

Good Samaritans: Tort Liability in the Regulation of Private Governance

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On the theory of Good Samaritan liability, one who ‘undertakes to provide protective services to another’ must exercise a duty of care. Especially in US courts, the theory has been tried and tested several times to hold private standard setters liable for damage caused to end users. Recently, efforts have been made to extend the theory to the contractual governance of supply chains, notably in *Doe I v WalMart*. There, employees of suppliers to WalMart argued that the US multinational owed them a duty of care arising out of the codes of conduct that it includes in its contractual relations throughout its supply chain. The Court of Appeal for the Ninth Circuit dismissed the claim summarily, making a strict distinction between tort and contract: WalMart, so the Court, did not undertake any obligation to protect the workers, but ‘merely reserved the right to cancel its supply contracts if inspections revealed contractual breaches by the suppliers.’

This contribution will put these cases in the context of the rise of private governance in the global economy, and will stake out the position that principles of tort law could, and should, sustain the weight of functioning as private global administrative law.