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Tort Law

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Sleight of Hand

U.S. v. Carroll Towing Company and the Hand formula are considered very important by most scholars of negligence law. Do they merit the special place they are given within negligence law? This contribution argues that they do not. Indeed, it shall argue that it is something of an embarrassment that the torts academy dwells on the Hand formula as much as it does, and that the most important torts article of the last several decades (Posner's Theory of Negligence) identifies *Carroll Towing* as an emblem of negligence law. As a technical matter and, this paper argues, as a theoretical matter, *Carroll Towing* does not even belong to negligence law; it is an admiralty case. Moreover, Judge Hand does not even address the central analytical question that the Hand formula is typically used to answer: "what is the content of the duty of reasonable care that a person or entity owes to others?" Hand's incisive opinion is useful and illuminating in a number of ways, but explaining what a duty of reasonable care within negligence law means is not among them. Tort professors' favorite case on what reasonable care requires in negligence law turns out not to address the question at all, and indeed not to be a part of negligence law. There are many reasons for this peculiar development, not the least of which is the desire of torts professors to finesse the moral concepts of tort law in order to gain clarity—a desire, this paper shall argue, that ironically undercuts our capacity to gain an accurate picture of the law.