Ohad Somech

(LL.M. Master in Law and Economics (EMLE) candidate)

Email: ohads2_at_gmail.com

Behavioral - Economic Analysis of Negligence: Risk Aversion and Perception of Risk

The tort of negligent surrounds our life. Be it driving, playing sports or seeking medical assistance it has become a central legal instrument to determine rights and wrongs in civil life. Negligence does not only influence individuals' behavior, it also has a profound effect on corporations, municipal authorities' and governments. Negligence received an important part in the economic analysis of law. From the Hand formula and the Coase theorem to Shavell's accident model, it was often considered the "jewel" of law and economic. During the past several years, prominent voices called for the adopting of insights from psychology and decision making research in the economic analysis of the law. The research aims to answer this call by proposing an adjustment to the traditional economic analysis of negligence in accordance with the theoretical and empirical accumulated knowledge in the field of decision making under uncertainty.

In my research I examine an alternative, behavioral economic analysis of the standard of liability based upon the Tversky and Kahnman's Prospect theory. Tversky and Kahnman proposed a decision making theory that offers a non linear perception of risk contrary to Rational Behavior as proposed by Utility Theory. The thesis presents Prospect theory as a substitute for the rationality assumption in the economic analysis of accidents. The research holds three main parts. First, a theoretical justification for the use of subjective perception and attitude towards risk in the measurement of utility. Second, analyzing the effects of the new measurement of utility on the liability standard through a formal model. The model serves two main purposes, determining the optimal amount of precaution under the new measurement of utility and predicting the behavior of victims and injurers given the new standard of liability. The advantages of the proposed standard are explored by the analysis of study cases. Third, the research explores the implication and potential critique of the proposed model and its relationship with legal doctrine of consumer expectations.