

Article Summary

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Errors of Judgment and the Reasonable Person

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There are many cases in which a person did the ‘wrong’ thing, but the court describes this as a mere ‘error of judgment’ falling short of negligence. These cases are numerous, controversial, but under-examined. This article offers a systematic study of them. It argues that judges use the language of a mere ‘error of judgment’ to capture the idea that the human beings are fallible, the reasonable person is only human, and so sometimes the reasonable person acts suboptimally. Understood in this way, the cases can be defended against their critics, with important implications for the broader law of negligence.