

Due Care: United States v. Carroll Towing Co. (Story by Stephen Gilles)

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United States v. Carroll Towing Co.

- Leading US torts case.
- Mainly concerned with “due care”.
- Important not for exploring an important legal principle, but for a famous formula.

Players

- **Four defendants:** Pennsylvania Railroad (Penn), Connors Marine Co. (CM), Carroll Towing (CO) and Grace Line (GL).
- **Plaintiff:** US Government.

Facts

- During (2nd) war time, US government hired Penn to carry 200 tons of flour to be transported across Atlantic.
- Penn leased a barge (Anna C, which belongs to CM) to load the flour to be delivered to a trans-Atlantic ship.

Facts

- Barge Anna C was tied to pier 52, along with many others.
- Therefore, pier was crowded, and tie was loose.
- On day of accident, a tug, Carroll (owned by Carroll Towing) arrived to pier.
- Carroll was rented to Grace Line, and had three crews aboard: captain and deckhand (employed by Carroll Towing) and harbor master (employed by Grace Line).

Facts

- Carroll was to tow another barge, but since pier was crowded, they needed to remove other barges (including Anna C) first.
- In the process, entire barges in the pier broke adrift.
- Other barges were recovered, but Anna C drifted away, collided with a tank, leaked and sank.

Facts

- Important fact: At that time, Carroll had summon a nearby Grace Line tug to get other barges safely back to pier. The reason why Anna C sank is that staffs did not know Anna C had leaked.
- Another key fact: Bargee on Anna C insisted being on board all day, but was not taken by court.

Litigation and Trial

- There can be several negligence claims:
 - (i) Conners can claim against Carroll Towing and Grace Line for negligence of their employees in handling Anna C's line.
 - (ii) Carroll Towing and Grace Line can claim Conners is contributory negligent because its barge failed to alert the tugs that Anna C was leaking.
 - (iii) US can claim all three to be jointly liable.

Litigation and Trial

- Originally, however, Conners filed claims against Penn Railroad for contract breach, failing to return Anna C undamaged.

Litigation and Trial

- Anticipating impending tort claims, Carroll Towing filed special limitation petition pursuant to a federal admiralty statute that limits shipowner's liability to value of vessel and freight.

Litigation and Trial

- Statute requires all five parties be consolidated in a single trial.
- Main issue: Which, if any, of the parties had been negligent for the loss of Anna C and the cargo?

Trial Court Decision

- Paradoxically, that the bargee was not believed to be on board actually helped Connors.
- If he were on board, he would have been blatantly negligent.
- If he was absent, his responsibility vanishes, and the question becomes whether absence constitutes negligence.

Trial Court Decision

- Trial judge ruled in favor of Conners, and held that Grace Line and Corroll deckhand were jointly negligent.

Briefs of Appeal

- Appeal filed by Grace Line and Carroll.
- Grace Line stressed that Anna C, loaded with valuable cargo, was lying in a busy spot, and accident occurred during working hours. Bargee's absence is wrongful. GL also asked that be distinguished collision and sinking.

Briefs of Appeal

- **Connors**

- (i) Cited precedents.
- (ii) Contended that district court is correct in ruling that bargee is not required to anticipate the negligence by harbor master and deckhand.
- (iii) Harbormaster and deckhand knew there were no one on board Anna C, they were negligent for inspecting her after collision.

Pre-Conference Memoranda

- Judge unanimously agreed with trial court's decision that Carroll and Grace Line are jointly liable.
- Panel was divided on the bargee's negligence.
- Learned Hand's opinions eventually convinced the other two judges that Connors is also negligent.

Hand's Opinion

- Hand first resolved one key issue : How long the bargee was absent?
- He posited that bargee has never reported for work on that day. (Confirmed district court's factfinding.)

Hand's Opinion

- The way Hand proceed with the case is to respect trial court factfinding. Also one of the judges (Chase) in the panel insisted that nothing is clearly erroneous in trial court factfinding. Therefore, he recognizes that bargee has been absent from Anna C all day.

Hand's Opinion

- Given this, in order to show that bargee is negligent, Hand has to reckon with three district judge's rulings:
 - (i) Bargee's absent has not caused the accident.
 - (ii) Case law suggests that it is not negligence for a bargee to leave the barge absent foreseeable danger.
 - (iii) There is indeed no danger, as the bargee has left Anna C safely moored.

Hand's Opinion

- Hand's reckoning with trial court's ruling:
 - (i) The damages to Anna C is actually from two steps: First, its breaking away from pier; second, its sinking. While bargee is not negligent in the first, he is negligent in the second: bargee's presence would have discovered that Anna C was leaking, and prevented Anna C from sinking.

Hand's Opinion

- (ii) As to precedents, actually “there is no general rule to determine when the absence of a barge or other attendant will make the owner barge liable for injuries...”, and there can be no such rule, because the issue turns on balancing the cost and benefit of bargee’s presence in each case. Here he proposes the famous rule of *B vs PL*, then reasons that the cost of keeping a bargee on Anna C, *B*, is far lower than *PL*.

Hand's Opinion

- (cont.) Therefore, Conners is liable for damages. He also listed 13 similar decisions in the past. 7 held negligent, 3 not negligent, 3 had not liable on other ground.

Hand's Opinion

- Hand reasons that “during the short January days and in the full tide of war activity, barges were being constantly drilled in and out. Certainly it was not beyond reasonable expectation that, with the inevitable haste and hustle, the work might not be done with adequate care.”

Hand's Opinion

- Anna C might have been safely moored, there was a residual risk that she might go adrift as a result of the negligence of performance in the busy harbor: P is not small, and L substantial.

Critics

- Information cost of figuring out the values of P, L and B are large. Had this been incorporated in the cost-benefit analysis?

Critics

- In practice, defendant usually argues that the precaution (which has not been taken) as claimed to be important by the plaintiff produces no net benefit. Similarly, plaintiff usually identifies certain specific untaken precautions and offers proof that their net benefit outweigh the costs, as compared with the defendant's actual action.

Critics

- Sometimes B , L , P can't be measured in comparable terms. For example, if accident in question is someone losing a leg, or even death, what is the value of L ?

Two Alternatives to Hand Rule

- Foreseeable-danger approach
 - (i) One who creates a foreseeable danger should be liable if injury results, regardless of whether eliminating this danger would have been ridiculously easy or extremely difficult.
 - (ii) Above the threshold level of foreseeable danger, the actor is liable regardless of the difficulty of remedial measure; and not liable if below.
 - (iii) This is actually the liability rule. (Cf. *Palsgraf v Long Island Railroad Co.*)

Two Alternatives to Hand Rule

- Community-expectations
Social norms and customs can better serve as what the society expects of the individual's behavior than cost-benefit analysis.

Comparison to Alternatives in Carroll Tower

- Hand rule vs. foreseeable danger
 - (i) Under Hand rule bargee is negligent because, although PL is small, B is negligible.
 - (ii) Under foreseeable danger, bargee probably would have won, because PL falls below the threshold of danger given he left the barge safely moored.
 - (iii) Foreseeable danger in this case is less strict than Hand rule in this case, but not necessarily so for all.

Comparison to Alternatives in Carroll Tower

- (iv) If, for example, bargee has left in a storm because he was seriously sick. Then he would be liable since danger (PL) is large enough to pass the level threshold, but might not be negligent under Hand rule because B is also large. In this case foreseeable danger is stricter.

Comparison to Alternatives in Carroll Tower

- Hand rule vs. commuity-expectations
 - (i) Not very clear if the bargee will be negligent under the latter.
 - (ii) It might be the case that bargees usually rely on tug crews to rearrange lines when moving barges. In that case bargee would not be negligent.
 - (iii) If it is customary that having a bargee on board during working hours is usual, to help when something goes wrong, then bargee will be negligent.

Comparison to Alternatives in Carroll Tower

- (iv) There not might be a common understanding about what constitutes an acceptable excuse for the bargee to go ashore during working hours.

Comparison in Carroll Tower

- All three have respective shortcomings
 - (i) We already mentioned the shortcomings of Hand rule.
 - (ii) Foreseeable danger also suffers from measurement problem. What constitutes the threshold and why? Sometimes defendant is held liable when it is very burdensome to avoid damages, and sometime escapes liability when he could have easily avoided it.
 - (iii) Problem of community-expectations is that there might not be common expectation for the action in question.

Hand Formula in Practice: An Example

- Suppose hiring a bargee is \$8/day.
- Suppose expected loss without bargee is \$6,000 every 200 day, i.e., \$30/day.
- But we are not to compare \$8 with \$30, as there is accident even bargee is hired.
- Suppose hiring a bargee reduces accident loss to one every 300 day, with loss \$3,000. Then expected loss is $\$3,000/300=\$10/\text{day}$.

Hand Formula in Practice: An Example

- The difference in expected loss without and with bargee is then $\$30/\text{day} - \$10/\text{day} = \$20/\text{day}$.
- In this case, the absence of bargee is a negligence by the logic of Hand's formula, as $\$20 > \8 .
- This highlights the fact that what the formula means is in sense of “marginal”.

Theory: Reconciliation

- Hand's rule can be rephrased as comparing between whether additional reduction in expected loss ΔPL , when e increases, is worth its cost, ΔB .

Theory: Reconciliation

- If we think of the care taken by plaintiff is continuous.
- Suppose level of “care” or “caution” against accident is e .
- $c(e)$ is its cost, which $c', c'' > 0$
- Suppose probability of accident is $p(e)$, with $p' < 0, p'' > 0$.
- Loss of accident is L .

Theory: Reconciliation

- Then net social loss is

$$c(e) + p(e)L$$

- FOC:

$$c'(e^*) = -p'(e^*)L$$

- If threshold of foreseeability is defined to be e^* , then foreseeability danger and Hand Rule are identical.