

## The Justice Function of Civil Liability Law: Islamic and Common Law Comparative Perspective

*Ali Reza Bariklou\**

DOI: 10.22096/law.2025.537478.1927

Received Date: 25/08/2021 - Accepted Date: 16/03/2022

### Abstract

The justice function of legal rules, especially civil liability law, is one of the issues that has attracted the attention of scholars. Given that Islamic and common law legal systems share certain commonalities, the justice function of civil liability law of these two systems was comparatively studied using a descriptive-analytical method. It turned out that the view of justice in the common law system has evolved from situation to theory. In line with this view, the justice function of civil liability law was analyzed through relational, fundamental, combinatory, and realistic approaches. However, both systems agree that the purpose of civil liability law is to achieve corrective justice. In Islamic law, the apparent evidence suggests that justice serves as a criterion for all matters and issues, and its function in civil liability law is restorative. This difference in approach affects the judge's discretion in determining the amount of compensation, as well as in cases involving multiple factors, and whether liability is applied fully or proportionally.

**Keywords:** Corrective justice; Restorative justice; Civil liability; Justice function.

---

\* Professor, Department of Private Law, University of Tehran, Farabi College, Qom, Iran.  
Email: bariklou@ut.ac.ir



### Bibliography

- A Group of Authors. *Majalah fiqh ahle bayt Alaeyhim Alsalam*. Volume 7, Qom: muaseseyeh dayirat al-maearif fiqh isalamy bar mazhab ahle bayt alaeyhim al-salam, [N.D]. [In Persian]
- Adam S. Zimmerman. "The Corrective Justice State." *DE GRUYTER - Journal of Tort*, no. 5 (2012): 189-225.
- Al-Hosseini Al-Shirazi, Sayyed Mohammad. *Al-fiqah, Al-qanun*, Bayrut: Markaz Al-Rasul Al-Azam (PBUH) Lel-Tahqiq va Al-nashri, 1999. [In Arabic]
- Al-Hosseini Al-Shirazi, Sayyed Mohammad. *Al-fiqah: Al-idarah*. [N.P] : [N.D]. [In Arabic]
- Al-Hosseini Al-Shirazi, Sayyed Mohammad. *Al-qawaed Al-fiqhiah*. Bayrut: Muaseseye Imam Reza Alaeyhe Al-salam, 1993. [In Arabic]
- Aristotle. *Nicomachean Ethics*. Translated by W.D. Ross. Kitchener: Batochebooks, 1990.
- Ashtiyany, Mirza Mohammad Hassan. *ketab Al-Qaza*. Qom: entesharat Zuhair, Congress of Allameh Ashtiani Quds Sareh, 2005. [In Arabic]
- Bariklo, Alireza. *Tort law*. Tehran: Mizan, 2014. [In Persian]
- Beever, Allan. "Corrective Justice and Personal Responsibility in Tort Law." *Oxford Journal of Legal Studies* 28, no. 3 (2008). 475-500.
- Best, Arthur, and David W Barnes. *Basic Tort Law, Cases, Statutes, and Problems*. U.S: Aspen Publishers, 2007.
- Brennan, Carol, *Tort Law Concentrat*. Uk: Oxfoed University Prss, 2019.
- Bussani, Mauro. *Comparative Tort Law: Global Perspectives*. USA: Edward Elgar Publishing, 2021.
- Cane, Peter. "The Anatomy of Private Law Theory." *Oxford Journal of Legal Studies*, Oxford University Press 20, no. 2 (2005): 203-217.
- Coleman, Jules L. "Moral Theories of torts: Their Scope and Limits." In *Justice Rights, and Tort Law*, edited by Michael D. Bayles and Bruce Chapman, 45-96. Holland: Springer Science & Business Media, 2012.
- Coleman, Jules L. "The Practice of Corrective Justice." *ARIZONA LAW REVIEW* 37 (1995): 15-31.
- Epstein, Richard A. "A Theory of Strict Liability." *Journal of Legal Studies* (1973): 151- 204.
- Finnis, J. *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1980.

- Fletcher, George P. "Fairness and Utility in Tort Theory." *Harvard Law Review* 85, no. 3 (1972): 537-573
- Hosseini Tehrani, Seyyed Mohammad Hossein. *Wilayat Faqhi dar hukomate Islami*. Mashhad: Entesharat Allame Tabatabaei, 2000. [In Persian]
- Hylton, Keith N. *Tort Law: A Modern Perspective*. USA: Cambridge University Press, 2016.
- Jansen, Nils, "The Idea of Legal Responsibility." *Oxford Journal of Legal Studies* 34, no. 2 (2014): 221-252.
- Kashif al-Ghita, Mohammad Hossein. *Tahrir Al-Majalah*. Volume 1, Najaf Ashraf: AlAl-Murtazawi Library, 1940. [In Arabic]
- Keren-Paz, Tsachi. *Torts, Egalitarianism and Distributive Justice*. UK: Ashgate Publishing, Ltd, 2013.
- Khansari, Seyyed Ahmad. *Jame Al-Madarak*. Qom: Muaseseye Ismailian, 1984. [In Arabic]
- Koziol, Helmut (ed). *Basic Questions of Tort Law from a Comparative Perspective*. Vienna: Jan Sramek Verlag, 2015.
- Leiter, Brian. "Tort Theory and the Objectivity of Corrective Justice." *ARIZONA LAW REVIEW* 37 (1995): 45-51.
- Marchisio, Emiliano. "Medical Civil Liability Without Deterrence: Preliminary Remarks for Future Research." *Journal of Civil Law Studies* 13, no. 1 (2020): 9-28.
- Miller, Paul B. *Civil Wrongs and Justice in Private Law*. edited by Paul B. Miller and John Oberdiek. UK: Oxford University Press, 2020.
- Montazeri, Hossein Ali. *Nezam Al-Hukme fi Al-Islame*. Qom: Nashere Sarayi, 1997. [In Arabic]
- Oberdiek, John. *Philosophical Foundations of the Law of Torts*. UK: Oxford University Press, 2014.
- Oliphant, Ken. "Basic Questions of Tort Law from the Perspective of England and the Commonwealth." In *the Basic Questions of Tort Law from a Comparative Perspective*, edited by Helmut Koziol, 355-428. Vienna: Jan Sramek Verlag, 2015.
- Posner, Richard A. *The Economics of Justice* (Cambridge: Harvard University Press, 1983.
- RAWLS, John. *A Theory of Justice: Original Edition*. USA: Harvard University Press, 2005.
- Schroeder, Christopher H. "Corrective Justice and Liability for Increasing

Risks.” *Ucla law review* 37 (1990): 439-478.

Seyyed Razi, Mohammad. *Nahj al-Balagha*. Qom: Nahj al-Balagheh Institute, 1993. [In Arabic]

Steele, Jenny. *tort Law: Text, Cases, and Materials*. Oxford: Oxford University Press, 2017.

Weinrib, Ernest J. “Legal Formalism: On the Immanent Rationality of Law.” *The Yale Law Journal* 97, no. 6 (May 1988): 949-1016.

Wells, Catharine P. “Tort Law as Corrective Justice: A Pragmatic Justification for Jury Adjudication.” *Michigan Law Review* 88 (1990): 2348-2364.

Wilcox, Vanessa. “Punitive Damages IN ENGLAND.” In *Tort and Insurance Law Punitive Damages: Common Law and Civil Law Perspectives*. Volume 25, edited by Helmut Koziol, 7-53. Wien: Springer Vienna, 2009.