

Hypothetical Lawful Conduct and Causation of Criminal Negligence: A Review from the Perspective of “Realization of Hypothetical Allowed Risk”

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Abstract

This article discusses an interpretation problem concerning criminal negligence: hypothetical lawful conduct and its causation. First, the authors analyses and reviews the traditional theory: avoidability thesis, then criticizing both alternative resolutions proposed by courts and scholars: adequate theory and theory of enhanced risk. Lastly the author suggests a new way “realization of hypothetical allowed risk” to solve related cases.

Keywords: hypothetical causality, hypothetical lawful conduct, consequence attribution, theory of avoidance, theory of risk enhancement, causation

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