

Title:

How should the law of tort reform, if at all, the reasonable man standard?

Introduction and background:

The reasonable man standard, henceforth RMS, is the legal test for the judgement of the lawfulness of conduct and is applied in several subjects of English law (Horder, 2005). In tort law (specifically, the tort of negligence), the RMS is used to set the standard of care against which a defendant's negligent actions are judged. The courts will consider how a prudent man, 'guided upon those considerations which ordinarily regulate the conduct of human affairs', would have acted in a given situation, to determine if the defendant has fallen short of this objective standard (*Blyth v Birmingham Waterworks*, 1856). The RMS differs across legal systems, but I will predominantly focus my doctrinal analysis and policy proposals on the UK law and legal system to produce a research paper. I will, however, draw on law and academic literature from other common law jurisdictions, including the US and Canada.

One aim of this research is to analyse how the RMS has been depicted in English tort law. The standard has been criticized for embracing an inherently androcentric character in its portrayal of 'the man on the Clapham omnibus' (*McQuire v. Western Morning News*, 1903). In an effort to make the test more inclusive and bias-free, it gradually substituted the term 'man' with 'person' - identifying nowadays as the reasonable person standard. Some scholars,

however, deny that this name change bears any substantial impact on the traditional interpretation of the legal test (Dimock, 2008). Though the test is objective (meaning it disregards individual differences e.g. gender and race), it relies heavily on the ambiguous term of ‘reasonable’ (Jaeger, 2021). The lack of diversity and representation observed in the UK judiciary calls into question whether what is deemed reasonable by the metrics of the reasonable man is merely a reflection of judicial interpretations.

Over the years, some changes have been implemented to relax the strict structure of the RMS, such as incorporating modifications to accommodate age, specific illnesses, and skilled persons. Additionally, the Social Action, Responsibility and Heroism Act (SARAH) was enacted in 2015 to direct the courts to consider a wider range of factors when determining whether the defendant took reasonable care, in cases of emergency interventions. Ultimately, my research seeks to analyse whether the criticisms targeted towards the RMS are such that reform is necessary and investigate the possible pathways to reform.

Research questions:

To achieve my aim of determining how and whether English tort law should resolve the problems associated with the RMS, the following research questions will be tackled:

- i. How does English tort law conceptualise the reasonable man?
- ii. How has the RMS perpetuated the issue of gender bias in the tort of negligence?
- iii. What effect did changing the RMS to the reasonable person standard have?
- iv. What are the criticisms of the RMS?
- v. What are some proposed solutions?
- vi. How effectively are these solutions able to reform the RMS?

Methodology:

This project will rely on the doctrinal research methodology in order to produce a research paper, which will tackle questions of law reform and the feasibility of change. This involves analysing established rules found in case law and parliamentary statutes in order to figure out the inception and evolution of the legal standard in the tort of negligence.

Additionally, reading scholarly works, this project will analyse the frailties of the test, and the proposals commonly put forward to respond to them. Using both primary and secondary sources, this research aims to dissect the practical implications of adopting these proposals into the English tort system.

Likewise, to acknowledge the feminist critique of the RMS, this project will explore feminist literature, in the form of journal articles, podcasts, books etc.

Schedule:

Week 1 - Week 2:

Doctrinal research: Define the qualities of and outline the key concerns of the RMS in tort law.

Week 3 - Week 4:

Doctrinal research and literature review: Outline prominent proposals put forward to reform the standard.

Week 5:

Policy research: Evaluate the permissibility of these proposed reforms.

Week 6:

Research paper: Conclusion of writing and analysis.

References:

- Dimock, S. (2008). Reasonable Women in the Law. *Critical Review of International Social and Political Philosophy*, 11(2), 153
175. <https://doi.org/10.1080/13698230802021306>

- Horder, J. (2005). Can the Law Do Without the Reasonable Person? University of Toronto Law Journal, 55(2), 253-269.
<https://doi.org/10.1353/tlj.2005.0006>
- Jaeger, C. (2021). The Empirical Reasonable Person. University of Alabama Law Review, 72(4), 897. <https://law.ua.edu/wp-content/uploads/2021/05/5-Jaeger-887-957.pdf>
- Blyth v. Birmingham Waterworks Co, 20 JP 247 (Ex 1856).
<https://plus.lexis.com/uk/cases-uk/blyth-v-birmingham-waterworks-co/?crid=e561716d-2828-4141-82cf-ea58635baa89&pdiskwicview=false>
- McQuire v. Western Morning News Co, 2 KB 100 (CA 1903).
<https://plus.lexis.com/uk/cases-uk/mcquire-v-western-morning-news-co/?crid=1e0fab82-e1c9-461a-aaba-b74f0d56a03e&pddocumentnumber=1>

Style: APA