

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

---

## PART I • SITUATING THE FRONTIER

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

# 1 The notion of pure economic loss and its setting

MAURO BUSSANI AND VERNON VALENTINE PALMER

## Introduction

Pure economic loss is one of the most discussed topics of European tort law scholarship. Fascination with the subject (which may at first glance appear dry and technical) has developed into a wealth of literature about this frontier notion.<sup>1</sup> It stands at the cutting edge of many questions: how far can tort liability expand without imposing excessive burdens upon individual activity (or, as some may wish, to what extent should tort rules be compatible with the market orientation of the legal system)?<sup>2</sup> How should the tort law of the twenty-first century – or the provisions of a projected European code – approach this issue? As a

<sup>1</sup> The literature is overwhelmingly weighted to those countries where the concept is well recognized by practitioners, judge and scholars. See E. K. Banakas, *Civil Liability for Pure Economic Loss* (Kluwer, 1996); J. M. Barendrecht, 'Pure Economic Loss in the Netherlands', in E. H. Hondius (ed.) *Netherlands Reports to the Fifteenth International Congress of Comparative Law* (1998), at pp. 115–35; R. Bernstein, *Economic Loss* (2nd edn, Sweet & Maxwell, London, 1998); B. Feldthusen, *Economic Negligence: The Recovery of Pure Economic Loss* (Carswell, 1989); J. Kleineman, *Ren förmögenhetsskada* (1987); C. Lapoyade Deschamps, 'La réparation du préjudice pur en droit français' in Banakas, *Civil Liability*, pp. 89–101; W. Posch and B. Schilcher, 'Civil Liability for Pure Economic Loss: An Austrian Perspective', in Banakas, *Civil Liability*, at pp. 149–76; J. Spier (ed.) *The Limits of Liability: Keeping the Floodgates Shut* (Kluwer, 1996) (discussion of eight 'Tilburg Hypotheticals' – four of which concern pure economic loss); C. von Bar, 'Liability for Information and Opinions Causing Pure Economic Loss to Third Parties: A Comparison of English and German Case Law', in B. Markesinis (ed.) *The Gradual Convergence* (Oxford University Press, Oxford, 1994), pp. 99 ff.; B. Markesinis, *The German Law of Obligations*, vol. II *The Law of Torts* (3rd edn, Oxford University Press, Oxford, 1997); J. M. Thomson, 'Delictual Liability for Pure Economic Loss: Recent Developments', 1995 SLT 139; J. Herbots, 'Le "duty of care" et le dommage purement financier en droit comparé', (1985) 62 *Revue de Droit International et de Droit Comparé* 7–33; L. Khoury, 'The Liability of Auditors Beyond Their Clients: A Comparative Study', (2001) 46 *McGill Law Journal* 413.

<sup>2</sup> P. Benson, 'The Basis for Excluding Liability for Economic Loss in Tort Law', in D. G. Owen, *The Philosophical Foundations of Tort Law* (Clarendon, Oxford, 1995), pp. 427, 431.

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

matter of policy, should the recovery of pure economic loss be the domain principally of the law of contract? To these and others we add our own modest question: is there a common core of principles, policies and rules governing tortious liability for pure economic loss in Europe? There has never been a universally accepted definition of 'pure economic loss'. Perhaps the simplest reason is that a number of legal systems neither recognize the legal category nor distinguish it as an autonomous form of damage. Nevertheless, where the concept is recognized, as in Germany and common law systems, it is apparently associated with a rule of no liability and there a definition is likely to be found.<sup>3</sup> The contrasting approaches here obviously do not follow the familiar common law/civil law divide, for civil law is itself divided to some extent over this question.

Our own approach in this study was to make no supposition in advance about the nature or definition of this notion. We hoped it might be possible to allow a neutral, fact-based questionnaire to flush out the rules and responses of each national system. Therefore, in framing the questionnaire we did not hesitate to mix into the facts instances of property damage, personal injury and other infringements that particular traditions may regard as absolute rights (i.e. rights opposable to the world at large – *erga omnes*). In this way we were attempting to clarify the grey zones that exist between recoverable and non-recoverable loss. Consistent with the Cornell methodology,<sup>4</sup> the questionnaire alleges facts

The same author, articulating a well-known *tòpos* among tort lawyers (see e.g. G. Viney, 'Introduction à la responsabilité', in J. Ghestin (ed.), *Traité de droit civil* (1995), p. 21; P. G. Monateri, *La responsabilità civile* (UTET, Turin, 1998) pp. 8 ff.), writes: '[T]he fact that every individual is somewhere and is making use of some external objects, with the result that he or his property is put into relation with them and is subject to being affected by conduct that affects them, is an inevitable incident of being active in the world... [considered as] beings who exist in space and time and who are inescapably active and purposive, persons are necessarily and always connected in manifold ways with other things which they can affect and which in turn can affect them as part of a causal sequence.' Benson, 'Excluding Liability', at p. 443 (emphasis and footnotes omitted).

<sup>3</sup> Gary Schwartz refers to 'the general economic loss no liability doctrine' in his essay 'The Economic Loss Doctrine in American Tort Law: Assessing the Recent Experience', in Banakas *Civil Liability*, at pp. 103–30.

<sup>4</sup> The 'Cornell methodology' refers to the research project on 'Formation of Contracts' which Rudolph Schlesinger directed from 1957–68, R. B. Schlesinger (ed.), *Formation of Contracts* (2 vols, Oceana, New York, 1968). For Schlesinger's later views, see 'The Past and Future of Comparative Law', (1995) 43 *American Journal of Comparative Law* 477, 479. See also M. Bussani and U. Mattei, 'The Common Core Approach to European Private Law', (1997–98) 3 *Columbia Journal of European Law* 339 and, M. Bussani and U. Mattei, 'Le fonds commun du droit privé Européen', (2000) 52 *Revue Internationale de Droit Comparé* 29. M. Bussani, 'Current Trends in European Comparative Law: The Common Core Approach', in (1998) 21 *Hastings International and Comparative Law Review* 785.

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

and avoids the use of what could be classified as legal artifacts such as the expression ‘pure economic loss’ itself. Because there is no recognition of the term in some systems, and in any event less than complete consensus about its meanings in others, we rigorously excluded all use of the term in the hypotheticals.

For example, in the not-so-hypothetical ‘cable cases’, we posed variant forms of loss to see where and when the negative objection, if any, arises. To throw light on the rule from different patrimonial angles, we took the same facts but varied the victim, or varied the tortfeasor’s state of mind.<sup>5</sup> Obtaining these permutations and combinations in collecting the data was an important objective of this study.<sup>6</sup>

### Pure vs. consequential economic loss

The outcome of the research about the underlying notion of ‘pure economic loss’ can be shortly stated as follows. What is made clear by the national reports is twofold: the negative cast and the patrimonial character of that loss. In countries where the term is well recognized, its meaning is essentially explained in a negative way. It is loss without antecedent harm to plaintiff’s person or property. Here the word ‘pure’ plays a central role, for if there is economic loss that is connected to the slightest damage to person or property of the plaintiff (provided that all other conditions of liability are met) then the latter is called *consequential* economic loss and the whole set of damages may be recovered without question.<sup>7</sup> *Consequential* economic loss (sometimes also termed

<sup>5</sup> Thus the same negligent act might cause recoverable physical damage to one, but pure economic loss to another which is non-recoverable unless, perhaps, the act was intentional. The instructions to the national reporters asked them to assume that the conduct in the hypothetical was intentional if this would produce a significantly different result. It was recognized that in some cases the claimant might not be entitled to recover for pure economic loss unless in fact the act were intentional.

<sup>6</sup> See particularly, as examples of this factual flexibility, Cases 6 (‘The Infected Cow’), 12 (‘Double Sale’) and 15 (‘A Closed Motorway – The Value of Time’). These are the same reasons that account also for the choice of not referring to any pigeonhole framework (such as the ones used, e.g., by I. Englard, *The Philosophy of Tort Law* (Dartmouth, Aldershot, 1993), pp. 211 ff.; Benson, ‘Excluding Liability for Economic Loss’, at 427 ff.; see also H. Kötz, ‘Economic Loss in Tort and Contract’, (1994) 58 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 3, 423; P. Cane, ‘Economic Loss in Tort and Contract’, (1994) 58 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* 3, at 429 ff.) in presenting the study of the cases.

<sup>7</sup> Perhaps another way to describe pure economic loss is to say that it does not arise as a consequence of some earlier physical loss, and it is not a court’s substituted value for physical loss.

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

parasitic loss<sup>8</sup>) is recoverable because it presupposes the existence of physical injuries, whereas pure economic loss strikes the victim's wallet and nothing else. In Sweden, where the legislator says that only victims of crimes may recover for pure economic loss, the Tort Liability Act 1972, §2, defines the notion exactly in these terms: 'In the present act, "pure economic loss" (*ren förmögenhetsskada*) means such economic loss as arises without connection to personal injury or property damage to anyone.'<sup>9</sup> A similar definition seems to prevail in England and Germany.<sup>10</sup>

One will discern from these preliminary remarks that the distinction under discussion is highly technical, perhaps even artificial. This impression is based upon two technical features of the exclusionary rule. The first feature is that 'consequential' economic loss only describes a relationship of cause and effect *within the same patrimony* (plaintiffs). All relation of cause and effect running *between patrimonies* is technically excluded. Put another way, when pecuniary loss is described as 'pure' (rather than 'consequential') it is apparent that each patrimony is viewed as an interruption of causation. For example, an injury to B (say, the breadwinner of the family) may have an immediate and foreseeable economic consequence upon A (his dependent child). Yet this causal impact is disregarded by the way in which our subject is defined. The child's loss of support will not be called 'consequential' economic loss, though clearly it did arise as a 'consequence' of physical injury to a parent. It is apparent, then, that those legal systems which employ these labels conceive of economic loss as an isolated phenomenon, as if plaintiffs patrimony were a separate world, cut off from all others. It is also apparent that this logic defies economic and social reality. In the real world, 'a practically unlimited range of interests are intertwined in an almost unlimited variety of ways'.<sup>11</sup> The affairs of economic actors are highly interdependent, connected to one another by a web of rights

<sup>8</sup> For this usage, see W. L. Prosser, W. P. Keeton, *On the Law of Torts* (5th edn, 1984), 43, at 291.

<sup>9</sup> W. van Gerven, J. Lever and P. Larouche (eds.), *Tort Law: Scope of Protection* (Hart, Oxford, 1998), p. 44.

<sup>10</sup> See Lord Denning's statement that 'it is better to disallow economic loss altogether at any rate when it stands alone, independent of any physical damage'. *Spartan Steel & Alloys Ltd v. Martin & Co. Ltd* [1973] QB 27, (1972) 3 All ER 557. Regarding *reiner vermögensschaden*, van Gerven et al., *Tort Law*, at p. 43, speaks of a 'worsening of one's overall economic position (loss of profit, diminution in the value of property, etc.) that is not directly consequential upon injury to the person or damage to a particular piece of property'.

<sup>11</sup> Benson, 'Excluding Liability for Economic Loss', at p. 431.

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

and duties that bind together contractual, proprietary and any other sort of legal interests. In these circumstances it is reasonably foreseeable that damage to any one interest may affect other interests. Indeed, it has been rightly said that ‘no reverberation from the initial damage, so long as it arises through this interdependence of interests, can intelligibly be distinguished as extraordinary or unforeseeable’.<sup>12</sup> Yet the inevitable effect (of what we might call the exclusionary rule’s ‘atomistic’ approach to causation) is that the scope of ‘consequential’ loss is artificially narrow, and accordingly the incidence of ‘pure’ economic loss is greatly multiplied.

A second technical aspect is that, although all countries following the exclusionary rule may be in ‘acoustical’ agreement on the proposition that ‘consequential loss’ is recoverable, they actually do not agree in concrete instances how it will be applied. Since consequential loss is a causal construct influenced (in its ultimate results) by policy considerations, it is perhaps unsurprising to find divergent interpretation at the national level. Some national courts have developed rules that require a more stringent connection between antecedent physical loss and the economic harm which results from it. Under such rules the court may conclude that plaintiff’s loss was ‘pure’ (hence unrecoverable) because there was insufficient relation to prior physical harm sustained by plaintiff. Yet judges in other systems, employing less exigent notions, may deem the same loss ‘consequential’ and thereby permit its recovery.<sup>13</sup>

Despite the foregoing caveats about the artificial and technical aspects of this concept, we must not lose sight of the fact that consequential economic loss (and for the purpose of this generalization we apply this term even to systems which do not actually use it) is in principle recoverable in every European system within this study – whether the source of the loss is intentional or negligent conduct, or an activity subject to strict liability. Ignoring for the moment divergent European views toward the recoverability of ‘pure’ economic loss, here at least is an area of common ground that is worth noting.

Furthermore, the recoverability of economic loss, even when ‘pure’, is not regarded as doubtful when such loss stems from the infringement

<sup>12</sup> Ibid.

<sup>13</sup> For further details, see Editors’ Comparative Comments under Cases 1 (‘Cable I – The Blackout’) and 9 (‘Fire in the Projection Booth’). Cf. C. von Bar, *The Common European Law of Torts*, vol. II (Oxford University Press, Oxford, 2000), pp. 30–5, 487–9.

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

of statutorily protected interests, such as those we will meet in our case studies,<sup>14</sup> and those protected by antitrust, copyright and patent laws.<sup>15</sup>

Taken in the aggregate, the above considerations lead us to say that consequential loss and 'pure' economic loss are not different in kind or in principle, but distinguishable only by the circumstances in which they originate and the technical limits which have been imposed on their recoverability.<sup>16</sup>

<sup>14</sup> See especially the answers to Case 4 ('Convalescing Employee'). Cf. C. von Bar, *Common European Law of Torts*, II, pp. 54–6.

<sup>15</sup> The same could be said as to some other fields, particularly the field of 'business torts'. Although legal systems such as France, the Netherlands, UK and Portugal handle these problems with the help of the general law of obligations (the sixth book of the Dutch Civil Code devotes an entire chapter to unfair advertising), these subjects are not dealt with here. Since the rules in these areas largely depend on policy factors which are only partially common to our field and would deserve detailed investigation, reasons of space compelled the editors to place limits on the research. For a general survey, C. von Bar, *Common European Law of Torts*, II, pp. 4–200, 245–9 and, more closely related to our issue, 52–6; van Gerven et al., *Tort Law*, (Hart, Oxford, 2000), pp. 208–48, 358–94.

<sup>16</sup> It is of interest to note that breach of European Community law may entail liability for pure economic loss. The liability of the Community institutions and its servants in the performance of their duties finds its source in art. 288(2) of the EC Treaty. The liability of a Member State has its origins in the case law of the European Court of Justice (ECJ), particularly the preliminary rulings pursuant to art. 234 of the EC Treaty. It is true that under these provisions, plaintiffs can recover only when they fall within a group of persons which the infringed provision was designed to protect, but no 'in principle' restriction is made regarding the interests that are protected. Indeed, since Community law is primarily concerned with economic matters, breaches of Community law will typically result in economic or purely economic losses. The compensability of these losses when caused by Community institutions has been clearly set forth in an ECJ case, Case C-104/89, 19 May 1992, *Mulder v. Council*, [1992] ECR I-3061. With regard to the Member States, their liability has been clearly endorsed by ECJ Case C-49/93, 5 March 1996, *Brasserie du Pêcheur v. Germany*, R v. *Secretary of State for Transport, ex p. Factortame*, [1996] ECR I-1029 (wherein the ECJ explicitly rejects the use of German and English national rules which would have prevented individuals from benefiting from the use of Community law to impose liability on Member States. The rejection was particularly important in the case of the English rule requiring proof akin to abuse of power to establish the tort of misfeasance in public office, and in the case of the German hierarchy of protected interests under BGB § 823. For a comparative survey, see van Gerven et al., *Tort Law*, (2000), at p. 889 ff; see *passim*, T. Heukels and A. McDonnell (eds.), *The Action for Damages in Community Law* (Kluwer, The Hague, 1997); P. Craig, 'Once More Unto the Breach: The Community, the State and Damages Liability', (1997) 113 LQR 67. See also Markesinis, *German Law of Obligations*, p. 902 ff.

It is a different, and still open issue, whether individuals are entitled to compensation under national law when other individuals infringe Community law and thereby cause economic loss. Under the laws of the Member States a right to recovery is generally acknowledged in cases of breach of a Community law provision which imposes direct obligations upon individuals – such as Arts. 81 and 82 of the EC

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)**Actor's state of mind: intention vs. negligence**

The exclusionary rule is associated with economic loss caused by negligent behaviour, not intentional wrongdoing. European systems do not begin to diverge until the question becomes one of liability for negligence. Here is a kind of rubicon which some fear to cross and others blithely dismiss. However, all systems agree that intentionally inflicted pure economic loss is recoverable in circumstances where the conduct in question is regarded as culpable, immoral or contrary to public policy. The significance of this point is of more practical importance than it may appear at first sight. Its range of application may be somewhat greater than the narrow, infrequent form of liability which the words 'intentionally inflicted' harm suggests. In some systems a broad, flexible meaning is given to the 'intention' element.<sup>17</sup> Furthermore, though harder to prove than negligence, the incidence of financial fraud is not a rare occurrence. A consistent rule across Europe is therefore an important protection. Secondly, we think it is interesting to observe from the comparative point of view that the shift to higher degrees of culpability tends to broaden the scope of recovery in all systems. This at least suggests that the exclusionary rule should not be conceived as a simple rule based solely on the nature of plaintiff's damage. The material nature of the loss, in our view, is no more than one element in a complex balancing act which decides where and when limits will be imposed in tort. To tailor reasonable limits, judges and legislators must consider other important factors as well, including the actor's state of mind.<sup>18</sup>

Treaty, or other provisions having the so-called 'horizontal' direct effect: see W. van Gerven, 'Bridging the Unbridgeable: Community and National Tort Laws after Francovich and Brasserie', (1996) 45 ICLQ 507 and, recently, upholding 'horizontal' direct effect of arts. 81 and 82 of the EC Treaty, *Courage Ltd v. Bernard Crehan and Bernard Crehan v. Courage Ltd and Others*: ECJ, judgment of 20 September 2001, reference for a preliminary ruling: Court of Appeal (England and Wales) (Civil Division) United Kingdom, Case C-453/99, [2000] ECR I-7499.

<sup>17</sup> See, e.g. von Bar 'Liability for Information', at 104.

<sup>18</sup> The existence of a balancing process is not so apparent in open, liberal systems such as the French which appear to make little use of the distinction between intentional and careless fault, but the complex interaction of scienter with other factors clearly surfaces in the English and German systems. In those systems, where harm is intentionally inflicted, restrictions on the recoverability of the type of harm are dropped, and in addition, concepts of remoteness of causation are relaxed. As David Howarth correctly notes, the overall result is that intentionality removes restrictions on liability that do not exist in the first place in other jurisdictions; 'The General Conditions of Unlawfulness', in A. Hartkamp, M. Hesselink, E. Hondius, C. Jouta and E. du Perron (eds.), *Towards a European Civil Code* (2nd edn, Kluwer, 1998), at p. 411.



Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)**The standard cases: a taxonomy**

Broadly speaking, pure economic loss arises out of the interdependence of relationships and interests in the modern world. These relationships are sometimes two-dimensional and other times three-dimensional. In this section we attempt to draw up a taxonomy of the principal ways in which it arises within such relationships. Our list will not exhaust all the conceivable ways in which such damage may arise. Our only interest lies in tracing the most recurrent and typical patterns which we refer to as 'standard cases'. Although we have sometimes borrowed and at other times given new names to these standard situations, we have not attempted to explain or employ all of the descriptive labels that writers and judges have used. These diverse and contradictory ideas are not always compatible with the results of our own study and would serve no purpose here. With these provisos in mind, we venture to set forth four categories that seem to be functionally and relationally distinct.<sup>19</sup>

*Ricochet loss*

'Ricochet loss' classically arises when physical damage is done to the property or person of one party, and that loss in turn causes the impairment of a plaintiff's right. This situation is three-dimensional and certain authors call it 'relational economic loss'.<sup>20</sup> A direct victim sustains physical damage of some kind, while plaintiff is a secondary victim who incurs only economic harm. To illustrate: A has a contract to tow B's ship. C's negligent act of sinking the ship makes it impossible for A to perform his contract and thus deprives him of expected profits. A's financial loss is the ricochet effect of C's negligence toward B. The loss is purely economic, since no property interest of A's has been impaired.<sup>21</sup> A ricochet loss can also arise from the impairment of an employment contract. For example, B is a key employee in A's business or sporting team. C's negligent driving leads to B's death or incapacity, thus causing A's

<sup>19</sup> For a longer taxonomic list consisting of eight categories (in which we think there is considerable overlap), see W. Bishop and J. Sutton, 'Efficiency and Justice in Tort Damages: The Shortcomings of the Pecuniary Loss Rule', (1986) 15 *Journal of Legal Studies* 347, 360–61. Benson's taxonomy consists of five situations, two of which he calls 'exclusionary situations'. His three other situations are called 'non-exclusionary', Benson, 'Excluding Liability for Economic Loss', at pp. 427–30.

<sup>20</sup> See this terminology and analysis in Bernstein, *Economic Loss*, pp. 163 ff. and Feldthusen, *Economic Negligence*, pp. 199 ff.

<sup>21</sup> The example closely follows *La Société Anonyme de Remorquage à Helice v. Bennets* [1911] 1 KB 243.

Cambridge University Press

0521824648 - Pure Economic Loss in Europe

Edited by Mauro Bussani and Vernon Valentine Palmer

Excerpt

[More information](#)

team or business to lose profits and revenues. Here B's injury is physical, but A's loss is purely financial. The 'Cable Cases',<sup>22</sup> the *Meroni Case*,<sup>23</sup> and certain other hypotheticals studied in this volume<sup>24</sup> are also variations of ricochet harm. Concern about the indeterminate number and size of the claims for losses is often associated with cases falling within this category.

### *Transferred loss*

Here, C causes physical damage to B's property or person, but a contract between A and B (or the law itself) transfers a loss that would ordinarily be B's onto A. Thus a loss *ordinarily falling on the primary victim* is passed on to a secondary victim. The transfer of the loss from its 'natural' to an 'accidental' bearer differentiates this from a case of ricochet loss, where the damage in question is not transferred but is a distinct damage to the interests of the secondary victim.<sup>25</sup> These transfers frequently result from leases, sales, insurance agreements and other contracts that separate property rights from rights of use or specifically reallocate risk bearing. To illustrate, A is time charterer of a ship owned by B. The day before the time charter is to go into effect and while the ship is in B's possession, C negligently damages the ship's propeller, thus necessitating repairs and a two-week delay, which causes A to lose all use of the ship. Here B suffers property damage, and ordinarily B as owner would recover for the consequential loss of the ship's use, but the right of use had been transferred to A by the boat charter. So A's loss is purely pecuniary because he has no antecedent property loss.<sup>26</sup> A similar effect can result under a sales contract which reserves title in B (seller) while the goods are in shipment, but places the risk of loss in transit upon the buyer A. If the goods (still technically owned by B)<sup>27</sup> are damaged in

<sup>22</sup> See e.g. *Spartan Steel & Alloys v. Martin & Co. Ltd.* [1973] QB 27 and Cases 1 ('Cable I – The Blackout'), 2 ('Cable II – Factory Shutdown'), 3 ('Cable III – The Day-to-Day Workers').

<sup>23</sup> *Torino Calcio SpA v. Romero*, Cass. Civ., SU 26.1.1971, no. 174, GI, 1971, I, 1, 681. Case 5 ('Requiem for an Italian All Star') is modelled upon the *Meroni* case.

<sup>24</sup> See Case 10 ('The Dutiful Wife').

<sup>25</sup> This category receives extensive consideration in von Bar, *Common European Law of Torts*, I, pp. 507–512.

<sup>26</sup> The illustration is based upon *Robins Dry Dock v. Flint*, 13 F 2d 3 (2nd Cir. 1926), 275 US 303 (1927) as well as Case 8 ('The Cancelled Cruise').

<sup>27</sup> As is well known, who should be called the 'owner' of goods in shipment depends on the law applicable to the transfer of ownership, and above all on the validity and extent of the principle of transfer of possession. See von Bar, *Common European Law of Torts*, at p. 509, fn. 499.