

A COMPANY'S RIGHT TO DAMAGES FOR NON-PECUNIARY LOSS

Applying appropriate legal rules to companies with as much consistency and as little consternation as possible remains a challenge for legal systems. One area causing concern is the availability of damages for non-pecuniary loss to companies, a disquiet that is rooted in the very nature of such damages and of companies themselves. In this book Vanessa Wilcox presents a detailed examination of the extent to which damages for non-pecuniary loss can properly be awarded to companies. The book focusses on the jurisprudence of the European Court of Human Rights and English law, with a chapter also dedicated to comparative treatment. While the law must be adaptable, considerations of coherency, certainty and ultimately justice dictate that the resulting rules should conform to certain core legal principles. This book lays the foundation for further comparative research into this topic and will be of interest to both the tort law and broader legal community.

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To My Mother and Father

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PREFACE

The history of the law is a history of new and unexpected instances. To be effective, therefore, the law must evolve. As a living thing, a growing organism, it must be adaptable to the changing needs of time. Such adaptability, however, must be achieved by balancing sets of competing interests and, most importantly, the resulting principles must operate in a coherent and consistent manner. Failing this, the law exposes itself to scrutiny and possible ridicule. One such area that is causing disquiet is that on the availability of damages for non-pecuniary loss to business entities, in particular companies. This book seeks to present a detailed examination on the extent to which such damages can properly be awarded in favour of such persons. This research seems expedient in light of the current debates brought about by the expansion of the protection of corporate interests in new and diversified fields. It also seems expedient in light of reform campaigns and careful studies that question the historical applications of the law to these legal subjects. Regrettably, the amount of time at my disposal only permitted detailed coverage of two jurisdictions – the European Court of Human Rights and England. The study has been personally rewarding, and it is hoped that the value to its readers is somewhat proportional to the effort invested here. It is also hoped that this research will induce others to add to what has been a subject of great interest for me: a more comprehensive comparative study on this topic would encourage informed discourse in an area that would benefit from it. To that extent, this publication has been designed to capture the attention of a diverse European readership.

I am of course deeply indebted to someone recently described as the *Godfather* – not *Grandfather* as was once put in jest – of tort law, Univ-Prof iR Dr DDr hc Helmut Koziol (em). His readiness to look through multiple drafts of this research, quite often during his few moments of leisure, and his stimulating guidance and encouragement are what every researcher dreams of but will very rarely experience. I would equally like to express my most grateful acknowledgement to Univ-Prof Dr iur Christiane

Wendehorst, LL.M. (Cantab), for her patience and constructive criticism and wish to also record my obligations to Prof Ken Oliphant, BA, BCL (Oxon), whose exactness prevented me from publishing this text with several errors. I incorporated his suggestions almost without exception. Last, but by no means least, it is to Univ-Prof Mag Dr Bernhard A Koch, LL.M., that I owe profound thanks to for bringing me to Vienna and for suggesting the topic that forms the subject of this book.

I note the contribution of the ever-cheerful Donna Stockenhuber, MA for taking on the task of proofreading the manuscript. This has materially lightened my load.

Like many before me, I publish this book in the knowledge that I remain 'strictly' liable for any remaining errors. I hope, however, that those familiar with the intricacies of law will pardon me for them.

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