Mitigation and Last Clear Chance Notes

When the inputs occur sequentially, none of the damage-based liability rules creates the optimal incentives both for long-run efficiency and for second-best outcomes when the long-run efficient choice is not made. Furthermore, the incentives that the law entails must prevent parties that act first from being negligent while motivating those that act second to choose the optimal amount of care. Think of this in terms of the motorcycle and the truck driver example. A *marginal cost liability rule* is optimal in this situation because the motorcyclist pays for the additional cost (of swerving, per se) that she imposes on other drivers by not parking optimally (usually with a fine or parking ticket). On the other hand, the truck driver is then liable for any costs that he imposes on the motorcyclist beyond those that would occur if the truck driver had best responded to the motorcyclist's inefficient behavior. The result of the marginal cost liability ruling is incentivizing the motorcyclist to park optimally while making the truck driver internalize costs of avoiding potential damages and costs of being extra careful.

Some other applications include the mitigation of damages in contract law. If a product purchased is defective, the buyer should undertake cost effective strategies to mitigate the damage. This follows from the logic that the buyer should only collect for the additional cost of prevention and any subsequent damages that would occur if the buyer were to optimally mitigate. The buyer would then have an incentive to increase the amount of care/precaution when the seller has acted inefficiently. Examples of this include the farmer purchasing defective seeds as well as a buyer buying pork packed in barrels of brine that is found to have leaks. Since the barrels are covered by a warranty that the barrels will not leak, the seller of the pork will pay only for the replacement and not for any other damages incurred from suboptimal actions after the discovery of the leak.

Another application is the Last Clear Chance in Accident Law. This implies that even if the party that acted first behaved inefficiently, the second party must choose the optimal actions or else they will have to pay for the marginal costs that they have also imposed. Some examples of these include the collision between a moving truck and one left standing on the highway as well as the scenario that involves drunk drivers and other drivers on the road.

Lastly, avoidable consequences pertain to situations wherein individuals must consider the additional damages that may accrue from their actions (marginal cost liability rule). United Verde Extension Mining Co. v. Ralston (1931) is a good example. Given that the sulfur fumes prevent the crop that the farmer intends to plant from being profitable at all, the farmer should not bother plant the seeds. Again, the logic is that the farmer should collect for lost profits but not for further costs arising from the inefficient behavior of planting a hopeless crop.

Good Samaritan Rule Notes

The Good Samaritan is a bystander who happens to encounter another individual who needs rescue. If the cost of rescue is trivial, the Good Samaritan would tend to the needs of the individual. In the Anglo-American countries, the courts require no affirmative duties by bystanders, and rarely is there a legal obligation to compensate the rescuer for the minor costs incurred in rescuing. In other words, the Anglo-American countries do not provide any incentives (aside from moral-based incentives) to rescue someone in need. For the most part, they also do not force most potential victims to be thoughtful of costs posed on other people of their rescue (The required postage of bonds for rescue is, of course, an exception). This rule, however, does not attempt to price altruism and thus, it does not diminish the magnitude of the good deed. The counterargument is that many times the law promotes ethical behavior without diminishing it. Moreover, this ruling avoids the costs associated with searching for bystanders that could have rescued someone in need, but did not. Hence, the costs of monitoring, enforcing, and arbitrating the division of blame and punishment are all avoided.

On the other hand, the ruling in Continental Europe requires rescue when the cost of doing so is trivial. Compensation is then given for a successful rescue while a penalty is forced into any bystanders caught neglecting those who needed rescue (at a trivial cost). Because of the potential penalty, the bystanders are incentivized to rescue. In addition, the individual who faces a potential rescue is incentivized to take on an optimal amount of risk as the compensation for the rescue falls under his care.