(Mis)Aligning Accident Law

In negligence cases, courts first determine whether the defendant has fulfilled her duty of care; if she has not, and harm has occurred, then the defendant must make a payment of damages to the plaintiff. As Professor Ariel Porat’s Article in this Issue explains, the relationship between duty and damages is generally straightforward: the risks taken into account when setting the standard of care are the same risks considered when imposing liability and awarding damages. Yet tort law deviates from this general rule in many instances. Professor Porat identifies five “misalignments” between duty and damages that are embedded in the doctrines of negligence and that have not been identified as such so far. According to Professor Porat, those misalignments are not consistent with the view that tort law is (or ought to be) efficient, nor can most of them be reconciled with corrective justice approaches to tort law. Therefore, he argues, those misalignments should be rectified.

In an Essay responding to Professor Porat’s Article, Professor Mark Geistfeld agrees that misalignments between duty and damages exist, but he argues that they exist for reasons of principle. Under the misaligned negligence rule, the legal valuation of physical harm (e.g., wrongful death) within the element of duty exceeds the monetized amount of that injury within the damages element, thereby prohibiting dutyholders from rejecting the (higher-valued) duty to exercise reasonable care in exchange for paying the (lower-valued) compensatory damages award. To enforce the prohibition embedded in the misaligned negligence rule, the legal system relies on criminal negligence and punitive damages to penalize defendants who breach the primary duty in a reprehensible or bad-faith manner. The way in which courts have misaligned the negligence rule, Geistfeld concludes, decisively supports the corrective-justice interpretation of tort law over the competing interpretation based on allocative efficiency.

As Professor Porat notes, misalignments in negligence law “have thus far been ignored by the legal scholarship.” The following Article and Essay begin to fill this void. Along the way, these contributions show that the relation between the elements of duty and damages raises fundamental questions regarding the structure and content of negligence law—questions whose answers have important implications for the tort system.