

Efficiency Considerations in Negligence Disputes:
Theory and Experimental Evidence

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Tort-law theorists have long debated whether courts apply the Hand formula, implying that judges deciding negligence disputes weigh efficiency inconsistently. This Article suggests that framing effects can help reconcile this inconsistency. We claim that negligence disputes fall into two categories: cases in which injurers inflicted harm while seeking to avoid a loss (loss frame), and those in which they were seeking to obtain a gain (gain frame). We develop a theoretical framework explaining the significance of loss-gain framing in adjudicators' inclination to assign liability based on efficiency considerations. A series of experiments support our hypothesis, whereby adjudicators accord greater weight to efficiency in a loss frame than in a gain frame.