

The Role of the Injured Party's Fault in the Apportionment of Damages in Tort Law: A Comparative-Historical Study between Common Law and Islamic Law

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Abstract : In order to understand the role of the injured party's fault in dividing liability, we studied its historical background. In common law, the traditional contributory negligence rule was a complete defense. Then the legislature and judicial procedure modified that rule to one of apportionment. In Islamic law, too, the Action rule was at first used when the injured party was the sole cause, but jurists expanded the scope of this rule, so this rule was used in cases where both the injured party's fault and that of the other party are involved. There are some popular approaches for apportionment of damages. Some common law countries like Britain had chosen 'the causal potency approach' and 'fixed apportionment'. Islamic countries like Iran have chosen both 'the relative blameworthiness' and 'equal apportionment' approaches. The article concludes that both common law and Islamic law believe in the division of responsibility between a wrongdoer claimant and the defendant. In contrast, in the apportionment of responsibility, Islamic law mostly believes in equal apportionment that is way easier and saves time and money, but common law legal systems have chosen the causal potency approach, which is more complicated than the rival approach but is fairer.

Keywords : contributory negligence, tort law, damage apportionment, common law, Islamic law

Conference Title : ICTL 2021 : International Conference on Tort Law

Conference Location : Copenhagen, Denmark

Conference Dates : June 10-11, 2021