

"Safety Score Liability"

Prof. Dr. Omri Ben-Shahar (University of Chicago)

Wednesday, 9 July 2025 at 6.15 PM CEST

Data technology is increasingly deployed to assign safety scores to people and products. Could these scores be used by tort law to apportion liability for accidents? Instead of basing tort liability on negligence—on the level of care leading to the specific accident—“safety score liability” would impose liability commensurate with a party’s habitual propensity to behave unsafely. Two parties involved in an accident would divide the loss in relation to their relative scores. This article describes how safety score liability would work, the incentives it would create, and the principles limiting its adoption. It demonstrates the application of this regime to the most common type of torts—auto accidents. The article suggests that the effects of safety scores in other channels of safety regulation offers thought-provoking opportunities for tort law. Safety score liability is rooted in a novel and intriguing foundation for the notion of fault in tort law, providing surprisingly strong incentives for care, and managing the post-accident compensatory goals of tort law in a simple, low-cost manner.