law that provides for an objective responsibility which permits the demonstration of contributory negligence

BUT

To have really effective solutions, we have to suppose that the court is fully aware of the events
IN ACTUAL FACT

central Authority is unlikely to have all the information, and its decisions will not be totally effective

SO

Usually people involved will choose the level of efficient diligence on the basis of the verifiable precautions,

BUT

both the court and the parties could make mistakes
SOMETIMES

The court estimates the precaution level comparing it to that of an ideal person

SO

According to the principle of objective responsibility is aware to take his decision on the basis of the information on his personal skills
ABOUT

the criteria whereby the extent of damages is assessed…

According to the traditional procedure it should correspond to the amount that is necessary to fully compensate the victim in order to re-establish the situation before the accident

In the event that all guilty are found, put on trial and convicted, this kind of approach is effective

BUT

This is not reality
IN THE COMMON LAW SYSTEM WE HAVE

PUNITIVE COMPENSATIONS

That go over the extent of the caused damage

BUT

They require a particular condition

That the tort was committed

• intentionally
• happened because of serious negligence
There are **six different arguments** that justify or deny the existence of such compensations:

- Retributive compensations do not exist. Those that are thus qualified are just compensations for damages of difficult quantification
- Ordinary compensations do not imply a moral judgment on the injurer, who is only expected to provide a compensation, as much complete as possible, of the caused damage. On the contrary retributive compensations express a formal reproach
- Retributive compensations represent a multiplier of probabilities, in order to counterbalance the probability that the injurer will never be put on trials or that the victim will not win the trial
- Retributive compensations are suitable for cases where damages are difficult to evaluate
- Retributive compensations seem particularly appropriate in the cases where potential injurers can be actually discouraged
- Retributive compensations have the purpose of discouraging intentional torts
ABOUT
The problem of the damage extent

- **In civil law** the offender must pay the compensation directly to the victim

- **In criminal law** the compensation goes to the state’s coffers

**OBVIOUSLY**
- every extrajudicial arrangement that guarantee for the victim an amount higher than zero improves his situation

- every compromise that implies a payment lower than the compensation extent is a benefit for the offender
According to English law of XVIII century, every citizen could prosecute a crime (even if they are not the victim).

However, there are three good reasons to give the victim the right to begin a legal case:

1. the victim is the person who best knows whether a crime has been committed;

2. the victim probably knows how the events unrolled;

3. the victim by taking legal action, discourages any future offence
A law that gives the fine to the victim assembles all incentives in one person, avoiding wasteful dealings

**USUALLY**

Usually the compensation given to the victim is justified by the fact that in this way the victim is compensated for the suffered losses

From this point of view, civil law is a poor form of insurance.
Responsibility for faulty product: the coca cola case

The problem is to understand who must be considered responsible between the seller (caveat venditor rule) and the buyer (cavea empor rule) when something goes wrong in the product usage. The necessity to solve this problem rose from real cases of coca cola bottles that exploded.
SOLUTION

- If which the seller knows the risk (but the buyer ignores it) the best solution, in spite of a caveat venditor’s rule, would be to insure the product.

**SO**

The buyer buys the product and the policy

To find the best solution it must be analyzed which part has the best pieces of information about risk’s identity between the producer and the buyer. In the first case it will be used caveat venditor rule, in the second case caveat emptor rule
ABOUT

The costs of judicial procedure related to the two rules:

- CAVEAT EMPTOR: nobody is responsible, nobody is subjected to judgment, nobody must pay lawyers

- CAVEAT VENDOR: the consumer who was subjected to an injury must begin the judgment in order to cash the recompense

BUT

In a regime of contractual freedom the courts impose some standard clauses of responsibility, but they give to the parts the opportunity of modify them
Information values and judicial errors

The evaluation of information is expensive both for the producer and for the consumer: the evaluation of the information will show if it’s better to do it or not

SO

The information that has just a modest effect on the consumer’s evaluation has little possibility to influence his inclination to buy it

THEREBY

the omission of providing an information shouldn’t be sanctioned with the exception of the case in which the information has an important effect on the goods value for the consumer

- CASE OF POLIO VACCINE
Fragile bones and incoherent rules

The potential victims of a harmful event present different degrees of vulnerability. If the legal norm would limit the compensation to how much can reasonably be estimated, the ones who cause damages to specially fragile victims would pay a recompense on the average, while the ones who cause a damage to specially robust victims would pay a smaller amount.

On the contrary, the imposition to compensate victims according to the particular conditions that characterize them, stimulate the potential authors of crimes to choose a level of precautions on the average correct
Annual or flat rate compensation

If the court recognize the compensation of the damage to the injured party, there will be the problem if the compensation must contain health costs relating to each year of cure and of ceasing gain, little by little it realize itself, or the court should recognize a flat rate on the base of his own valuation?

Today’s law seems to be oriented at the second solution. Moreover with flat rate payments the costs related to fake lesions reduce, since it’s possible to stop the simulation that has been done in order to obtain the compensation, when the check is cashed
A question to reflect

The motorway traffic exhibit people to a continuous risk. People who drive accept the risk to be subjected to damages, as well as people who pass nearby storage of dumping that are full of heavy wealth material. In these two cases people can’t obtain a compensation, in the absence of a proof that at the beginning of the accident there was a lack of diligence or valuation. This is really happened. **Was the judge right thinking that the responsibility must be subordinate to the positive verification of a subjective behavior of negligence in this case?**