

Liability and Symmetry

THE NEGLIGENCE RULE imposes a standard of care upon the injurer, which we depicted as partitioning the injurer's precaution into permitted and forbidden zones. The defense of contributory negligence imposes a legal standard of care upon the victim, which can be represented by partitioning the victim's precaution into permitted and forbidden zones.

Figure 6.7 shows the injurer's precaution on the horizontal axis and the victim's precaution on the vertical axis. The two legal standards partition Figure 6.7 into four quadrants. The following table summarizes the relationship between the four quadrants and the fault of the parties:

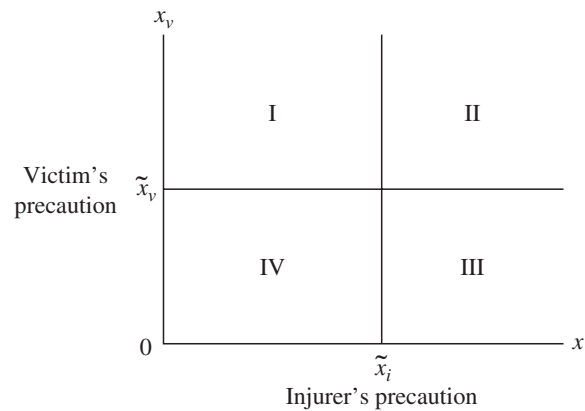
Quadrant	Injurer	Victim
I	fault	no fault
II	no fault	no fault
III	no fault	fault
IV	fault	fault

For example, in quadrant I, the injurer is at fault because $x_i < \tilde{x}_i$, and the victim is not at fault because $x_v > \tilde{x}$.

The following table summarizes the way different liability rules allocate the costs of accidental harm between the parties, depending upon their precaution by quadrant:

Liability rule	Injurer bears cost of harm	Victim bears cost of harm
Simple negligence	I, IV	II, III
Negligence with defense of contributory negligence	I	II, III, IV
Strict liability with defense of contributory negligence	I, II	III, IV
Strict liability with defense of dual contributory negligence	I, II, IV	III

FIGURE 6.7



If we switch the labels of the axes in Figure 6.7 so that the injurer's precaution is on the vertical axis and the victim's precaution is on the horizontal axis, then compare how the liability rules allocate the burden of harm, we shall find some interesting relationships. "Simple negligence" is the mirror image of "strict liability with a defense of contributory negligence," and "negligence with defense of contributory negligence" is the mirror image of "strict liability with defense of dual contributory negligence."

QUESTION 6.25: Explain why the victim bears the costs of accidents under a rule of strict liability with a defense of contributory negligence in quadrant IV.

QUESTION 6.26: Explain why the injurer bears the costs of accidents under a rule of strict liability with a defense of contributory negligence in quadrant II.