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Abstract

Tort Law, Autonomous Vehicles and the Ironies of Automation: The Case of *Nettleship v Weston*.

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Nettleship v Weston, a landmark ruling on liability of drivers in tort of negligence, is generally regarded as defining the boundaries between risk, responsibility and liability. Lawyers focussing on tortious liability issues raised by autonomous vehicles invariably emphasise the foundations of this fault based compensation system - that the defendant not only breached his duty of care but that the resulting injury suffered was a consequence of the defendant's fault. The central question, which forms the focus of this paper, is whether public policy considerations informing principles formulated during a particular era in the evolution of the automobile industry need to be reassessed to accommodate the emergence of autonomous systems. This is an important and profound question since autonomous vehicles, potentially challenge the precept of one central idea in fault based compensation systems - that liability rules create incentives for avoiding injury-causing accidents. Intelligent software systems, which assume many functions previously engaged in by human drivers, are not simply advanced forms of automation. Autonomous vehicles crucially possess decision-making capabilities, which blur the boundary between the human driver and the machine. How can or should we distinguish between 'human' and 'technical' errors? What weight, if any, should we attach to the 'reasonable man' test or policy considerations to limit the responsibility of the human driver for decisions effectively made by software? Do we need to re-think the way tort law allocates liability for negligence if autonomous vehicles effectively re-define the driving tasks engaged by software and human drivers? The tentative conclusion is that while fault based compensation rules continue to be relevant, their application to allocating liability in the context of this new form of human-machine interaction is uncertain. The paper considers some key aspects of intelligent software functionality in autonomous vehicles and human factors in ergonomic research, which may help arrest constraints inherent in tort liability rules. Put another way, we need a more nuanced approach, which goes beyond the theory of deterrence as illustrated in *Nettleship v Weston*.