

PROPERTY RULES VERSUS LIABILITY RULES: AN ECONOMIC ANALYSIS

LOUIS KAPLOW AND STEVEN SHAVELL (1996) pdf

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Abstract. A fundamental legal problem is whether property rights should be protected by property rules or by liability rules. In this Article, we provide a systematic economic analysis of the choice between property and liability rules.

Stokey, " The model delivers predictions about the We examine these predictions in light of data on the outcomes of actual trade disputes in the Show Context Citation Context But as argued in Maggi and Stokey , and Beshkar those literatures assume the existence of cash transfers between disputants and so are not directly applicable We investigate how liability rules and property rules affect the incentives to invest in research tools. We argue that it is hard to deter infringement under any of the enforcement regimes available. However, counterintuitively, a credible threat of infringement can actually be beneficial to the patentee However, counterintuitively, a credible threat of infringement can actually be beneficial to the patentholder. We compare the two doctrines of damages under the liability rule, namely, lost profit and lost royalty and unjust enrichment, and argue that unjust enrichment protects the patentholder better than lost royalty. Both can be superior to a property rule the right to enjoin infringement , depending on how much delay is permitted before infringement is enjoined. We also show that, for patents on end-user products, the ranking of liability doctrines is reversed: Yao , " We examine the impact of patent infringement damages in an equilibrium oligopoly model of process innovation where the choice to infringe is endogenous and affects market choices. Under the lost profit measure of damages, we find that infringement always occurs in equilibrium with the infringing firm Under the lost profit measure of damages, we find that infringement always occurs in equilibrium with the infringing firm making market choices that manipulate the resulting market profit of the patentholder. In equilibrium, infringement takes one of two forms: This chapter surveys the literature on tort damages, including damages for serious physical injury and death. Section A presents the basic analysis of tort damages for injuries to replaceable commodities, focusing on the relationship between liability rules and optimal damage rules. Section B discusses damages for physical injury and death, examining, among other issues, the deterrence and insurance values of life. An exhaustive bibliography is attached at the end. K13 Show Context Citation Context

2: CiteSeerX " Citation Query Property Rules versus Liability Rules: An Economic Analysis

Notably, we show that, for controlling some important externalities, liability rules (and pollution taxes) are superior to property rules (including many forms of regulation) even when damages must be set using only limited information about harm.

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economic analysis of property rights and liability rules has been largely done from an ex post perspective, taking as given the presence of the parties involved and their payoffs.

4: HLS : Steven M. Shavell

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