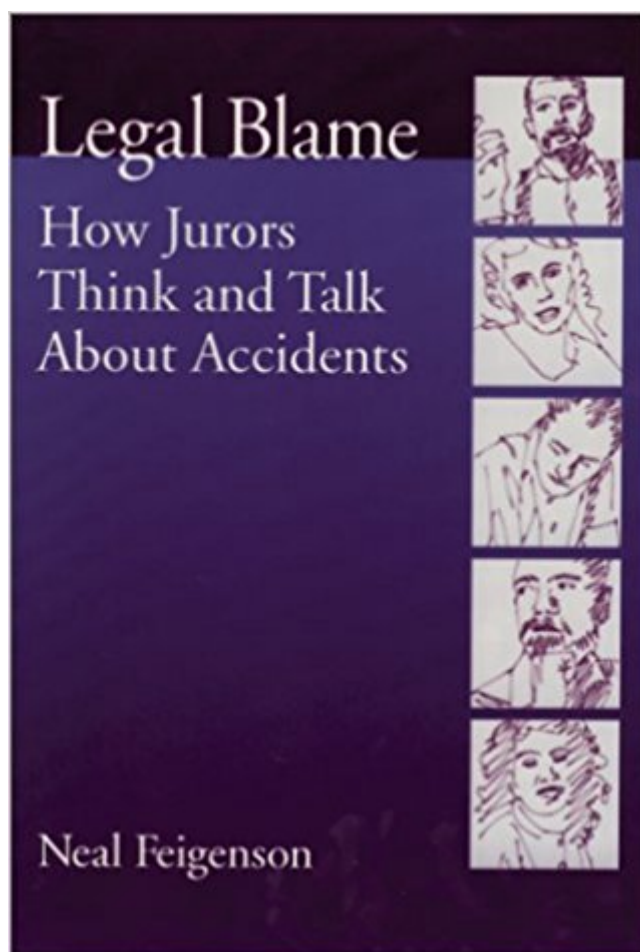The book was found

Legal Blame: How Jurors Think And Talk About Accidents (Law And Public Policy)

Neal Feigenson

Synopsis

This text explores how jurors try to do justice in the wake of accidents, and reveals much about the overall psychology of jury decision-making. Neal Feigenson, a professor of law, offers a framework for how jurors deploy their common sense, together with the law and the facts, to produce what the author refers to as total justice.

Book Information

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Customer Reviews

Neal Feigenson is Carmen Tortora Professor of Law at Quinnipiac University School of Law and author of "Legal Blame: How Jurors Think and Talk About Accidents."

It's a lot of good information, don't get me wrong -- but it's a bit hard to read.

Legal Blame is the best book I've ever read about how juries think. The author explains in simple, clear language the psychology of how and why jurors blame someone for an accident, and shows how that psychology is reflected in the words that lawyers use when they try to persuade juries as well as in the jurors' own words. The book makes it possible to get inside the jurors' heads as they decide these cases, and that makes it easier to understand why the jurors decided as they did, whether you agree with their decisions or not. The background chapters on the tort law system and the cognitive psychology, especially the psychology of emotions, were extremely clear (I'm not a lawyer or a psychologist, and I felt I understood all of it) and helpful. I feel that from now on I'll be a

much more educated consumer of television and newspaper coverage of jury trials and the legal system.

At the beginning of this review, I need to disclose my bias: I have known Neal Feigenson for nearly 15 years: He was on the faculty at the law school which I attended, and I consider him a friend, as well as a mentor of sorts. Although I candidly concede, therefore, that I cannot be entirely objective about anything written by Professor Feigenson, I am confident that, by any standard, this is a marvelously intelligent and incisive book at the intersection of law and social psychology.Torts is taught in the first year of law school. The black- letter law - those legal rules which must be learned - could fit on an index card. Nevertheless, the concept of negligence, which is the most important topic in torts, and its application to cases ranging from automobile collisions to medical malpractice, is very difficult. In jury trials, principles of negligence are applied by lay jurors selected precisely because they know little or nothing about law. That sounds like a recipe for farce, if not disaster, but it has evolved in Anglo-American law over a period of nearly 1,000 years. As a result, Professor Feigenson's effort to explain how jurors comprehend, interpret, and apply the rules of legal blame is very important. According to Professor Feigenson:: "Legal blaming is multidimensional: It springs from common sense and is also shaped by legal rules, expert rationales, and the facts of the individual case." The essence of Feigenson thesis is: "If there is any overarching pattern in [complex lay decision making] it is that jurors try to achieve what I call total justice. They strive to square all accounts between the parties (even though the issues the law asks them to resolve may not be framed in those terms), to consider all information they deem relevant (even if the law tries to keep them from relying on some of it), to reach a decision that is correct as a whole (even if they reach it by blurring legally distinct questions), and to feel right about their decision (even though the law discourages them from using their emotions to decide). In Feigenson's view, "the more original and important that this book makes to the understanding of lay decision making" is to "examine how the words that advocates use to persuade jurors and the words jurors themselves use to explain their decisions in several accident cases reflect the social psychology of total justice." In the introduction, Professor Feigenson makes these important points: "A very small portion of all accidental injuries, about 1 in 10, results in claims for compensation of any sort, and only a fraction of these lead to lawsuits;" and "Of all tort cases filed, about 5% or less are resolved by verdict at trial." Later he provides this interesting statistic. "[P]laintiffs win only a little more than half of tort cases tried to juries: over 60% for auto accidents, about 40% for products liability, and about 30% of medical malpractice." I find that surprising: My experience is that most strong plaintiffs' cases settle, so I

might have expected the percentage of plaintiffs' verdicts to be lower. In addition, for reasons not clear to me, slip-and-fall cases are not included; they are notoriously difficult to win and, had they been factored in, the rate of plaintiffs' victories would have decreased. According to Professor Feigenson, he seeks to "shed light not just on outcomes (of lay decision making) but on how people get to those outcomes." According to Feigenson, "[t]hree general features characterize lay judgment when it is applied to" accident cases: (1) Jurors tend to conceive of accidents as melodramas; (2) Juror's common sense about accidents is full of contradictions; and (3) Jurors strive "to give total justice." Feigenson writes: "By `total justice,' I mean that jurors are more concerned with making things come out right than with strictly following the relevant legal rules." One of Professor Feigenson's most important observations is that "social psychology suggests that jurors may tend to conceive of accidents as melodramas." He defines "melodrama" as "a narrative in which (a) events such as accidents, are caused by individual human agency; (b) the acts of individuals are explicable in terms of their character; (c) the agents involved in the accident can be divided into `good guys' and `bad guys'; (d) the focus of the narrative is the accident victim and his or her suffering; and (e) the good guy wins (at trial) and the bad guy gets his or her comeuppance." According to Feigenson: "People's preferences for simple, indeed monocausal, accounts of events points toward a melodramatic conception of accidents, in which one and only one party is to blame." However, he acknowledges limitations on the melodramatic conception of accidents. For instance, jurors "do not simply yield to the melodrama often offered by plaintiffs' attorneys," and "the plaintiff's lawyer may not construct the case primarily as a melodrama." Professor Feigenson devotes a couple of chapters to actual cases, and the information presented is intriguing, although probably not extensive enough to draw authoritative conclusions. There is, therefore, plenty of room for additional investigation. According to Feigenson: "The ideal way to learn how laypeople think and talk about blame and compensation when they are serving as jurors would be to listen to them deliberate. For the most part, however, observing or recording actual jury deliberations is prohibited." But litigants are increasingly taking advantage of various forms of alternative dispute resolution outside the courts, and this includes "private" jury trials. There is no reason, with the consent of the parties and attorneys, why deliberations in private jury trials could not be observed, recorded, and analyzed by properly-credentialed researchers.In conclusion, this book is superb. Neal Feigenson is a gifted teacher, able to communicate complicated concepts clearly. I recommend Legal Blame both to trial lawyers seeking insights into how juries arrive at verdicts and to members of the general reading public who are interested in the inner workings of the most important proceeding in the civil justice system.

I think it unfortunate that a relative and a former student provide two glowing, 5 star reviews of this work. Buyer beware.

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