

Summary

Summary	VII
Table of Contents	IX

Foreword

Orient Express Law	1
MAURO BUSSANI	

Issues at Stake

The State of the Art of European Tort Law	15
NILS JANSEN	

Towards a European Tort Law	47
EWOUT HONDIUS	

The Torts Provisions of the Study Group on a European Civil Code	55
JOHN BLACKIE	

The Swiss Tort Reform: a Possible Model for Europe? Selected Remarks, Including a Short Assessment of the Principles of European Tort Law	81
FRANZ WERRO	

The Economics of Legal Harmonization in European Tort Law	103
FRANCESCO PARISI	

The Western Approach to Taxation of Damages: The Substitution Myth	121
ENRICO MARELLO	

Insurance in a European Tort Law Perspective	133
BILL W. DUFWA	

Personal Injury. Features of the Italian Legal System	153
GUIDO ALPA	

Pure Economic Loss: The Case for a Cross-fertilization

Extra-Contractual Recovery of Pure Economic Loss in Europe	225
JANE STAPLETON	

Pure Economic Loss in Croatian Law	249
IGOR GLIHA, MARKO BARETIĆ, SAŠA NIKŠIĆ	

Recoverability of Pure Economic Loss in Austria	295
WILLIBALD POSCH	

Pure Economic Loss Compensation from the Czech Perspective	313
LUBOŠ TICHÝ	

Pure Economic Loss in Hungarian Tort Law	323
ATTILA MENYHÁRD	

The Eastern Face of Pure Economic Loss	339
VERNON VALENTINE PALMER	

European Tort Law in a Context of Cultural Difference

A Common Framework of Reference and Teaching	345
WALTER VAN GERVEN	

European Tort Law – A Way Forward?	365
MAURO BUSSANI	

Table of Contents

Orient Express Law	1
MAURO BUSSANI	
The Reasons for the Journey	3
The Engine-driver	6
The Route	8
 The State of the Art of European Tort Law	15
Present Problems and Proposed Principles	
NILS JANSEN	
I. Present Problems	18
1. Rights, Risks and Luck: Responsibility for One's Own Decisions and the Question of Pure Economic Loss	19
2. Wrongful Behaviour, Strict Liability, and the Idea of Individual Responsibility	21
a. Misconduct	22
b. Strict Liability	22
c. Economic Taliation and Fair Compensation	25
d. The Fragmentation of Responsibility	28
II. Proposed Principles	32
1. "Flexible" Systems	32
2. Protected Interests	36
a. Pure Economic Loss	38
b. Ranking Interests?	40
3. Describing Responsibility	41
III. Conclusion	45
 Towards a European Tort Law	47
EWOUDE HONDIUS	
1. Introduction	47
2. The Need for Harmonisation	48
3. Technical Problems	49
4. Political Problems	50
5. Is There a Solution?	51
6. Conclusions	51
Bibliography	52
 The Torts Provisions of the Study Group on a European Civil Code	55
JOHN BLACKIE	
I. Introduction	55
1. Background	55

2.	Whether it is appropriate to codify tort(s)/delict for a supranational legal order such as the EU?	57
3.	The major matters to which supranational codification of tort(s)/delict has to respond	61
II.	The basic constants in the provisions of the Study Group	62
1.	“Damage”	62
2.	“Legally Relevant Damage”	64
a.	Starting point for formulation	64
b.	Some prominent examples and their dominant features	68
c.	Other situations – the expansion joint	70
3.	Accountability	74
a.	Accountability (1) – Intention and negligence	74
b.	Accountability (2) – Accountability without intention or negligence	75
4.	Causation	78
5.	Defences	79
6.	Remedies	79

The Swiss Tort Reform: a Possible Model for Europe? Selected Remarks, Including a Short Assessment of the Principles of European Tort Law 81

FRANZ WERRO

I.	Some Important Features of the Swiss Project	82
1.	Codification of Case Law	82
a.	Unearthing Existing Law and Adding Rules with the Risk of Stifling New Developments	83
b.	Keeping Fundamental Choices of Present and Past Law	84
c.	Reinforcing New Trends with Respect to Enterprise Liability	86
2.	Some Innovations	87
a.	The Choice of Subjective Fault: A Regrettable One	87
b.	Some Steps in the Right Direction	88
3.	An Appraisal	91
II.	The Swiss Project and the European Principles in the Light of Contemporary Needs and EC Law	92
1.	Some Features of the Principles of European Tort Law	93
a.	Compensable Loss and the Hierarchy of Protected Interests	93
b.	Fault	95
c.	Strict Liability	96
d.	Enterprise Liability	97
2.	The Swiss Project, the Spier/Kozioł Principles and European Law	98
a.	Favouring 19th Century Choices?	99
b.	Ignoring EC Law	100
	Conclusion	101

The Economics of Legal Harmonization in European Tort Law 103

FRANCESCO PARISI

1.	The Optimal Territorial Scope of Tort Law	104
----	---	-----

1.1	The Costs and Benefits of Legal Harmonization	104
1.2	Parties' Choice of Law and Externality-Based Limitations	107
1.3	The Market for Tort Law	108
2.	The Optimal Design of European Tort Law	109
2.1	Codifications and Legal Obsolescence	112
2.2	The Evolving Structure of European Tort Law	114
2.3	Principles of Legal Harmonization in European Tort Law	117
	Bibliography	119
The Western Approach to Taxation of Damages: The Substitution Myth		121
ENRICO MARELLO		
1.	Introduction	121
2.	Tax treatment of damages: a brief theoretical analysis	122
3.	A western leitmotiv: the "substitution principle"	125
4.	Personal injuries: an injury to the substitution rule	129
5.	Conclusion	132
Insurance in a European Tort Law Perspective		133
BILL W. DUFWA		
A.	Introduction	133
B.	The Split between Tort Law and Insurance	134
C.	An "Insurance-based" Law of Tort	137
1.	General	137
a.	Usual Influences of Insurance	137
b.	Insurance-based Foundation	137
c.	Insurance-based Application of Law	139
d.	America	139
e.	Scandinavia	140
2.	Multiple tortfeasors	140
D.	A More Open Picture of Compensation?	142
1.	General	142
2.	Multiple Wrongdoers	145
E.	Liability Insurance or Victim Insurance?	146
1.	General	146
2.	Multiple Tortfeasors	149
F.	Conclusion	150
a.	The traditional approach and its opposite	150
b.	Multiple tortfeasors	151
c.	The future	152
Personal Injury. Features of the Italian Legal System		153
GUIDO ALPA		
1.	An historical profile	153
(i)	Melchiorre Gioja	153
(ii)	Old rules, old methods	155
(iii)	<i>Drittwirkung</i> and personal injury	157

Table of contents

2.	The macroeconomic perspective	160
3.	The legal meaning of “damage” in present times	161
4.	“Personal injuries”	166
5.	Areas and types of personal injury	169
6.	<i>Danno biologico</i> . Legal definition	170
7.	<i>Danno biologico</i> as a project of policy	174
8.	The first judgements of the Constitutional Court	178
9.	The first trends of the Court of Cassation	181
10.	Further interventions of the Constitutional Court	182
a.	Judgement No. 184 of 1986	182
b.	Judgement No. 372 of 1994	183
11.	Statutes	185
12.	Methods of calculation of <i>danno biologico</i>	189
13.	Some features	196
14.	Economic damage	197
(i)	Specific working incapacity	198
(ii)	Loss of opportunities	201
15.	Future pecuniary loss	202
a.	Employees	202
b.	Self-employment and entrepreneurial activities	203
c.	Method for the calculation of compensation	203
d.	Housewives	204
e.	Pensioners	204
f.	Unemployed	204
g.	Minors	205
16.	Special damages	205
17.	Non-pecuniary loss. Some historical notes	205
18.	Interpretations of art. 2059 Civil Code	209
19.	Concepts	212
20.	Quantification of non-pecuniary loss	215
21.	Psychological and “existential” damage	216
a.	Pure psychological damage	219
b.	Existential damage	221
c.	Psychological damage additional to existential and non-pecuniary damage	221
	Extra-Contractual Recovery of Pure Economic Loss in Europe	225
	JANE STAPLETON	
	The United States	225
	Non-US Common Law Systems: Australia; New Zealand; Canada;	
	United Kingdom	229
	Guidelines for Future Research	232
	The Results so Far	236
	Form of Reporting: the example of Restatement in the Common Law World	238
	Form of Reporting: A Code; Principles; a Restatement	240
	Form of Reporting: A Statement of Legal Concerns	242

Pure Economic Loss in Croatian Law	249
IGOR GLIHA, MARKO BARETIĆ, SAŠA NIKŠIĆ	
1. Introduction	249
2. Statutory Framework	250
3. General Liability Regime – COA	251
3.1 Extra-Contractual Liability	252
3.1.1 General Conditions of Liability	253
3.1.2 Limiting Factors for Recoverability of Pure Economic Loss	256
3.1.3 Specific Types of Pure Economic Loss	271
3.2 Contractual Liability	281
3.2.1 General Rules	282
3.2.2 Impact of the Party Autonomy Principle on the Scope of Compensation	284
3.2.3 Specific Types of Pure Economic Loss	285
3.3 Pre-Contractual Liability	286
4. Special Liability Regimes	288
Recoverability of Pure Economic Loss in Austria	295
WILLIBALD POSCH	
1. The Legal Context	295
2. Recovery of “Pure Economic Loss” is Significantly Limited under the ABGB	299
3. The Role of Legislation in Certain Fields of Civil Liability	309
4. Summary	310
Pure Economic Loss Compensation from the Czech Perspective	313
LUBOŠ TICHÝ	
I. Introduction	313
II. Fundamental Problems	313
1. The Term	313
2. Pure Economic Loss as a Problem not Restricted to the Law of Tort	315
3. Justification of Pure Economic Loss Compensation	316
4. General Interests	316
III. Czech Law	317
IV. The Resolution – Attributability	320
Pure Economic Loss in Hungarian Tort Law	323
ATTILA MENYHÁRD	
1. Introductory Remarks	323
2. The Basis of Liability in Hungarian Tort Law	324
3. The Types of Damage to be Compensated	326
4. The Limitation Measures in the Hungarian Court Practice	330
5. The Standard Cases of Pure Economic Loss in Hungarian Tort Law	331
5.1. The Cases of Relational (Ricochet) Economic Loss	331
5.2. Transferred Loss	333

Table of contents

5.3. Closures of Public Markets, Transportation Corridors and Public Infrastructures	334
5.4. Reliance upon Flawed Data, Advice or Professional Services	334
6. The Problem of Indirect Damage	335
7. The Principles and Proposals for a New Hungarian Civil Code	336
The Eastern Face of Pure Economic Loss	339
VERNON VALENTINE PALMER	
A Common Framework of Reference <i>and</i> Teaching	345
WALTER VAN GERVEN	
Of Differences in Legal Styles, Legislative Enactments and Teaching Methods	348
The Bottom-up Approach as Represented by Case- and (other) Source Books	354
Back to the Commission's a Common Frame of Reference ... and Teaching	357
Concluding Remarks	363
European Tort Law – A Way Forward?	365
MAURO BUSSANI	