



The Role of Desert in Tort Law

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Published online: 31 October 2023

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This thesis challenges the assumptions that the moral principle of desert (or retribution), distinguishes criminal law from civil law. The thesis examines the normative and descriptive dimensions of the role of desert in tort law, with a particular emphasis on its relationship to criminal law.

At the normative level, the thesis explores the reasons for and against considering desert in tort law. Three arguments are advanced in favor of the relevance of desert: theoretical, comparative, and intuitive. Examining the objections to desert, the main part of the discussion is devoted to the argument that desert is relevant only to criminal law, or that it does not provide good reasons in tort law. The normative discussion examines various arguments from the field of political philosophy, the characteristics of branches of law, and procedural rules. The conclusion is that it is difficult to find a convincing objection to considering desert in tort law, and the discussion also contributes to formulating an appropriate way to apply desert in tort law.

At the descriptive level, the main argument is that the effect of desert is not limited to criminal law but plays an important role also in tort law. Through systematic examination, the thesis demonstrates that while desert is only one of several considerations in tort law and is sometimes overridden by other important factors, it plays a significant role at every important doctrinal crossroad in tort law. The research focuses on Israeli law but is relevant to the common law in general. In addition, empirical research examines the effect of desert on determining the amount of compensation in a typical tort case.

This thesis contributes to a better understanding of the role of desert in legal rules and judgments, and further, it promotes a better understanding of the relationship between criminal law and other branches of law.

PhD, Law, Hebrew University of Jerusalem, Israel. Awarded 2022.

Supplementary Information The online version contains supplementary material available at <https://doi.org/10.1007/s11572-023-09705-4>.

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