

THE INTERSECTION OF TORT LAW AND CLIMATE CHANGE: IMPLICATIONS FOR LIABILITY AND COMPENSATION

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Abstract

As the effects of climate change become more widely acknowledged and the demand for responsibility and compensation becomes more pressing, the area of law where these two topics overlap has become increasingly important. This article investigates the climate change-related tort law consequences for responsibility and compensation and looks at how the law is changing and the difficulties encountered by people and businesses that have been harmed by climate change.

It examines the challenges of causation, culpability, and compensation in climate change cases including severe weather, increasing sea levels, and ecological harm. It also emphasizes how government rules and international frameworks shape climate change tort claims by exploring climate change responsibility and compensation options through case law, legal theories, and policy issues.

Introduction –

Weather and temperature patterns have been changing throughout the years, a phenomenon known as climate change. These changes can occur naturally, for example, due to the sun's activity or a massive volcanic explosion. However, since the 1800s, human activities, especially the combustion of fossil fuels like coal, oil, and gas, have been the primary cause of climate change.⁶⁶ Scientists in the field of climate change have proven that humans are to blame for almost all of the warming that has occurred on Earth in the previous 200 years. Greenhouse gases from human activities like those listed above are warming the planet at a rate unseen in at least two thousand years.

There has never been a moment in the previous 100,000 years when the average temperature of the Earth's surface has been higher than it is now (approximately 1.1°C higher than it was in

the late 1800s, before the industrial revolution).⁶⁷ Every decade since 1850 has been warmer than the one before it, but the past few years (2011-2022) were the warmest. Anthropogenic climate change is predicted to have a significant long-term impact on the habitability of the planet.⁶⁸

As citizens and states seek remedies for climate change harms and foster effective political responses, litigation has increased and will continue to increase in the absence of consensus in global and national political responses. The primary function of tort law in global warming is still up for debate. Others, however, see a more indirect role for tort law in climate change mitigation, citing its potential as a regulatory weapon (*regulation via litigation*) or as part of a larger body of strategic litigation despite the fact that few tort cases have been successful to yet.

⁶⁶ What is Climate Change, <https://www.un.org/en/climatechange/what-is-climate-change>

⁶⁷ Climate Change, IPCC, <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

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In simple terms, a tort can be defined as the violation of one's duty towards another. We have a tort when a person's duty to others is violated. It is a civil wrong. The major objectives are –

- To sort out who wins when two people have a disagreement.
- By issuing injunctions, the court can stop an illegal act from happening again. (to prevent continuation of harm)
- To safeguard a person's legally protected reputation, for example.
- When an individual's property is illegally taken from them, it ensures that it is returned to the rightful owner.

There are three primary classes of torts. When someone intentionally causes pain or injury to another person or their property, they have committed an intentional tort. The second is known as "negligence," which occurs when someone fails to employ "reasonable care" and thereby causes injury. The third category, known as "strict liability," assigns blamelessness to the victim and holds the responsible party accountable for any damages produced by the defendant's actions.

One of the fundamental aims of tort law is to discourage wrongdoing by holding individuals and organizations accountable for their acts, and another is to compensate victims of wrongdoing where appropriate. It also seeks to recompense victims for their losses, so fostering a sense of justice and social responsibility.

Tortious Liability for Climate Change –

Courts throughout the world are increasingly being presented with lawsuits attempting to hold parties liable for their contributions to greenhouse gas emissions and consequent harms as the scientific consensus grows about the link between human activities and climate change.

Establishing a causal relationship between the activities of particular defendants and the injury that was endured by plaintiffs is one of the most significant issues that arise in situations of tort

liability connected to climate change. Because of the complexity and interconnectedness of the systems affected by climate change, it is extremely difficult to pin individual responsibility for particular climatic disasters or damages.

Cases involving tort liability due to climate change sometimes make use of a variety of legal doctrines. In cases of negligence, plaintiffs argue that the defendants have a responsibility to act with reasonable care and that the defendant's refusal to take action to mitigate climate change constitutes a violation of that obligation. The activities of the defendants are said to have unduly hindered the plaintiffs' ability to utilize and enjoy their property or public resources, which is the basis of nuisance claims. The extraction and combustion of fossil fuels are two examples of operations that fall under the purview of strict liability theories because of the intrinsically hazardous character of these practices.

One recent case of 2020 that exemplified this principle was that of the *Rhode Island v. Chevron Corporation*.⁶⁹ The state filed a lawsuit alleging many wrongdoings under the guises of carelessness, nuisance, and strict responsibility. As large emitters of greenhouse gases, Rhode Island claimed the defendants had a responsibility to mitigate the risks associated with climate change. The state also used the strict liability theory to argue that fossil fuel extraction, production, and promotion were intrinsically harmful activities that harmed the public. Although the trial did not go further, the case highlighted the use of these legal arguments in climate change lawsuits.⁷⁰ As a result, tort liability cases involving climate change are novel and developing rapidly.

Different jurisdictions have different rules regarding tort liability in the event of climate change. There has been a rise in lawsuits concerning climate change in several nations, including the United States, with cases going after both governments and companies. There

⁶⁹ 393 F. Supp. 3d 142 (D.R.I. 2019)

⁷⁰ <http://climatecasechart.com/case/rhode-island-v-chevron-corp/>

have been successful cases in other nations holding governments accountable for insufficient climate action, including Germany and the Netherlands. Furthermore, climate change-related damages are not universally recognized or compensated for under the law.

Challenges faced in establishing Causation –

Due to the global and interrelated nature of the issue, establishing causation and attributing culpability in complicated climate change claims presents substantial hurdles. Damages from climate change are difficult to pin on particular parties because of the complexity of the issue. Certain challenges include –

1. *Criterion of Harm* – It might be difficult to establish a connection between certain climatic occurrences or damages and the activities of a particular defendant. The cumulative effect of a large number of greenhouse gas emission sources located all over the planet over a prolonged period of time is what causes climate change. Because of this, assigning culpability for particular damages caused by climate change to any one particular actor or set of players is extremely difficult.

2. *Scientific Complexity* – In the context of instances involving climate change, establishing causality frequently needs complicated scientific evidence. The science of climate requires complex models and forecasts, which can be prone to uncertainty and can make it difficult to isolate the exact contributions made by different individuals. There is a possibility that courts may have difficulty appropriately evaluating and interpreting scientific evidence.

3. *Non-linear effects* – The effects of climate change are nonlinear, which means that even very little shifts can have large and even disproportionate consequences. Because of this, it is challenging to accurately measure the contribution that each individual actor has made to the suffering caused by climate change. The determination of causation and accountability is made much more difficult by

the cumulative nature of emissions and the interplay between different variables.

In the lawsuit of *Murphy Oil USA, Inc. v. Comer*.⁷¹ from the United States, citizens of Mississippi filed suit against a number of oil firms, claiming that the businesses' greenhouse gas emissions exacerbated the devastation caused by Hurricane Katrina. However, the district court threw out the lawsuit because of the plaintiffs' inability to prove that the defendant was responsible for their damages. This case showed how difficult it might be to attribute individual defendants' acts to certain weather conditions.

4. *Multiple players* – A broad variety of players are involved in the process of climate change. These actors include governments, companies, and people, all of whom contribute to emissions. In situations when there are several parties involved, determining the degree of culpability for particular injuries can be a complex and difficult endeavour. In addition, the conduct of one party may be impacted by the actions or inactions of other parties, which makes it difficult to appropriately assign blame.

The interrelated and worldwide character of the problem, the scientific intricacies, the nonlinear impacts, and the participation of various players all contribute to the difficulty of establishing causation and assigning blame in complicated climate change cases. When considering climate change-related tort liability, the courts are required by these challenges to give serious consideration to the existing information, the scientific consensus, and the legal frameworks.

Compensation for Climate Change –

As the effects of climate change become more severe, it is becoming increasingly clear that individuals and communities who have been harmed as a result of climate change should be compensated for their suffering. This article investigates the question of whether or not

⁷¹ 839 F. Supp. 2d 849 (2009)

persons whose lives have been altered as a result of climate change should be compensated for their losses. It does so by addressing the many existing avenues via which compensation may be sought, such as class-action lawsuits and government compensation programs.

The existing mechanisms for seeking compensation cover broadly two types –

a) Class action lawsuits allow anyone who has been negatively impacted by climate change to band together and file a claim for damages. Corporations, governments, or both may be the targets of such litigation, which may allege negligence, nuisance, or other legal grounds. Communities suing fossil fuel firms over their role in rising sea levels and the resulting devastation is one such example.

b) Some countries have instituted compensation schemes to offset financial hardships brought on by climate change. These initiatives are meant to help those who have been negatively impacted by climate change in terms of money and other resources. Assistance plans could cover things like property repairs, new starts, and more. For example, the Australian government's Natural Disaster Relief and Recovery Arrangements (NDRRA) and the United States Federal Emergency Management Agency (FEMA) offer compensation and assistance to affected individuals and communities.

Limitations in obtaining compensation -

However, despite the fact that there are compensation procedures, there are a number of limits and difficulties that must be overcome in order to secure sufficient compensation for losses brought on by climate change. The question of evidence is one of the primary challenges. Given the long-term and interwoven nature of climate impacts, determining a clear causal relationship between climate change and individual damages may be a difficult and time-consuming process. In many cases, the burden

of proof is placed on the claimants, who are required to provide scientific data in order to establish the connection of particular individuals or actions to their losses.⁷²

Jurisdictional challenges also arise when seeking compensation for climate change-related harms. The global nature of climate change means that damages may occur in one country, while the entities responsible for causing those damages operate in another. Another important challenge is trying to put a price on the harm. Losses that can be attributed to climate change frequently entail a diverse array of impacts, such as destruction of property, loss of means of subsistence, health repercussions, and relocation. It can be difficult to place a monetary number on the myriad of harms that climate change can cause, particularly when one considers the protracted nature of climate change and the interaction it has with other socioeconomic issues.

In the case of *Urgenda Foundation v. The Netherlands*⁷³, the Supreme Court of the Netherlands rendered a landmark ruling in favour of the Urgenda Foundation, a sustainability-focused non-profit. The case centred on the Dutch government's responsibility to combat climate change. The Urgenda Foundation argued that the government's insufficient efforts to reduce greenhouse gas emissions violated its legal obligations and posed a threat to the rights of its citizens, specifically with regard to the European Convention on Human Rights. The Dutch government argued that it should not be held legally liable for climate change impacts and that political rather than judicial decision-making was more appropriate. The court recognized the Urgenda Foundation's claim and ordered the government to reduce greenhouse gas emissions.

The Urgenda case may not have dealt with individual compensation, but it did establish a

⁷² https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap16_FINAL.pdf

⁷³ <https://elaw.org/nl.urgenda.15>

precedent for future climate-related lawsuits and highlight the need of using the law to address the harms brought on by climate change. The case is instructive because it exemplifies the growing trend throughout the world to use the law to address climate change-related concerns and seek compensation for the harm it has caused.

Future Directions: Adapting Tort Law to Address Climate Change

There have been important legal advances and landmark cases in recent years at the confluence of tort law and climate change, reflecting the rising acknowledgement of the necessity for culpability and compensation in the face of climate-related harms. Adapting current tort law concepts to the new realities posed by climate change is becoming increasingly important as the effects of climate change grow more severe.

Recent landmark decisions have significantly influenced the topic of climate change tort liability law. The case of *Juliana v. United States*, brought by young plaintiffs against the United States government, brought to light the government's responsibility to protect future generations constitutional rights in a habitable environment. Similarly, *Urgenda Foundation v. The Netherlands* established a standard for government responsibility in combating climate change by finding the Dutch government liable for insufficient climate action.

A new possible route to increase culpability and compensation is through climate change torts. These cases are an effort to make governments and companies pay for the damages they've caused due to climate change. Climate change torts use preexisting tort law principles like negligence and nuisance to determine fault for climate-related losses and establish compensability.⁷⁴

By passing climate change legislation that sets clear norms and requirements for lowering

greenhouse gas emissions and bolstering climate resilience, governments and legislative bodies may play a pivotal role. However, the law can be interpreted by the courts in a way that takes into account the specific dangers and losses that climate change brings. Furthermore, international cooperation is required to establish global accountability for climate change through harmonizing legal frameworks. The Paris Agreement and other international pacts pave the way for countries to cooperate on combating climate change and creating responsibility and compensation systems.

Conclusion –

In light of the climate issue, the junction of tort law and climate change has important consequences for liability and compensation. The changing legal environment and seminal decisions show that the necessity to address climate-related problems through legal procedures is becoming more widely acknowledged. There is an opportunity to improve responsibility and offer compensation for those who are negatively impacted by climate change by adopting current tort law concepts and investigating creative legal solutions, such as climate change torts. In order to reduce greenhouse gas emissions, increase resilience, and guarantee justice, legislative and judicial action, as well as international cooperation, are required.

Tort law can provide justice, accountability, and adaptation to the global climate problem. Comprehensive legal frameworks, collaborative initiatives, and continual legal principle adaptation can help us achieve a more sustainable and equitable future.

⁷⁴ Tort Law and Climate Change, <http://classic.austlii.edu.au/au/journals/UQLawJl/2021/20.pdf>