

I'm about to teach my last Torts class of the semester today, and I've been musing about how some fundamental torts ideas bear on environmental law.

Let me begin with the idea of duty. There are special situations where courts say there's no duty of reasonable care by one person toward another. But they're exceptions. There are two formulations of the general duty of care. Putting aside those exceptional situations, one view says that we have a duty to all the world to exercise reasonable care in our activities.

The other view is that we owe the duty to everyone who might be foreseeable injured by our failure to take reasonable precautions. Either way, the duty isn't limited to our families, our neighborhoods, or even our country. So we can't just ignore responsibilities to people because they are strangers or live in other countries. I hope you're not missing the implications for issues like climate change or protection of the ozone layer.

This leaves open the question of what reasonable care requires. The cost of effort to reduce risks is definitely relevant, along with the amount of harm we're causing. So we don't have to take every conceivable precaution. Custom is evidence of reasonable care, but it's not decisive. Thus, the fact that we're used to everyone burning a lot of fossil fuels doesn't prove that it doing so is consistent with our duty of reasonable care toward others.

That point is not that damage suits for climate change are a viable possibility. I'm dubious on that score. But the basic concepts of negligence law have something to teach us about our responsibilities to address the problem of climate change, even if it requires abandoning old practices or ends up costing money.