
Introduction

I The Four Premises

1/1 This book explores the propriety of awarding damages for non-pecuniary loss to legal entities. It concludes that: (a) damages for non-pecuniary loss should be available only for interference in the bodily, mental or emotional spheres on the one hand and/or interference with the personality sphere on the other; (b) a corporation, not being a physical person, cannot suffer interferences in the bodily, mental or emotional spheres; (c) notwithstanding the foregoing, a principle of 'equality' demands that, since a company can be directly liable for the acts of its organs, it should in principle also be entitled to sue for damages for *some* non-pecuniary harm experienced by them; (d) a company has a 'personality' which is not merely an interest of a proprietary character (e.g. the property a company has in its 'goodwill') and should therefore be entitled to damages for non-pecuniary loss for interference with the non-proprietary aspects of its personality.

II The Propriety of Awarding Damages for Non-Pecuniary Loss to Corporations

1/2 As Spelling observed in his work on Corporations, the great and ever-increasing number of companies assuming the functions of individuals has created a tendency for the law to assimilate the rights of companies to the rights of natural persons,¹ the corollary being the granting of remedies to companies some of which in fact warrant closer scrutiny; for just as natural persons have distinctive features which cannot be ignored, so too, companies have attributes or a lack thereof which sit uneasily

¹ T. C. Spelling, *A Treatise on the Law of Private Corporations*, 2 vols. (New York: L. K. Strouse & Co. Law Publishers, 1892), vol. 2, p. 1058.

with recompense traditionally awarded to individuals. This is particularly the case with respect to damages for non-pecuniary loss – an expression synonymous with so-called ‘non-pecuniary damages’, ‘immaterial damages’, ‘non-material damages’, ‘non-’ or ‘extra-patrimonial damages’, ‘non-economic damages’ and ‘moral damages’. The English refer to them as ‘general damages’, a term which denotes losses ‘which are not capable of precise quantification in monetary terms.’² The latter are not exclusively non-pecuniary losses, however. For this reason, reference to ‘general damages’ will be avoided, except where that broad meaning is intended. Damages for non-pecuniary loss remedy a wide range of losses, some heads of which, when awarded to corporations, raise fewer brows than others. In the succeeding chapters, the extent to which such damages can properly be awarded in favour of a company will be examined in light of their particular features.

III Jurisdictions Covered

A *The EctHR and England*

- 1/3 Conscious of the enormity of the potential scope of research such as this, prominence has been given to the jurisprudence of two key jurisdictions: the *European Court of Human Rights* (EctHR) and *England*; the former because it is a case of that Court – *Comingersoll SA v. Portugal*³ – that first drew the author’s attention to the topic at hand and the latter for reasons explained shortly.
- 1/4 Colourful superlatives have been lavished on the Strasbourg Court, whose jurisdiction is directly accessible to over 800 million citizens. Among others, it has been described as the most active, prominent and authoritative rights protecting court in the world. The price of its popularity, however, ‘must be a closer scrutiny of the consistency and legitimacy of its activities.’⁴ Regrettably, a recurring theme of studies which have done so, at least insofar as the Strasbourg Court’s application of art. 41 of the European Convention on Human Rights (ECHR)⁵ (on just satisfaction) is concerned, has been that the Court adopts a notoriously flexible

² A. Tettenborn, *Halsbury’s Laws Commentary on Damages* (London: LexisNexis Butterworths, 2014), vol. 29, para. 317.

³ 06.04.2000, no. 35382/97.

⁴ C. A. Gearty, ‘European Court of Human Rights and the Protection of Civil Liberties: An Overview’, *Cambridge Law Journal*, 52(1) (1993), 89–127, 93.

⁵ Adopted 4 November 1950, entered into force 3 September 1953, ETS 5; 213 UNTS 221.

and seemingly unprincipled basis in awarding compensation.⁶ This book adds to those concerns.

1/5 An analysis of the law in key Council of Europe Member States reveals noteworthy inconsistencies between them and the Strasbourg Court's approach to the topic under consideration. Indeed, it seems right to have regard to such domestic practices since the Court itself has stated that 'it may decide to take guidance from domestic standards'⁷ in making an award under art. 41 ECHR and also in light of the fact that the Court's decisions affect national approaches. Attention will therefore be given to the jurisprudence of some parties to the Convention in assessing the propriety of the Court's jurisprudence. More consideration is given to English law,⁸ however, for a number of reasons.

1/6 First, it can safely be said that among the various Council of Europe Member States, the UK (or England to be precise) has a developed corpus of jurisprudence in the area of damages for non-pecuniary loss which has a long, continuous and historical underpinning. When one inquires into what might have facilitated this generous disposition, the history of the common law, its procedural aspects included, seems a persuasive starting point. Damages for non-pecuniary loss of sorts can be traced back to the first extant Saxon laws committed to writing: *Leges Æthelberht* – the laws of Anglo-Saxonian King Ethelbert of Kent. The purpose of *Leges Æthelberht* was to lay down a tariff system for wrongs through the payment of a fixed sum – a *weregild* (or *were*, *wergild*, *weregildum*, *wergeld*, *weregeld*) – to make *bót*.⁹ Although criminal and civil redress ran into each other at the time, the *weregild* is not to be confused with the *wíte* – satisfaction to

⁶ See among others, The Law Commission and the Scottish Law Commission, *Damages under the Human Rights Act 1998*, Law Com 266/Scot Law Com 180 (2000), para. 3.4. W. V. H. Rogers, 'Comparative Report' in W. V. Horton Rogers (ed.), *Damages for Non-Pecuniary Loss in Comparative Perspective* (Wien/New York: Springer, 2001), no. 68; A. P. Lester and D. Pannick (eds.), *Human Rights Law and Practice*, 3rd edn (London: LexisNexis Butterworths, 2009), para. 2.8.4; See also K. Reid, 'European Court of Human Rights: Practice and Procedure' in J. Simor and B. Emmerson (eds.), *Human Rights Practice* (London: Sweet & Maxwell, looseleaf), para. 19.063; D. Shelton, *Remedies in International Human Rights Law*, 3rd edn (Oxford University Press, 2015), p. 2; R. Clayton and H. Tomlinson, *The Law of Human Rights*, 2nd edn, 2 vols. (Oxford University Press, 2009), vol. 1, para. 21.30; the various contributions in A. Fenyves, E. Karner, H. Koziol and E. Steiner (eds.), *Tort Law in the Jurisprudence of the European Court of Human Rights* (Berlin/Boston: De Gruyter, 2011).

⁷ *Practice Direction on Just Satisfaction Claims* (2016), para. 3.

⁸ Developments in other common law countries will feature where appropriate.

⁹ Bosworth-Toller's Anglo-Saxon Dictionary Online defines 'bót' as 'amends, reparation, compensation for injury'.

be rendered to the King or community for the public wrong which had been committed (i.e. to buy back the peace) – as the *were* was paid to the injured person or his family for the private injury. The loss of an eye or a leg, among other injuries, demanded the highest *bót* – fifty shillings.¹⁰ Lower down the tariff was loss of liberty: ‘If any one bind a freeman, let him make “*bót*” with xx shillings.’¹¹ These and other passages reveal how, as early as the first part of the seventh century, English law was concerned with the remedy of losses of what modern lawyers consider analogous to damages for non-pecuniary loss.¹² There were subtle differences, however: first, the amount of the award then was largely dependent on the social rank of the victim; second, it was the responsibility of the wrongdoer’s kinsmen to intercede if the former was unable to make *bót*; and third, unlike most modern awards of damages for non-pecuniary loss, the *bót* mostly compensated the injury itself (e.g. loss of a leg) as opposed to its consequences (e.g. pain and suffering). Pecuniary ‘dooms’ were also laid down.

1/7 It was not until the twelfth century, however, that damages as we know them today supplemented the old system of *bót* payments and it was also at this time that juries were used as fact finders; by 1773 juries were awarding damages for non-pecuniary loss, inter alia, for pain and loss of honour.¹³ Despite the large awards made by juries, who were observed to have been often ‘roused to indignation by partisan advocacy’,¹⁴ courts held themselves incompetent to review their verdicts except in the case of mayhem or where the latter were mistaken or had misbehaved themselves.¹⁵ Juries – composed of butchers, bakers and candlestick-makers – were considered better able to gauge human pain and suffering; better able to understand, appreciate and estimate the nature and extent of such damages than the most learned and eminent judge of appellate courts, particularly as juries saw and heard the witnesses, while courts (on appeal

¹⁰ S. Turner, *The History of the Anglo-Saxons from the Earliest Period to the Norman Conquest*, 7th edn, 3 vols. (London: Longman, Brown, Green and Longmans, 1852), vol. 2, p. 445.

¹¹ F. W. Maitland and F. C. Montague, *A Sketch of English Legal History* (New York and London: Putnam, 1915), p. 195.

¹² See how similar damage is assessed today in The Judicial Studies Board, *Guidelines for the Assessment of General Damages in Personal Injury Cases*, 13th edn (Oxford University Press, 2015).

¹³ J. O’Connell and K. Carpenter, ‘Payment for Pain and Suffering through History’, *Insurance Counsel Journal*, 50(3) (1983), 411–417, 412.

¹⁴ *Broome v. Cassell & Co. Ltd (No. 1)* [1972] AC 1027, 1128 per Lord Diplock.

¹⁵ M. Lobban, ‘Tort’ in W. Cornish et al. (eds.), *The Oxford History of the Laws of England*, 13 vols. (Oxford University Press, 2010), vol. 12, pp. 899–902.

at least) got their impressions from printed transcripts which often lose much by transposition.¹⁶ This state of affairs was compounded by the vague and uncertain principles of compensation for personal suffering at the time.¹⁷ Thus, the systemic chaos of the common law in times past as a result of the role of juries – accompanied by the reluctance of English judges to interfere, despite their competence and security via tenure – may well have contributed to the broad acceptance of damages for non-pecuniary loss in England today. Similar recognition is due independently to the common law itself which, in contrast to some civil systems, encouraged judges to shape and develop the law in a pragmatic fashion. It may well be that other factors also played decisive roles. What is certain, however, is that damages for non-pecuniary loss continue to be a well-established feature of English law today and their development is singular. As early as 1893, the Court of Appeal in *South Hetton Coal Company Ltd v. North-Eastern News Association Ltd*¹⁸ unanimously rejected the argument that a trading company could not recover such damages. While there are obvious differences between individuals and companies, this did not justify the denial of a remedy to companies. It is this receptive feature of damages for non-pecuniary loss that qualifies English law as a favourable comparator for the purpose of this research.

1/8 That said, a glance at recent reforms in England will at once correct any misconceived sense of flawlessness of English law with respect to this head of damages. Like statutory laws embarked upon as and when the need arises, the common law is a heterogeneous mass of rulings, some of which becomes inadequate especially in light of careful historical studies. This fuelled a call for the legislature to abandon archaic rules on the one hand and a plea for caution against expanding awards of damages for non-pecuniary loss to companies in an unprincipled manner on the other. Such reforms are thus another reason for the focus on English law.

B Discounting other Council of Europe Member States

1/9 Arguably, the laws on damages for non-pecuniary loss in Continental jurisdictions are equally highly developed and systematically applied. However, the influence of fundamental legal ideas or ideas of justice in the first place and several social, economic and political forces in

¹⁶ F. A. Taell, 'Right of Court to Interfere with the Determination of the Amount of Damages Fixed by a Jury', *Central Law Journal*, 61 (1905), 286–289, 286.

¹⁷ *Huckle v. Money* (1763) 2 Wilson KB 205, 206 per Pratt CJ. ¹⁸ [1894] 1 QB 133.

the second directed Continental lawmakers to adopt restrictive attitudes towards such damages generally.

1/10 In his report on damages for non-pecuniary loss in civil law countries, Stoll begins with a historical background on such damages. Unlike in England, where 'public and private aspects of injurious acts were pretty clearly distinguished by the Anglo-Saxon terms',¹⁹ it was only in eighteenth century Germany that composite sums were done away with. The peculiarity of non-pecuniary loss – i.e. that it was incapable of calculation in money – was therefore irrelevant, 'as long as the payment of reparation to the injured person was based not only on the extent of the injury, but also on a punishment to the wrongdoer and appeasement of the injured person's desire for retribution.'²⁰ In connection with the abolition of private law penalties, the view came to prevail that every payment of damages exceeding actual financial loss was a penalty, which civil courts were not permitted to impose.²¹

1/11 The feeling towards damages for non-pecuniary loss was, as Mugdan wrote in 1888, that they run counter to 'the modern German sense of justice and morality'.²² Such an award, when eventually admitted, was reserved for the peasantry and common bourgeois class, not those of higher standing.²³ Local legislation deemed it 'unworthy of a free individual to permit his honor to be appraised in an estimatory action for damages or his emotions to be assessed as an object of commerce'.²⁴ The anxiety was that recognition would open the gates to a deluge of litigious pleadings motivated by sheer greed. A further apprehension was, as Magnus tells us, that 'compensation of non-pecuniary loss in money . . . might lead to a great amount of judicial discretion, enhancing the influence of trial judges far beyond their traditional role in German civil procedure and rendering control on appeal unnecessarily difficult'.²⁵ Continental

¹⁹ F. Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I*, 2 vols. (Cambridge University Press, 1898), vol. 1, p. 48.

²⁰ H. Stoll, 'General Report on the Civil Law Countries' in Council of Europe (ed.), *Colloquy on European Law: Redress for Non-Material Damage* (1970), p. 24.

²¹ Stoll, 'General Report on the Civil Law Countries', p. 24.

²² Referred to in H. Stoll, 'Consequences of Liability: Remedies' in A. Tunc (ed.), *International Encyclopedia of Comparative Law*, 17 vols. (Mohr Siebeck, 1983), vol. 11(2), para. 8-36, fn 254.

²³ 'In the case of persons of a higher class, the wrongfully inflicted pain could only be taken into account in determining the proper statutory punishment': Stoll, 'General Report on the Civil Law Countries', p. 24.

²⁴ See Stoll, 'Consequences of Liability: Remedies', para. 8-36 for specific references.

²⁵ U. Magnus and J. Fedke, 'Germany' in W. V. Horton Rogers (ed.), *Damages for Non-Pecuniary Loss in Comparative Perspective* (Wien/New York: Springer, 2001), no. 8.

legislators thus sought completeness, coherence and clarity in the drafting of codes or other laws. This also protected against the impairment of certainty – a principle accorded paramount status. The desire to thwart judicial subjectivity also explains why case law was not accepted as a formal source of law: *stare decisis* or the doctrine of precedent was not the norm.²⁶ Of relevance to us, however, is that primary significance attached to numerically calculable losses as a means to control judicial autonomy. Nevertheless, with the introduction of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), which entered into effect on 1 January 1900, came a general acceptance of damages for non-pecuniary loss for injury to body, health, freedom or sexual self-determination: § 253(2). Such damages were also available where statute so stipulated. However, rather ‘few provisions’²⁷ did so. Indeed, it was not until 1958 – when the *Bundesgerichtshof* (Federal Court of Justice of Germany, BGH) ruled, having controversially interpreted art. 1, para. 1 and art. 2 of the (then) West German Constitution – that damages for non-pecuniary loss were available for injury to personality in civil actions.²⁸ Moreover, before the Second Act on the Amendment of Provisions Pertaining to the Law of Damages took effect in April 2002,²⁹ damages for non-pecuniary loss were not generally available for statutory provisions which operated on a strict liability basis.

1/12 While these developments support observations of declining legislative authority and confirm that the traditional image of the German judge is waning, it would be inaccurate to assume that decisions of the German judiciary necessarily exhibit a significant drift away from their traditional mooring. Thus, although the BGH has in the past accepted that a religious community is capable of suffering non-pecuniary loss,³⁰

²⁶ J. H. Merryman and R. Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edn (Stanford University Press, 2007), p. 36.

²⁷ Magnus and Fedke, ‘Germany’, no. 1.

²⁸ See the *Herrenreiter* decision: BGH, 14 February 1958, BGHZ 26, 349. As in a number of civil systems, redress was available under criminal law and in addition damage of a non-pecuniary nature could be alleviated by restitution in kind, e.g. the publication of a judgment was considered capable of vindicating a claimant’s reputation in whole or in part and the defendant could be made to retract a defamatory statement if its continued publication affected another’s honour: Stoll, ‘General Report on the Civil Law Countries’, pp. 36–37. G. Wagner, ‘Germany’ in H. Koziol and K. Warzilek (eds.), *The Protection of Personality Rights against Invasions by Mass Media* (Wien/New York: Springer, 2005).

²⁹ *Zweites Gesetz zur Änderung schadensersatzrechtlicher Vorschriften*, BGBl 2002 I 2674.

³⁰ BGH, 23 September 1980, BGHZ 78, 274. See also S. Martens and R. Zimmermann, ‘Germany’ in B. Winiger, H. Koziol, B. A. Koch and R. Zimmermann (eds.), *Digest of European Tort Law*, 2 vols. (Berlin/Boston: De Gruyter, 2011), vol. 2, 24/2 nos. 1–3 and

this was quickly followed by a statement by the *Oberlandesgericht* (Higher Regional Court, OLG) that the BGH's decision was exceptional and could therefore not serve as precedent for 'legal persons' in general, and companies in particular.³¹

1/13 In Austria the approach to damages for non-pecuniary loss was and, save for a brief spell, continues to be more liberal than is the case with its northern neighbour, Germany. In the nineteenth century, the *Oberste Gerichtshof* (OGH), the highest court in civil and criminal matters, took a broad approach to such damages. By the turn of that century, however, it had 'changed its established practices, probably under the influence of § 253³² of the German Civil Code which had just entered into force. Thus, in 1908, the OGH ruled by way of plenary decision that damages for non-pecuniary loss would be restricted to instances expressly provided for by statute.³³ Predictably, the drawback was that the OGH's approach eventually led to the 'arbitrary, inconsistent accumulation' of instances in which damages for non-pecuniary loss were awardable under statutes 'created by historical and political coincidences'.³⁴ Later Austrian commentators, in an attempt to correct this position, convinced themselves and eventually others of the existence of a general rule on compensation for non-pecuniary loss so that today – as was the position before the change in 1908 – the prevailing opinion is that such a norm does exist by virtue of §§ 1323 and 1324 of the Austrian Civil Code 1811 (*Allgemeines Bürgerliches Gesetzbuch*, ABGB). That said, damages for non-pecuniary loss are only awardable under these provisions in the case of gross negligence or intent (cf personal injury under § 1325 ABGB).³⁵ Of relevance for our present purposes is that, pursuant to § 26(2) ABGB, 'legal persons are capable of having rights; they have the same rights and duties as natural persons, insofar as the law concerned does not require a natural person due to its intrinsic nature.'³⁶ Consequently, in cases of unfair competition and tenancy, the Austrian Supreme Court has ruled that legal entities are

J. Oster, 'The Criticism of Trading Corporations and their Right to Sue for Defamation', *Journal of European Tort Law*, 2 (2011), 255–279, 257–258.

³¹ OLG München, 28 May 2003, 21 U 1529/03.

³² E. Karner and H. Koziol, 'Austria' in W. V. Horton Rogers (ed.), *Damages for Non-Pecuniary Loss in Comparative Perspective* (Wien/New York: Springer, 2001), no. 1.

³³ OGH in GIU Neue Folge (GIU New Series, GIUNF), no. 4185. See Karner and Koziol, 'Austria', no. 1.

³⁴ Karner and Koziol, 'Austria', no. 3. ³⁵ Karner and Koziol, 'Austria', no. 4.

³⁶ See E. Karner, 'Austria' in B. Winiger, H. Koziol, B. A. Koch and R. Zimmermann (eds.), *Digest of European Tort Law*, 2 vols. (Berlin/Boston: De Gruyter, 2011), vol. 2, 24/3 no. 3.

entitled to damages for non-pecuniary loss.³⁷ The laws in Austria will thus be examined where relevant.

1/14 As in the above systems, a number of other jurisdictions originally limited damages for non-pecuniary loss to instances specifically enumerated by statute – among them, Italy and the Scandinavian countries,³⁸ where the reference to statute was narrowly taken to refer exclusively to criminal laws. Such an interpretation ‘survived more or less intact until recent times’.³⁹ Since 2003, however, a more liberal stance has been adopted in Italy⁴⁰ and indeed, the jurisprudence of the Strasbourg Court on awards of damages for non-pecuniary loss to corporations has been particularly influential there (no. 8/12). In Scandinavia, damages for non-pecuniary loss are also more generously awarded today.

1/15 Moving east, as Ollier and Le Gall inform us, monetary compensation for non-pecuniary harm was also criticised as an aspect of bourgeois mentality in socialist society where the only legitimate source of income was work.⁴¹ The constraints placed by the Communist regime meant that such damages were entirely barred in Hungary, for example, though attempts were made to conceal losses of a non-pecuniary nature in other awards.⁴² Promoted by the fall of the Soviet Union and its dissolution in 1991, several post-Soviet States and former Soviet occupied Eastern Bloc countries gradually recognised non-pecuniary losses. In Romania, for example, where compensation for non-pecuniary loss was ‘forbidden during the Communist era for almost 40 years’, the first Supreme Court decision to be rendered on the subject was delivered in 2002.⁴³ Indeed, if that is the position with respect to damages for non-pecuniary losses

³⁷ H. Koziol, *Basic Questions of Tort Law from a Germanic Perspective* (Wien: Sramek Verlag, 2012), no. 5/21. See also Karner and Koziol, ‘Austria’, no. 101.

³⁸ Stoll, ‘Consequences of Liability: Remedies’, para. 8–41.

³⁹ B. Markesinis, M. Coester, G. Alpa and A. Ulistein, *Compensation for Personal Injury in English, German and Italian Law: A Comparative Outline* (Cambridge University Press, 2005), p. 6.

⁴⁰ Markesinis et al., *Compensation for Personal Injury in English, German and Italian Law*, pp. 6–7.

⁴¹ P. D. Ollier and J. P. Le Gall, ‘Various Damages’ in A. Tunc (ed.), *International Encyclopedia of Comparative Law*, 17 vols. (Mohr Siebeck, 1983), vol. 11(2), para. 10–75.

⁴² Stoll, ‘Consequences of Liability: Remedies’, paras. 8–17, 8–38. See A. Menyhárd, ‘Hungary’ in H. Koziol (ed.), *Basic Questions of Tort Law from a Comparative Perspective* (Wien: Sramek Verlag, 2015), no. 4/71.

⁴³ M. Józson, ‘Romania’ in B. Winiger, H. Koziol, B. A. Koch and R. Zimmermann (eds.), *Digest of European Tort Law*, 2 vols. (Berlin/Boston: De Gruyter, 2011), vol. 2, 1/26 no. 5 and 11/26 no. 5.

generally, one begins to appreciate the paucity of jurisprudence in some of these countries in the case of such damages for companies.

1/16 While France is one of few jurisdictions that historically placed pecuniary and non-pecuniary harm on an equal footing,⁴⁴ the overtly vague nature of art. 1382 of the *Code Civil* and the particularly liberal approach of French law inclined the author away from a detailed account of the position there. It is astounding, given the encompassing reach of its provisions, that the French *Code Civil* 'was envisioned as a kind of popular book that could be put on the shelf next to the family Bible, or perhaps in place of it.'⁴⁵ French customs aside, what is certain is that the law of torts, which rests on a mere five articles, 'is almost entirely the product of judicial decisions',⁴⁶ which are invariably brief.

1/17 To stop at that would, however, be an excuse. Admittedly, the author also lacked the command of a number of European languages to give full weight and proper construction to jurisprudence on awards of damages for non-pecuniary loss to corporate entities on an in-depth comparative basis. However, some references are made to reliable sources in English and to some extent non-English literature on the topic in Council of Europe jurisdictions, though the lack of depth here will be apparent. There are fewer hurdles to overcome in the case of developments in other common law countries where reciprocal references have been made with English law for decades and these will feature where appropriate.

IV Structure

1/18 A few words will explain the general plan of this book. Chapter 2 defines the three main institutions or ideas on which the study is focused: companies, damage (in particular non-pecuniary loss) and damages for non-pecuniary loss. The first element introduces the key idea of the company's separate legal personality – a company, as are its rights and obligations, is distinct from the individuals who own and control it; the second that non-pecuniary loss of necessity, give or take some overlap,

⁴⁴ Stoll, 'Consequences of Liability: Remedies', paras. 8–17, 8–41; P. Brun and C. Quézel-Ambrunaz, 'French Tort Law Facing Reform', *Journal of European Tort Law*, 4(1) (2013), 78–94, 84.

⁴⁵ J. H. Merryman and R. Pérez-Perdomo, *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edn (Stanford University Press, 2007), p. 29.

⁴⁶ Merryman and Pérez-Perdomo, *The Civil Law Tradition*, p. 83.