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# TORT LIABILITY FOR OMISSIONS IN THE CONTEXT OF CORPORATE CLIMATE LIABILITY

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## ABSTRACT

The growing body of climate litigation has increasingly focused on the role of corporations in contributing to climate change, not only through harmful acts but also through failures to act. This article explores tort liability for omissions in the context of corporate climate liability, with a particular focus on the Estonian legal system. It examines how omissions – such as failing to reduce emissions, implement mitigation measures, or meet evolving standards of care – can constitute unlawful conduct when linked to a duty to act. The analysis addresses the traditional reluctance to impose liability for omissions, grounded in philosophical, political, moral, and economic considerations, and shows how these rationales are being challenged by the systemic and cumulative nature of climate harm. Particular attention is devoted to the preconditions for liability – protective norms, duties to maintain safety, and fault – as well as the difficulties of proving causal connections in multi-actor settings. Drawing on key developments such as Milieudefensie v. Shell, Lliuya v. RWE, and the KlimaSeniorinnen judgment, the article highlights the gradual expansion of enforceable climate duties. Ultimately, it argues that omissions-based liability, while limited, may serve as an important complement to public regulation by concentrating liability on those corporate actors with disproportionate capacity to prevent climate-related harm.

**KEYWORDS**

Tort liability, Omissions, Corporate Climate Liability, Duty to Act, Duty of Care, Duty to Maintain Safety, Climate Change Litigation.

## INTRODUCTION

The increasing recognition of climate-related harms in legal settings has drawn attention to the responsibility of corporations in addressing these global challenges. According to M.-P. Weller and M.-L.Tran, an important dimension of climate litigation now concerns the extent to which private greenhouse gas emitters can be held liable for the consequences of anthropogenic climate change. Typically heard in civil courts, these claims are often rooted in private law – most commonly in tort law –, protecting individuals' rights to health, property, and bodily integrity.[1]

A pivotal moment in this evolving field is the *Milieudefensie et al. v. Shell* case, which has brought the issue of private-sector liability for global climate impacts further into focus. Central to the case was the question of whether Shell is legally obligated to reduce its CO2 emissions by 45% by 2030 compared to 2019 levels. The plaintiffs argued that Shell's failure to meet this target constitutes unlawful conduct, seeking a court order compelling the company to act.[2] While the Court of Appeal of The Hague ultimately did not impose the specific reduction mandate, it reaffirmed that companies do have a legal duty to mitigate their climate impact.[3]

At its core, this case concerns tort liability not for a specific harmful action, but for the omission to take sufficient action to mitigate the company's contribution to dangerous climate change. It demonstrates that corporations can face liability not only for what they do, but for what they fail to do.

This development reflects a broader legal trend recognizing that corporate climate liability may arise from both acts and omissions. As M. Hinteregger observes, the relevance of climate change for tort law is increasingly acknowledged, particularly through the growing recognition of duties of care owed by those obliged to protect individuals or property from climate-related harms.[4] In this context, breaches of the duty of care are often essentially connected to omissions, such as failing to reduce emissions or implement necessary mitigation measures, rather than direct harmful actions. This, in turn, has provided litigants with new grounds for claims and encouraged courts to apply tort law in innovative ways.[5] Viewed through this lens, climate-related omissions offer a compelling case for examining the legal foundations and implications of tort liability for inaction – highlighting some of the specific challenges and nuances that can arise when omissions, rather than acts, are at the centre of a legal claim.

This article examines the concept of tort liability for omissions through the example of corporate climate liability, providing a focused framework for analysing why, when and how such liability may arise. Rather than offering a comprehensive overview

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1 Marc-Philippe Weller and Mai-Lan Tran, "Climate Litigation Against Companies," *Climate Action* 1, 14 (July 2022): 3 // https://doi.org/10.1007/s44168-022-00013-6

2 *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC*, The Hague District Court (2021, ECLI:NL: RBDHA:2021:5339), § 3.1.

3 *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC*, The Hague Court of Appeal (2024, ECLI:NL:GHDHA:2024:2100), §§ 7.57, 7.111.

4 Monika Hinteregger, "Civil Liability and the Challenges of Climate Change: A Functional Analysis," *Journal of European Tort Law* 8, 2 (November 2017): 240–41 // https://doi.org/10.1515/jetl-2017-0010

5 Centre for Climate Engagement, "Tort Law and Climate Change," (February 2024) // https://lawclimateatlas.org/resources/tort-law-and-climate-change-2/

of climate litigation, it uses climate liability as a specific context to explore how tort law addresses failures to act. By exploring the theoretical foundations of tort liability for omissions and their possible application in climate cases, the analysis seeks to clarify the potential – and the limits – of holding corporations accountable for inaction in the face of climate change. The analysis is carried out with a particular focus on the relevance of these issues within the context of Estonian domestic law.

## 1. THE ROLE AND OPPORTUNITIES OF TORT LAW IN ADDRESSING CLIMATE LIABILITY

The global challenge of climate change has prompted extensive regulatory responses primarily through public law mechanisms. However, there is growing recognition of the complementary role that private law, especially the law of tort, might play in addressing climate change impacts.

As P. Semmelmayer observes, unlike public law, which approaches climate change as a collective societal issue, tort law emphasizes individual rights, interests, and relationships, typically grounded in economic and compensatory principles rather than environmental protection per se. Nonetheless, tort law has the potential to bridge significant gaps left by traditional regulatory frameworks, offering avenues for individual claimants to seek redress for climate-induced harms and thereby influencing corporate behaviour. [6]

According to M. Hinteregger, tort law traditionally addresses identifiable and direct harms, reflecting its compensatory foundation in corrective and distributive justice. Its preventive function, increasingly relevant in climate liability, creates economic incentives for potential polluters to reduce environmental harm and has a broader signalling effect, prompting other actors in comparable situations to alter their behaviour.[7]

M. Faure and M. Peeters have argued that tort liability could complement existing public climate regulation.[8] As noted by M. Latham, V.E. Schwartz and C. E. Appel, public law can articulate clear boundaries and establish standards of care, thereby clarifying and enhancing the scope and effectiveness of private law remedies. Conversely, tort cases initiated by individuals or civil society actors could indirectly guide legislative and executive branches by highlighting areas requiring stronger regulatory responses.[9]

Additionally, as M.Hinteregger has noted, the inherent flexibility and universal applicability of tort law present strategic advantages over other climate-change instruments, which typically require protracted political processes. As tort law frameworks are already embedded in national legal systems worldwide, they provide a pre-existing legal mechanism that can also be extended to address climate-related harms.[10]

Building on the role of tort law in addressing climate change, it is important to consider who the parties involved in such litigation are, particularly the plaintiffs and defendants. In the context of climate change litigation, plaintiffs are typically individuals, non-governmental organizations (NGOs), or a combination of these actors.[11]

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6 Philipp Semmelmayer, "Climate Change and the German Law of Torts," *German Law Journal* 22, 8 (December 2021): 1569 // https://doi.org/10.1017/glj.2021.76

7 Monika Hinteregger, *supra* note 4, 238, 245.

8 Michael Faure and Marjan Peeters, "Liability and Climate Change," *Oxford Research Encyclopedia of Climate Science* (April 2019) // https://doi.org/10.1093/acrefore/9780190228620.013.648

9 Mark Latham, Victor E. Schwartz, and Christopher E. Appel, "The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart," *Fordham Law Review* 80, 2 (November 2011): 737.

10 Monika Hinteregger, *supra* note 4, 238, 245.

11 Joana Setzer and Catherine Higham, "Global Trends in Climate Change Litigation: 2024 Snapshot," Grantham Research Institute on Climate Change and the Environment, London School of Economics and

These plaintiffs are motivated by a desire to raise awareness, exert pressure on policymakers, and secure remedies for the damage caused by climate change.[12] In recent years, according to the 2024 policy report of the Grantham Research Institute on Climate Change and the Environment, the NGOs have become particularly active, using litigation as a tool to challenge governments and corporations over their roles in exacerbating climate change. These civil society actors play a significant role in expanding the scope of climate-related litigation, often pursuing cases not primarily for financial gain but to catalyze broader societal change.[13]

Defendants in climate liability cases are most commonly government entities or large corporations. Historically, governments have been the primary targets of such litigation, often accused of failing to adopt adequate climate mitigation or adaptation measures.[14] However, there has been a notable shift towards holding corporations accountable, particularly fossil fuel and energy companies, for their role in contributing to climate change. These cases may involve allegations of misleading sustainability claims (greenwashing), failure to adhere to environmental regulations, or insufficient efforts to reduce carbon emissions.[15] The growing body of evidence, including datasets like the Carbon Majors[16], international legal frameworks, and successful litigation examples, highlights the critical role of both corporations and governments in exacerbating climate change.[17] These developments suggest that the trend toward corporate accountability will likely continue, driven by increasing recognition of their substantial contributions to global emissions, as well as by the strategic use of legal tools and influential precedents.

## 2. OMISSIONS AS A GENERAL BASIS FOR TORT LIABILITY

### 2.1. The Distinction Between Omissions and Positive Acts in Tort Law

Traditional tort law primarily deals with acts – positive conduct that results in harm to others. However, numerous examples in legal literature illustrate that a failure to act, or an omission, can also play a role in causing damage.[18] According to M.Faure, the understanding that unlawful conduct may arise not only from active conduct but also from omissions has gained general recognition in all contemporary European legal systems,[19] including the Estonian legal system. Although the Estonian Law of Obligations Act[20] (LOA) does not provide an explicit separate legal basis for liability arising from

Political Science (June 2024) // https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf

12 Ravi Menon and Chiara Zilioli, "Climate-Related Litigation: Recent Trends and Developments," Network for Greening the Financial System, Technical Document (January 2025) // https://www.ngfs.net/en/publications-and-statistics/publications/report-climate-related-litigationrecent-trends-and-developments.

13 *Ibid.*

14 Joana Setzer and Catherine Higham, *supra* note 11.

15 Ravi Menon and Chiara Zilioli, *supra* note 12.

16 The Carbon Majors dataset is a comprehensive record of historical and contemporary $CO_2$ emissions from global fossil fuel and cement producers, showing that a relatively small group of corporate and state entities is responsible for the majority of industrial emissions since the Industrial Revolution. InfluenceMap, "Carbon Majors Dataset," (August 2025) // https://carbonmajors.org

17 Joana Setzer and Catherine Higham, *supra* note 11.

18 Michael G. Faure, "Liability for Omissions in Tort Law: Economic Analysis," *Journal of European Tort Law* 2, 2 (August 2011): 184 // https://doi.org/10.1515/jetl.2011.184

19 Christian von Bar, *Non-Contractual Liability Arising out of Damage Caused to Another*, Principles of European Law: Study Group on a European Civil Code (Oxford: Oxford University Press, 2009), 592.

20 *Võlaõigusseadus (Law of Obligations Act)*, RT I 2001, 81, 487; RT I, 11.11.2025, 16. Riigi Teataja (State Gazette) [in Estonian; unofficial English translation available at https://www.riigiteataja.ee/en/eli/ee/507032019001/consolide/current].

omissions, such liability is recognized in judicial practice[21], and is acknowledged in the commentary on the LOA, which state that a damaging act may be expressed both in active conduct and in omission.[22]

By remaining inactive, individuals and entities can commit various offenses, and therefore, inaction constitutes a potentially broadly applicable basis for tort liability. Examples from Estonian case law include situations where the absence of proper road-work signs leads to an accident[23], where a board member fails to fulfil their obligation to file for bankruptcy in a timely manner[24], or where trademark infringements remain unaddressed after the infringer has been informed of them.[25] Liability for omissions thus creates an important mechanism for the protection of injured parties in cases where the occurrence of damage cannot be directly linked to the positive action of the tortfeasor.

Greenhouse gas emissions are, to some extent, inevitable in today's economic model, which means that not every instance of active emission can automatically give rise to tortious liability. What is more reproachable from a tort law perspective, however, is the failure of a corporation to curb emissions despite established legal limits or recognized duties of care. It has been found in legal literature that in cases involving natural disasters, the causal chain that must be established is typically one between neglect and impact, rather than between a direct, hazardous activity and its consequences. This distinction makes these cases fundamentally different from those involving clear, active wrongdoing.[26] As M.-P. Weller and M.-L. Tran have stated, climate change is not solely driven by active contributions, such as significant greenhouse gas emissions, but also by failures to implement necessary measures to mitigate damage. This includes the failure of corporations to transition away from fossil fuels, adopt effective climate policies, or enforce regulatory standards that could have prevented or reduced harm.[27] The legal relevance of omissions in this context is therefore particularly pronounced, as inaction can contribute to the worsening of climate risks.

Scholarly analysis has established that the decisive factor in assessing the unlawfulness of an omission is the existence of a duty to act. Determining liability therefore requires first identifying if such a duty applied in the given situation[28] – whether derived from a specific protective norm or from a general duty to maintain safety (generale Verkehrspflict[29]) – and then examining whether this obligation was violated.[30] As Estonian legal scholar I. Nõmm notes, this inquiry arises specifically in the context of omissions; in cases of active conduct, the direct infringement of a protected legal interest

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[21] Judgment of the Civil Chamber of the Supreme Court in case No. 2-19-7379, 26 October 2021, §§ 16.3, 18.5; Judgment of the Civil Chamber of the Supreme Court in case No. 3-2-1-127-16, 15 December 2016, § 17.

[22] Martin Käerdi and Tambet Tampuu, "VÕS § 1043, komm. 3.3.2" [Commentary on § 1043 of the Law of Obligations Act, annotation 3.3.2]; in: Paul Varul, Irene Kull, Villu Kõve and Martin Käerdi, *Võlaõigusseadus III. Kommenteeritud väljaanne* (Juura, 2009).

[23] Judgment of the Civil Chamber of the Tartu Court of Appeal in case No. 2-11-41431, 22 October 2012, § 15.

[24] Judgment of the Civil Chamber of the Supreme Court in case No. 3-2-1-79-05, 22 September 2005, § 12; Judgment of the Civil Chamber of the Supreme Court in case No. 2-14-50307, 12 June 2019, §§ 19.4, 22.

[25] Judgment of the Civil Chamber of the Supreme Court in case No. 2-14-6942, 21 April 2021, §§ 12.2, 12.3.

[26] Alexander Zahar, "Human Rights Law and the Obligation to Reduce Greenhouse Gas Emissions," *Human Rights Review* 23, 3 (September 2022): 390 // https://doi.org/10.1007/s12142-021-00648-8

[27] Marc-Philippe Weller and Mai-Lan Tran, "Klimawandelklagen im Rechtsvergleich – Private Enforcement als weltweiter Trend?" [Climate Change Litigation in Comparative Law – Private Enforcement as a Global Trend?], *Zeitschrift für europäisches Privatrecht* [Journal of European Private Law] 3 (August 2021): 599.

[28] Nils Jansen, "Damage Caused by Omission": 103–104; in: *Essential Cases on Natural Causation*, Digest of European Tort Law, vol. 1 (Vienna: Springer, 2007).

[29] The so-called general duty to maintain safety (*generale Verkehrspflicht*) originates in German doctrine and has been adopted in Estonian tort law. In comparative contexts, this corresponds to what is usually referred to as the duty of care.

[30] Marc-Philippe Weller and Mai-Lan Tran, *supra* note 27, 599.

may already constitute unlawful behaviour. The legal system regards such direct harm as inherently unacceptable, regardless of whether general safety obligations have been observed.[31]

According to M.-P. Weller and M.-L. Tran, private climate litigation often revolves around whether, and to what extent, private emitters have a duty to reduce their greenhouse gas emissions. These obligations can arise from statutory or regulatory requirements, which function as protective norms, or they may be derived from an unwritten duty to maintain safety toward third parties, requiring measures to mitigate the risks posed by CO2 emissions.[32] By not adhering to these standards, private emitters may be in breach of their duty to maintain safety.

### 2.2. Philosophical, Political, Moral and Economic Grounds for Liability for Omissions

As S.Steel has stated, many legal systems operate on the principle that liability generally does not arise from omissions.[33] According to H. Koziol, it is considered more practical and justifiable to require individuals to refrain from certain harmful actions rather than impose extensive obligations to act. Additionally, imposing a duty to act inherently limits individual freedom.[34]

Legal scholars widely accept that liability for failing to act should only arise in exceptional cases where a strong justification exists. For example, there is a common legal assumption that individuals do not have a general obligation to provide aid to strangers in distress, and where such a duty does exist, it must be specifically justified.[35]

However, this principle has traditionally been applied in cases where an individual is criticized for failing to assist another person.[36] The question arises whether this same framework should be used in other contexts, particularly in cases of climate-related harm and corporate liability. Climate damage, unlike immediate personal harm, is often caused by systemic, long-term failures rather than singular, isolated omissions. Moreover, the emergence of various legal frameworks[37] aimed at holding corporations accountable reflects the fact that businesses do have numerous (not individual and unexpected) obligations in this area. This aspect should also play a role in shaping corporate liability. Additionally, companies can impose such obligations on themselves by committing to voluntary standards and initiatives. For instance, the United Nations Global Compact, established in 2000, is the world's largest corporate sustainability initiative, having over 20,000 active participants.[38] In this context, it seems reasonable to consider that existence the duty of care could in principle be present. While legal systems generally do not impose liability for omissions unless a strong justification exists, corporate liability for climate-related harm could present precisely such a case.

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31 Iko Nõmm, *Käibekohustuse rikkumisel põhinev deliktiõiguslik vastutus* [Tort Liability Based on the Breach of a Duty of Care] (Doctoral thesis, supervised by Janno Lahe, Tartu University Press, 2013), 119.
32 Marc-Philippe Weller and Mai-Lan Tran, *supra* note 1, 9.
33 Sandy Steel, "Rationalising Omissions Liability in Negligence," *Law Quarterly Review* 135 (June 2019): 484.
34 Helmut Koziol, "Liability for Omissions – Basic Questions," *Journal of European Tort Law* 2, 2 (August 2011): 131–132 // https://doi.org/10.1515/jetl.2011.127
35 Sandy Steel, *supra* note 33, 484.
36 Eoin Quill, "Affirmative Duties of Care in the Common Law," *Journal of European Tort Law* 2, 2 (August 2011): 151–152 // https://doi.org/10.1515/jetl.2011.151
37 For example, the Corporate Sustainability Due Diligence Directive (*Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859*, OJ L, 2024/1760, 5 July 2024).
38 United Nations Global Compact, *About Us,* (August 2025) // https://unglobalcompact.org/about

In English law, the case of *Stovin v Wise* established that there are political, moral, and economic reasons for treating omissions differently from active conduct. From a political perspective, imposing liability for omissions interferes with individual freedom to a greater extent, as it compels a person to take positive action rather than merely refraining from harmful conduct.[39] However, P. Widmer, representing the Germanic legal tradition, counterargues that political attitudes are evolving. The duty to act is increasingly accepted, particularly in areas where ethical considerations are gaining prominence in legal reasoning.[40]

This reasoning can in a way be extended to climate liability. The growing recognition of environmental harm and the necessity for proactive measures have led to an increasing number of legal frameworks imposing obligations on states and corporations. Just as P. Widmer notes evolving attitudes toward duties to act[41], climate obligations can reflect a similar trend – where failure to prevent harm (e.g., failing to reduce emissions or mitigate climate risks) can attract liability.

As regards the moral reasons in the case of *Stovin v Wise*, it was established that a moral obligation to prevent harm or assist someone in need applies to a large and undefined group of people, making it unfair to single out only a few for their inaction.[42]

Similarly, in the context of climate change litigation, S. Downs has pointed out that it appears arbitrary to impose liability solely on enterprises for their emissions. If a duty to avoid "excessive" emissions were to exist, it would have to apply universally to all individuals, turning virtually anyone into a potential defendant.[43] Also, as M. Spitzer and B. Burtscher have noted, at the individual level, it seems doubtful that a single defendant can be held responsible for misconduct. The global nature of climate change and the complex causal links involved must be taken into account. This issue is particularly emphasized in common law jurisdictions, where plaintiffs face significant challenges in proving a duty of care. Consequently, it has been found that imposing individual legal obligations in response to global climate challenges appears problematic.[44]

Some scholars argue that anthropogenic climate change is an example of collective wrongdoing without individual culpability. They suggest that the actions of a single individual have an insignificant impact on global climate change. Thus, even if collective action is necessary to reduce carbon emissions, an individual does not necessarily act immorally by failing to reduce their own emissions.[45]

Thus, while it could be argued that entrepreneurs ought to be more acutely aware of climate-related risks and responsive to broader political developments, it remains inherently difficult to determine which specific actors within the business community should be held accountable for the resulting climate-related harm.

An interesting analysis in the legal literature provides a nuanced perspective on liability in cases involving multiple potential injurers. It has been argued that attributing

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39 Christian von Bar, Walter van Gerven, Pierre Larouche, Jack Lever and Geneviève Viney, *Tort Law: Scope of Protection* (Oxford: Hart Publishing, 1998), 79.

40 Pierre Widmer, "Ex nihilo responsabilitas fit, or the Miracles of Legal Metaphysics," *Journal of European Tort Law* 2, 2 (August 2011): 140 // https://doi.org/10.1515/jetl.2011.135

41 *Ibid*.

42 Christian von Bar et al., *supra* note 39, 79.

43 Sarah Downs, "Civil Liability for Climate Change? The Proposed Tort in *Smith v Fonterra* with Reference to France and the Netherlands," *Review of European, Comparative & International Environmental Law* (2024): 32 // https://doi.org/10.1111/reel.12532

44 Martin Spitzer and Bernhard Burtscher, "Liability for Climate Change: Cases, Challenges and Concepts," *Journal of European Tort Law* 8, 2 (November 2017): 169 // https://doi.org/10.1515/jetl-2017-0009

45 Garrett Cullity, "Acts, Omissions, Emissions": 160; in: Jeremy Moss (ed.), *Climate Change and Justice* (Cambridge: Cambridge University Press, 2015).

liability broadly to all possible tortfeasors in cases of omissions results in a dilution of liability, as each would be individually responsible for only a very small contribution to the harm. This, in turn, weakens the deterrent effect of liability. The concern is particularly relevant in the context of climate change, where assigning equal liability to all emitters would make legal enforcement impractical.[46]

To address this challenge, legal scholarship has introduced the principle of *salience*, which suggests that liability should be assigned to a small, identifiable group or, ideally, a single agent. The reasoning is that when multiple actors could have prevented harm – such as bystanders on a beach who could have rescued a drowning person – the risk of diffused liability makes it ineffective to hold all of them liable.[47] The same logic applies in climate litigation: if every individual emitter or corporation were subject to liability, each entity's contribution to harm would be so small that legal accountability would lose its force.

In climate litigation, this raises the question of whether liability should be concentrated on major corporate polluters, governments, or other actors with disproportionate influence over global emissions. While the principle of *salience* offers a compelling rationale for assigning liability to a small, identifiable group, it does not fully resolve the issue when no single cheapest cost avoider can be easily determined.[48] The complexity of climate harm, which results from the cumulative actions of numerous actors across different sectors and jurisdictions, makes the straightforward application of this principle challenging.

Coming back to the third principle of *Stovin v Wise*, from an economic perspective, it is not justified to demand that an individual who has done nothing should expend their resources and act in a way that benefits someone else. Therefore, liability for inaction is only justified under exceptional circumstances.[49]

On the other hand, it can be argued that the changing conditions in the world necessitate stricter obligations for corporations. Although this requires additional resource expenditure, it is essential for the sustainability of businesses and for combating climate change in the future.

To conclude, the traditional reluctance to impose liability for omissions is grounded in philosophical, political, moral, and economic considerations that prioritize individual freedom, avoid arbitrary burdens, and seek efficiency. However, in the context of climate change, these justifications are increasingly being challenged. While moral and economic concerns caution against assigning liability to individuals for diffuse and collective harms, evolving political and ethical attitudes – especially in environmental law – suggest that certain actors, particularly corporations and states, may justifiably bear a duty to act. The principle of "salience" supports focusing liability on key players with disproportionate capacity to prevent harm, thereby preserving the deterrent effect of legal liability. Thus, while general liability for omissions remains limited, climate-related obligations may represent a justified and necessary exception.

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46 Michael G. Faure, *supra* note 18, 197.

47 Michael G. Faure, *supra* note 18, 198.

48 Alon Harel and Assaf Jacob, "An Economic Rationale for the Legal Treatment of Omissions in Tort Law: The Principle of Salience," *Theoretical Inquiries in Law* 3, 2 (October 2002): 415 // https://doi.org/10.2202/1565-3404.1055

49 Christian von Bar et al., *supra* note 39, 79.

## 3. PRECONDITIONS FOR TORT LIABILITY FOR OMISSIONS IN THE CONTEXT OF CLIMATE LIABILITY

### 3.1. General Introduction

In cases of inaction, according to Estonian legal scholars I. Nõmm and J. Lahe, tort liability in Estonian law generally requires the following elements: the existence of actual harm[50], a legal duty to act, a breach of that duty through omission, a causal link between the omission and the harm, unlawfulness, and fault.[51] Unlike liability for active conduct, omission-based liability hinges on establishing a clear duty to intervene and proving that failure to act in accordance with that duty caused the harm.[52]

Although these elements are conceptually familiar from the general framework of tort law, further clarification is necessary regarding how they interrelate and operate specifically in the context of omissions.

As I. Nõmm and J. Lahe have stated, a breach of a statutory duty or a failure to meet an established standard of care also establishes unlawfulness, as such a breach inherently entails a violation of legal norms. However, in the context of unlawfulness it remains necessary to assess whether there are any justifications or exculpatory circumstances such as necessity, consent, or other recognized grounds stated in the LOA that may exclude unlawfulness.[53]

As stated in Estonian case law, causality is established in two stages: firstly, the test of the necessary cause (the *conditio sine qua non* rule or the but-for test) is applied and secondly, causality is assessed using the legal cause test. In the case of omissions, the but-for test is carried out using the substitution method, meaning that the tortfeasor's unlawful act is substituted with a lawful act, and it is checked whether the consequence could have been avoided when acting lawfully instead of omitting to act.[54] After the but-for test, the purpose of the protective provision theory as an expression of legal cause test is generally applied.

According to I. Nõmm, fault consists of two dimensions: external and internal negligence.[55] I. Nõmm and J. Lahe argue that external negligence is established concurrently with a breach of a general duty to maintain safety – this breach itself evidences a failure to act with the diligence required under the circumstances.[56] Internal negligence, by contrast, requires a separate inquiry into the actor's personal capacity – that is, in the case of natural persons, their ability to identify risks, process information, and act accordingly. This includes an assessment of whether the individual possessed the cognitive, practical, or organizational ability to recognize and fulfil their legal obligations.[57] Similarly to breaches of general duties of care, if the protective norm already presupposes fault, then external negligence is established through the breach itself; if

[50] Iko Nõmm, *supra* note 31, 108.
[51] Iko Nõmm, *supra* note 31, 108.; Janno Lahe, "German Transplants in Estonian Tort Law: General Duties to Maintain Safety," *Juridica International* 30 (October 2021): 134 // https://doi.org/10.12697/JI.2021.30.15
[52] Nils Jansen, *supra* note 28, 103–104.
[53] Iko Nõmm, *supra* note 31, 135.; Janno Lahe, *supra* note 51, 134.
[54] Judgment of the Civil Chamber of the Supreme Court in case No. 3-2-1-129-13, 11 December 2013, § 23. Judgment of the Civil Chamber of the Supreme Court in case No. 3-2-1-173-12, 8 January 2013, § 18. Judgment of the Civil Chamber of the Supreme Court in case No. 3-2-1-69-15, 17 June 2015, § 22.
[55] Iko Nõmm, *supra* note 31, 114.
[56] Iko Nõmm, *supra* note 31, 135.; Janno Lahe, *supra* note 51, 134.
[57] Martin Käerdi and Tambet Tampuu, "VÕS § 1050, komm. 3.3." [Commentary on § 1050 of the Law of Obligations Act, annotation 3.3.]; in: Paul Varul, Irene Kull, Villu Kõve and Martin Käerdi, *Võlaõigusseadus III. Kommenteeritud väljaanne* (Juura, 2009).

not, fault must be assessed separately as an independent element, from the aspect of external diligence and, where relevant, also internal negligence.[58]

In climate-related cases, the most critical and contested elements are the duty to act – which may arise from a protective norm or general duty to maintain safety – and causation, given the complex, multi-actor nature of climate harm.

## 3.2. VIOLATION OF STATUTORY DUTY OR DUTY TO MAINTAIN SAFETY – WRONGFULNESS

### 3.2.1. The Emerging Contours of the Duty to Act in Climate Context

According to the commentary on the LOA, the duty to act may arise either from a protective norm or from a general duty to maintain safety, not explicitly provided by law but stemming from the principle of good faith. The content of such a duty can be shaped through court practice based on the specific circumstances of the case.[59]

In the context of climate liability, the contours of a duty to act remain unsettled. What exactly constitutes a company's duty of care in relation to climate risks? From where do the relevant protective norms derive, and what is their scope of protection? While recent developments – such as *Milieudefensie v. Shell* and the Corporate Sustainability Due Diligence Directive[60] – offer guidance, they do not yet resolve these foundational questions. Both judicial and regulatory efforts indicate a shift toward recognition of corporate climate duties, but the legal basis for liability remains fragmented and partially indeterminate. However, as state liability standards evolve to include duties of climate action, they may gradually translate into enforceable expectations for private actors, effectively importing public law obligations into the tort framework.

The importance of the *Shell* case lies in how it translates abstract legal norms into corporate obligations. The Hague District Court identified a duty of care rooted in Dutch tort law, human rights, and international standards, extending not only to Shell's direct emissions but also to its capacity to influence global emissions through its business model.[61] However, the Court of Appeal introduced an important qualification: while it upheld the duty of care, it rejected the fixed reduction target of 45% by 2030. The court reasoned that, unlike governments – where international consensus can support specific targets – there is no established benchmark for what an individual company like Shell must achieve.[62] In other words, Shell's legal obligation exists, but its precise scope remains uncertain.

Another attempt to define corporate climate liability can be seen on the regulatory front. Corporate Sustainability Due Diligence Directive aims to institutionalize enforceable climate duties across sectors.[63] Article 22 of the Directive introduces a requirement for companies to align their business models, on a best-efforts basis, with the objective of limiting global warming to 1.5°C, in line with the Paris Agreement and the EU climate neutrality objective by 2050.[64] Yet the obligation remains procedural in nature. Companies must adopt and maintain a transition plan, setting out targets, measures, and

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[58] Janno Lahe, *supra* note 51, 134.
[59] Martin Käerdi and Tambet Tampuu, *supra* note 22.
[60] *Directive (EU) 2024/1760, supra* note 37*.*
[61] *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC, supra* note 2, §§ 4.4.54, 4.4.55*.*
[62] *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC, supra* note 3, § 7.57.
[63] European Commission, "Corporate Sustainability Due Diligence" // https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en
[64] *Directive (EU) 2024/1760*, *supra* note 37.

oversight mechanisms, but failure to meet those targets does not in itself trigger liability. Nor does Article 29, the Directive's liability provision, extend to climate transition planning. Liability is confined to supply chain-related human rights and environmental harms. [65]

This reflects a regulatory preference for formal compliance over substantive enforcement. Supervisory bodies are empowered to verify the existence and updating of plans, not their adequacy. As a result, as M.-P. Weller and S. Schwemmer have noted, Article 22 does not constitute a protective norm that could serve as a basis for tort liability. [66]

Amid the limitations of direct corporate tort liability, recent developments in state liability offer a parallel and potentially transformative trajectory. Jurisprudence at both European and international levels signals an emerging legal path that could reshape the framework for climate liability.

The European Court of Human Rights' 2024 *KlimaSeniorinnen* judgment found a violation of Article 8 of the European Convention on Human Rights due to Switzerland's failure to implement adequate climate measures, thereby recognizing that states bear positive obligations to mitigate climate-related harms. As for the content of the obligations, the State's primary duty is „to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change ".[67]

Similarly, an advisory opinion of the International Court of Justice regarding the obligations of states in respect of climate change affirms that a state's failure to regulate greenhouse gas emissions may amount to an internationally wrongful conduct under customary international law[68]. Thus, a state may be liable where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.[69] In what is considered a landmark pronouncement[70], the Court clarified that international legal obligations to mitigate climate change apply universally to all states, regardless of their participation in specific treaty frameworks such as the Paris Agreement.[71] Such breaches may give rise to state liability, potentially triggering legal consequences including full reparation to affected states, whether through restitution, compensation, or other appropriate forms of redress.[72]

If states are indeed bound by such international obligations, a plausible implication is that these duties must be implemented through domestic legal frameworks capable of ensuring compliance. This may involve the establishment of enforceable standards for private actors, potentially through legislation or administrative regulations, that could give rise to protective norms in the sense recognized by tort law. In this way,

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65 *Ibid*.
66 Marc-Philippe Weller and Sophia Schwemmer, "Klimatransformationspflichten für Großunternehmen – Umsetzung des Art. 22 CSDDD via Klimaquote" [Climate Transformation Obligations for Large Companies – Implementation of Art. 22 CSDDD via Climate Quota], *Die Aktiengesellschaft* [The Stock Corporation] 15 (2024): 518.
67 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], No. 53600/20, Eur. Ct. H.R., 9 April 2024, § 545.
68 *Obligations of States in Respect of Climate Change*, Advisory Opinion, I.C.J., 23 July 2025, § 565 // https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf
69 *Ibid*., § 478.
70 International Institute for Sustainable Development, *Historic International Court of Justice Opinion Confirms States' Climate Obligations* (July 2025) // https://www.iisd.org/articles/deep-dive/icj-advisory-opinion-climate-change
71 *Obligations of States in Respect of Climate Change*, *supra* note 68, §§ 171, 172, 173.
72 *Ibid*., §§ 444–455.

public law duties may progressively shape the boundaries of corporate liability within national legal systems, not through direct imposition, but via the normative extension of state obligations into the private sphere.

### 3.2.2. Duties to Act Arising from Prior Conduct in Climate Liability

On initial consideration, one might assume that liability can be determined solely by examining an individual's actions – if an act is available as a basis for assessment, why consider an omission at all? However, this perspective overlooks a crucial aspect: as H. Koziol has brought out, establishing liability requires not just an act but also additional conditions, one of the most fundamental being the wrongfulness of the conduct that led to harm – in other words, a breach of duty.[73]

Legal scholarship has pointed out, that distinguishing omissions from active conduct is sometimes necessary, particularly in cases where liability hinges on inaction – when the preceding active conduct, on its own, would not have been wrongful without the subsequent failure to act. For example, actions such as driving within the speed limit or digging a hole are not inherently wrongful and, therefore, do not suffice to establish liability. This makes it inevitable to shift the focus to omissions – failing to apply the brakes or neglecting safety measures – since these may constitute a breach of the duty of care and thus form the foundation for liability.[74] As highlighted in the comments to Article 4:103 of the Principles of European Tort Law (PETL)[75], the mere creation of a dangerous situation is not in itself typically considered unlawful; liability may arise only when the risk is not appropriately managed or prevented using suitable means. [76]

According to P.Widmer, one basic distinction in this respect is the recognition that some duties to act arise precisely because of a preceding activity. In such cases, an omission is not merely passive nonfeasance but rather a defective or wrongful continuation of that activity – misfeasance disguised as nonfeasance.[77] This view finds further support in the work of Estonian legal scholar T. Tampuu, who has argued that one form of omission consists precisely in the failure to act after having oneself created a hazardous situation.[78] This is why duties are not confined to situations where one actively contributes to risk creation. According to E. Quill, they can also extend to cases where an individual permits risks to persist, despite having the capacity and duty to mitigate them.[79]

Liability in the context of climate liability follows the same principle: certain duties arise because of prior actions. Conduct that is not inherently unlawful can still reach a point where intervention is required. Pollution itself is not necessarily illegal, but exceeding established limits or failing to mitigate its harmful effects can turn lawful activity into liability. It is not merely the act of emitting greenhouse gases that incurs liability, but the failure to stay within regulated bounds.

Previous statement could be explained as follows. In the context of climate change, emissions as such are actually broadly permitted under domestic and international law. They are not only allowed but also embedded in the structure of everyday life, consistent with prevailing norms across jurisdictions. They are, as A. Zahar has

[73] Koziol, *supra* note 34, 129, 131.
[74] *Ibid*.
[75] European Group on Tort Law, *Principles of European Tort Law* // http://www.egtl.org/
[76] Pierre Widmer, "Principles of European Tort Law: Text and Commentary": 86; in: European Group on Tort Law, *Principles of European Tort Law: Text and Commentary* (Vienna: Springer, 2005).
[77] Widmer, *supra* note 40, 142.
[78] Tambet Tampuu, *Lepinguvälised võlasuhted* [Non-Contractual Obligations] (2nd ed., Juura, 2017), 211.
[79] Quill, *supra* note 36, 175.

observed, in many cases, necessary for basic societal functions and are not ordinarily considered unreasonable.[80]

According to A. Zahar, the challenge in assigning liability stems from the fact that emitting greenhouse gases is a globally normalized activity, with treaty law not only recognizing emissions as lawful but also structuring global climate policy around their continued existence. Rather than mandating an immediate reduction, agreements like the Paris Agreement on Climate Change have institutionalized a framework in which emissions are budgeted for and permitted well into the future.[81] Climate treaties allow for the continuation of emissions in most countries at least through 2030, with contributions to atmospheric greenhouse gas concentrations expected to persist until 2050.[82] In this way, international agreements have not only failed to prohibit emissions but have, in effect, legitimized their ongoing presence in law and policy. This broad legal recognition of emissions highlights the difficulty in establishing liability – corporations' emissions do not inherently amount to a norm violation.

However, liability in the context of climate change does not have to arise from the mere act of emitting greenhouse gases but could rather arise from exceeding established limits by failing to take necessary mitigation measures. As A. Zahar has noted, all climate change resulting from greenhouse gas emissions is accounted for within the global emissions budget. This means that individual liability for contributing to climate change can only be meaningfully considered once the budget has been fully exhausted.[83] This distinction is crucial: while emissions are broadly permitted under both domestic and international law, liability can still emerge when emissions cross a threshold set by regulatory frameworks. In other words, lawful activity can give rise to liability when it becomes excessive and when a failure to act results in harm.

This perspective aligns with the Oslo Principles, an international regulatory framework that emphasizes that states and enterprises must refrain from initiating new activities that cause excessive greenhouse gas emissions unless these activities are indispensable due to prevailing circumstances (Principle 8).[84] The notion of excessive emissions invites further discussion: what exactly constitutes "excessive" in this framework? One possible interpretation is that emissions become excessive when they exceed a predetermined regulatory limit. If this threshold is exceeded, liability arises not just from the act of emitting but from the failure to implement necessary mitigation efforts. For example, if an entity – such as a car manufacturer – fails to take reasonable steps to prevent surpassing an agreed emissions threshold, liability may arise.

#### 3.2.3. Circumstances Precluding Unlawfulness

Under Estonian law, circumstances precluding unlawfulness are set out in § 1045 (2) of the LOA, which provides that causing damage is not unlawful if the right to cause the damage arises from law; if the injured party consented to the damage, except where such consent is contrary to law or good morals; if the person causing the damage acted in a state of self-defence or necessity; or if the person causing the damage lawfully exercised self-help to enforce or protect their right.

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80 Alexander Zahar, *supra* note 26, 387.
81 *Ibid*., 405, 407.
82 *Ibid*., 388.
83 *Ibid*., 402.
84 Expert Group on Global Climate Obligations, *Oslo Principles on Global Climate Obligations*, (2015) // https://climateprinciplesforenterprises.org/wp-content/uploads/2017/12/osloprincipleswebpdf.pdf

A pivotal question in climate litigation concerns the potential application of the legal ground for excluding unlawfulness, namely that damage is not unlawful if the right to cause it is derived from law. This query gains prominence given that greenhouse gas emissions are not only widely accepted but also explicitly regulated by international legal instruments. As brought out above in section 3.2.2, agreements such as the Paris Agreement do not prohibit emissions but rather establish frameworks that permit and budget for their continued existence. As a result, these international legal structures effectively confer legitimacy upon ongoing emissions, thereby implying that such emissions do not inherently amount to a breach of legal norms or an unlawful act. The assertion of legal compliance as a condition precluding unlawfulness has also been evident in relevant case law. For example, in *Lliuya v. RWE AG*, one of the defendant's key claims centered around the argument that RWE was in compliance with all applicable legal requirements and permits.[85]

However, an omission-centred approach suggests that liability in the context of climate change should not stem from the mere act of emitting greenhouse gases itself, but rather from the act of exceeding established limits by failing to take necessary mitigation measures. This perspective aligns with the understanding that liability can arise when emissions cross a threshold set by regulatory frameworks, making excessive emissions the critical factor in determining liability, even when initial activity is otherwise lawful.

### 3.3. Causal Link and Fault

According to M.-C. Gruber, among the various legal hurdles in climate litigation, establishing causation emerges as one of the most disputed and multifaceted issues, often seen as a major obstacle by courts addressing tort claims related to climate harm.[86] This difficulty transcends the distinction between acts and omissions, as the challenges in proving causation are universal in nature. Many legal scholars are on the opinion that at the core lies a structural problem: climate change results from complex, cumulative, and often indirect environmental processes, making it difficult to demonstrate a legally convincing cause-and-effect relationship[87] between the conduct of individual emitters and specific infringements of legal rights or protected interests.

A key reason for this difficulty lies in the fact that greenhouse gas emissions originate from a vast number of anthropogenic sources, both historically and in the present. As G. Wagner has brought out, although it is scientifically uncontested that all $CO_2$ emissions collectively contribute to the accumulation of greenhouse gases in the atmosphere, isolating the legal liability of a particular emitter for specific harm remains highly problematic. The dilution of contributions over time and across countless actors

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85 The case of *Lliuya v. RWE AG* involves a Peruvian farmer, Saúl Luciano Lliuya, who sued RWE AG, one of Europe's largest $CO_2$ emitters, seeking a declaration that RWE must bear a proportionate share of the costs for protective measures against flooding from a glacial lake near his property in Peru. See: *Saúl Ananías Luciano Lliuya v. RWE AG*, Oberlandesgericht Hamm, 28 May 2025, I-5 U 15/17 // https://rwe.climatecase.org/sites/default/files/2025-05/Urteil%20v.%2028.5.2025-anon.pdf

86 Malte-Christian Gruber, "The Anthropocenic Cupola: On Future Models of Climate Change Liability," *Zeitschrift für Rechtssoziologie* [Journal of Legal Sociology] 44, 1 (2024): 75, 83 // https://doi.org/10.1515/zfrs-2023-1004; Friederike E. L. Otto, Petra Minnerop, Emmanuel Raju, Luke J. Harrington, Rupert F. Stuart-Smith, Emily Boyd, Rachel James, Richard Jones and Kristian C. Lauta, "Causality and the Fate of Climate Litigation: The Role of the Social Superstructure Narrative," *Global Policy* 15 (2024): 737, 741 // https://doi.org/10.1111/1758-5899.13113

87 Eva Schulev-Steindl, Oliver C. Ruppel, Monika Hinteregger, Gottfried Kirchengast, Lukas H. Meyer, Gerhard Schnedl and Karl W. Steininger (eds.), *Climate Change, Responsibility and Liability* (Nomos, 2022), 97.

makes it extremely difficult to establish a legally significant causal link between individual conduct and concrete damage.[88]

Moreover, according to G. Wagner and A. Arntz, climate-related tort claims typically require proving a causal chain that includes the following elements: the respondent's greenhouse gas emissions; global warming; either the alteration of a regional microclimate or a rise in sea levels; and a specific weather event or natural phenomenon that ultimately impairs the claimant's rights.[89] Accordingly, for example, in the case of *Lliuya v. RWE AG*, the claimant argued that RWE's greenhouse gas emissions contributed to climate change, which accelerated the retreat of the Palcaraju glacier in the Peruvian Andes. This retreat increased the water level of Laguna Palcacocha and raised the risk of a destructive flood threatening his home – an outcome that would not have occurred to the same extent without anthropogenic climate change.[90]

Recent developments in German case law, particularly the Lliuya v. RWE AG ruling, have made the establishment of a causal link between emissions and climate-related harm increasingly feasible. The Higher Regional Court of Hamm emphasized that companies responsible for large-scale emissions can, in principle, be held liable under German civil law for the climate-related damages they contribute to.[91] It recognized the causal chain linking the defendant's emissions to a climate disaster elsewhere in the world and affirmed that even partial contributions can lead to liability, provided a sufficiently concrete causal link to the harm is demonstrated.[92] Moreover, the court clarified that the significance of an emitter's contribution should be assessed relative to other contributors and rejected the argument that smaller contributions are legally insignificant. In this case, RWE's 0.38% share of global industrial $CO_2$ emissions was deemed significant, reinforcing that even small but concrete contributions can be liable in climate litigation.[93] Although the German case law may offer valuable guidance, the diffuse and cumulative nature of climate change presents a significant challenge in applying it to Estonia's tort law framework. The role of attribution science in proving causation remains uncertain, as its acceptance is ultimately subject to judicial interpretation by local courts.

Additionally, in the context of omissions, carbon budgets could play a key role in establishing liability. According to P. Semmelmayer, in German law, carbon budgets are used to set permissible annual emission quantities, providing a useful tool for climate litigation. By accurately measuring the emissions of private entities, it may become possible to track how much these entities exceed the permissible limits, thereby determining their liability for the resulting climate harm.[94]

The complexities of climate change litigation introduce a significant challenge for the assessment of fault, particularly when defendants claim to have acted within existing legal frameworks. As P.Semmelmayer has stated, this creates an issue for fault, as liability is generally precluded if the defendant assumes and proves that the actions adhered to legal requirements. Debate arises over whether defendants compliant with regulations can still be negligent. It could be argued that allowing regulatory adherence

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[88] Gerhard Wagner, "BGB § 823 Liability for Damages," in *Münchener Kommentar zum Bürgerlichen Gesetzbuch* [Munich Commentary on the German Civil Code] (9th ed., C.H. Beck, 2024), § 823, Rn. 1183.
[89] Gerhard Wagner and Arvid Arntz, "Liability for Climate Damage under the German Law of Torts," *SSRN Electronic Journal* (January 2021) // https://doi.org/10.2139/ssrn.3792048
[90] *Saúl Ananías Luciano Lliuya v. RWE AG*, *supra* note 85, 6.
[91] *Ibid*., 42, 50.
[92] *Ibid*., 124, 125.
[93] *Ibid*., 52.
[94] Philipp Semmelmayer, *supra* note 6, 1577.

as an automatic defense would nullify tort law's ability to address climate change impacts. Yet, numerous precedents show a reasonable standard of care often demands more than mere regulatory compliance.[95]

A prime example is the landmark *Milieudefensie et al. v. Royal Dutch Shell plc* case. The Hague District Court based Shell's duty of care on Dutch tort law (Article 6:162 Civil Code), human rights, and soft law, the latter referring to widely accepted but non-binding international standards such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact, and the OECD Guidelines for Multinational Enterprises.[96] The initial ruling emphasized Shell-group's global emissions' significant impact on climate change, posing "serious and irreversible" risks to Dutch residents. In setting emission reduction obligations, the court considered global emissions, Dutch citizens' human rights, and Shell's control over its subsidiaries and supply chains.[97] The court of appeal later affirmed that Shell's significant role in the fossil fuel sector led to heightened expectations for GHG emission reductions compared to other companies[98], illustrating how duty of care can extend beyond strict regulatory compliance in this context.

## CONCLUSIONS

This analysis has examined tort liability for omissions through the lens of corporate climate liability, using this specific context to explore why, when, and how such liability may arise. While climate litigation encompasses a broad array of claims, the omission-based perspective highlights a distinctive challenge: corporations are often not accused of causing direct harm through unlawful acts, but of failing to take sufficient measures to mitigate climate risks within their control. This approach reveals how duties to act – whether derived from statutory protective norms or general duties of safety – form the essential gateway to liability.

The potential and limits of holding corporations liable for omissions in the climate context depend on balancing established tort principles with the realities of systemic environmental harm. While traditional reluctance to impose liability for inaction reflects political, moral, and economic concerns, the scale and urgency of the climate crisis provide compelling grounds for exceptions. Concentrating liability on actors with disproportionate capacity to prevent harm preserves deterrence without diluting liability, aligning with both corrective-justice goals and preventive aims. In this way, omissions-based liability – properly grounded in clear duties and robust causation analysis – can serve as a meaningful complement to public regulatory measures in addressing the corporate contribution to dangerous climate change.

The doctrinal review shows that the most difficult elements to establish tort liability in the field of climate litigation are the existence and scope of a duty to act, and the causal link between inaction and harm. Climate change's diffuse, cumulative nature complicates both inquiries, as greenhouse gas emissions remain broadly lawful under domestic and international regimes until thresholds are exceeded. Yet developments such as *Milieudefensie v. Shell*, the *KlimaSeniorinnen* judgment, and evolving international obligations illustrate a gradual expansion of enforceable climate duties. These

[95] *Ibid*., 1578.
[96] *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC*, *supra* note 2, §§ 4.4.11, 4.4.14.
[97] *Ibid*., § 4.4.55.
[98] *Vereniging Milieudefensie et al. v. Royal Dutch Shell PLC*, *supra* note 3, § 7.55.

trends suggest that public-law obligations imposed on states may, over time, influence the contours of private-law duties, particularly in jurisdictions – such as Estonia – where the law already recognizes omissions as a basis for liability.

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