

Table of Contents

<i>Acknowledgements</i>	vii
Introduction	1
1. Private Law and the Burden of Repair	9
I. Original Burdens and Burdens of Repair	12
II. A 'Direct' Account of the Burden of Repair	14
III. The Significance of Wrongfulness	16
A. Derivativeness and Priority	17
B. Continuity and Doing the 'Next Best Thing'	19
C. Rights	22
D. Agent-relativity	24
E. 'Getting Even'	27
F. Distribution	32
IV. Repair Without Wrongfulness or Corrective Justice.....	34
2. Responsibility, but the Right Kind	39
I. Substantive and Attributive Responsibility.....	41
II. Private Law Principles as Allocations of Substantive Responsibilities	46
III. Some Implications of the Attributive/ Substantive Divide.....	48
A. No Carry Over	48
B. 'Basic' Responsibility.....	52
C. Agency	56
IV. A Progress Report.....	65
3. Choice and Responsibility	68
I. The Value of Choice and the Asymmetry between Benefits and Burdens	71
II. Making a Choice vs having a Choice	77
III. Two Sets of Objections	86
IV. From the Value-of-choice Account to Models of Private Law	92
A. Basic Responsibility and Agency Accounts.....	94
B. Accounts of the Burden of Repair	96
C. A Possible Accommodation?	101
D. Cost-based Models.....	104

4.	Protection Against the Burden of Repair	110
I.	Why Protection?	111
II.	Protection as a 'Bail Out' and as a Condition of Responsibility	114
III.	Protection as a Condition of Responsibility: A Preview	120
IV.	Working Examples and Variations	124
A.	Three Examples	125
B.	Easy Variations	127
C.	Tricky Variations	128
V.	The Protection Principle	129
VI.	Comparing Notes: Other Accounts of Contributory Negligence	137
VII.	Protection and the 'Background Conditions' of Choice	142
5.	Avoidability	146
I.	Exercise of Care as an Objection to Liability	151
II.	<i>Rylands v Fletcher</i> and Doing Things on One's Own Terms	156
III.	Limited Capacities and the Standard of Care	161
IV.	Negligence Liability and the UK SARAH Act 2015	166
A.	Assisting a Person in an Emergency	168
B.	Acting for the Benefit of Society	169
C.	Taking a Predominantly Responsible Approach to an Activity	170
V.	Conclusion	173
6.	Contracts and the Social Structure	175
I.	The Classical Story and Its Limitations: Scanlon's EL and EF Principles	179
II.	A Structure-sensitive Alternative: The EFS Principle	186
III.	Three Objections	191
A.	Transaction Costs and Partiality	191
B.	Tax-and-Transfer	193
C.	The Limitations of Contract Law	196
IV.	Contract Doctrine in the Light of the EFS Principle	198
A.	Unconscionability	199
B.	Fair Terms in Consumer Contracts	204
V.	'Fair Terms', Justice, and Opportunity	208
7.	Vicarious Liability	210
I.	Participation and Placement	213
II.	The Significance of Placement	216

III.	Participation and Attribution	219
A.	The Purpose of Attribution.....	220
B.	The Object of Attribution.....	221
C.	The Test for Attribution.....	223
IV.	An Illustration: Vicarious Liability for the Use of Cars.....	228
V.	Vicarious Liability as Protection.....	232
A.	Directed Agent.....	233
B.	Directing Agent.....	237
C.	Consumers	240
D.	Claimants.....	240
VI.	Liability for Protection vs Direct Liability	242
VII.	Conclusion.....	244
	Conclusion	245
	<i>Index</i>	249