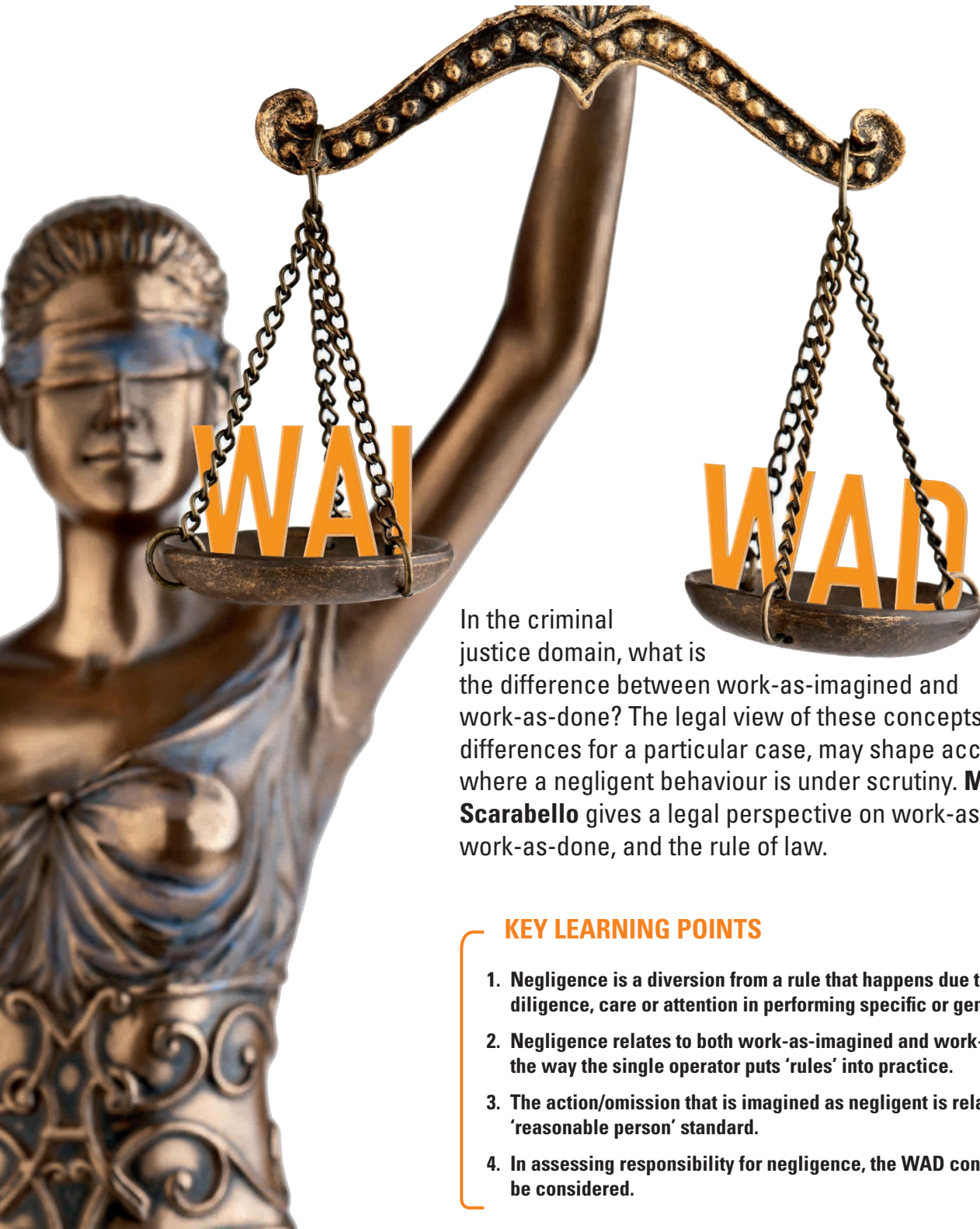


# WORK-AS-IMAGINED, WORK-AS-DONE, AND THE RULE OF LAW



In the criminal justice domain, what is the difference between work-as-imagined and work-as-done? The legal view of these concepts, and any differences for a particular case, may shape accountability where a negligent behaviour is under scrutiny. **Massimo Scarabello** gives a legal perspective on work-as-imagined, work-as-done, and the rule of law.

## KEY LEARNING POINTS

1. Negligence is a diversion from a rule that happens due to lack of diligence, care or attention in performing specific or generic tasks.
2. Negligence relates to both work-as-imagined and work-as-done: the way the single operator puts 'rules' into practice.
3. The action/omission that is imagined as negligent is related to the 'reasonable person' standard.
4. In assessing responsibility for negligence, the WAD context should be considered.

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The criminal justice system is intended to find out if there is someone to blame for an unwanted outcome that is relevant to criminal law, and to punish the individual of the actions/omissions that led to that event.

Over-simplifying, the first thing that has to be assessed in cases involving negligence is if the event is a consequence of the action or omission of someone involved in the 'process' within which the outcome occurred. There are scientific-naturalistic rules to follow in this seeking.

After that, assuming that a positive answer is given to the first search, the attitude and mind-set of the person under scrutiny must be investigated, in order to find a 'negligent behaviour'.

Negligence, roughly speaking, is an unwanted diversion from a rule that happens due to lack of diligence, care or attention in performing specific or generic tasks. The person has to have a 'legal' duty to perform a task in a specific manner, in order to accomplish a certain outcome. The term 'legal' is really general, since the sources of these rules can be different.

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That being said, let's try to verify if work-as-imagined (WAI) and work-as-done (WAD) theory somehow fits in this process.

At first glance, the legal duty that has been violated belongs to WAI world. 'Legal' means, for the purpose of the law, written, or procedural, and applicable to number of cases, so that similar cases are treated in the same way and different situations differently. Why should WAD be assessed? The WAI-WAD gradation does not belong to general rules, nor to the way these rules are written in the law, in contracts, in policies, or in procedural documents. It is something that is related to the way the single operator puts these 'rules' into practice, in real cases and environments.

It is a general principle in negligence theory that the action/omission that is imagined as negligent is related to the 'reasonable person' standard. This concept is aimed at personalising the average degree of care and competence to the specific domain within which

the event occurs (healthcare, aviation, driving, etc.). So, there will be a reasonable ATC controller (a reasonable tower, approach, ground controller) a reasonable pilot (a reasonable PIC, first officer, Boeing PIC, Airbus PIC) and so on, depending on the case under investigation.

This reasonable person must be appropriately informed, capable, aware of the law, and fair-minded. Since it is a standard, it can never go down, but it can go up to match the training and abilities of the particular person involved. For example, in testing whether the particular controller misunderstood an aircraft identification so incompetently that it amounts to a crime (because some bad outcome occurred), the standard must be that of the 'reasonable ATC controller'. If that particular controller has extraordinary competence (because he/she is recognised as 'the best' tower or approach controller), a higher degree of diligence and care can be expected.

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This being the general frame of the reasoning, WAD may find its own space in further personalisation (in the sense stated above) of the context where the event occurred.

WAD is the consequence of many factors that induce the diversion from WAI. Let's look at some examples.

**A) An ATC controller in an airport that normally has low to medium traffic.**

Traffic increases rapidly due to a new airline that sets its base (for contingent reasons) in that field. The management of the ATC provider decides not to recruit new personnel because the airline is due to move in a short time. Workload for the operators begins to increase, and shortcuts in some procedures are made in order to ensure safe and regular ground and air operations. The situation becomes stagnant and the airline decides not to move. Nevertheless, controllers seem able to carry on their duties, endorsed by the management, by shortcutting here and there, in some non-safety-essential processes, and these procedures become the WAD workflow in that environment.

Now, what if an unwanted event that affects safety occurs? The 'reasonable person', in this case, is one who is comparable to those controllers who work there, based on WAD and not WAI.

**B) Cockpit environment.**

A newly designed digital management process of some in-flight procedures is provided in the cockpit of a modern jet liner. The system is so complex and interacts with so many other systems that, even though training was given, the crew is not completely aware of the tasks that must be performed in response to some malfunctions. The manual provided does not help in solving that particular situation, which evolves rapidly in an emergency. The crew decides to act in a way that is not imagined in the manual, because they guess the only possible action is to switch the system off. So they perform the task manually, and the emergency is resolved, but nevertheless a minor event occurs.

In assessing responsibility for negligence, the WAD context should be taken into consideration.

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Given this argument, the WAD context should be considered in answering the fundamental question, could a different action be taken by the particular person under scrutiny?

It is not an easy task, though, to define for each environment or situation a WAD workflow model that can be used as a standard to evaluate negligence.

In some domains, best practices can fill the gap between abstract prescriptions and real-case management, although when the WAI-WAD relation is concerned, the concept itself of 'best', referring to the practice, may not necessarily reflect WAD. ❏



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