

## **INDEX**

accessory liability see liability; specific	coherence, 375
jurisdictions	conclusion, 415
accountability	complexity of tort and crime law,
capacity and, 108	369–70
children, 108–9	crime prioritised over tort, 401-2
defences, 114-15	defences, 392–6
mentally disordered persons, 109-10	evidence
vicarious and accessory liability,	burden and standards of proof,
110–14	402–4
action	parallel proceedings, 404–6
cause of action, 34, 237, 394	procedure, 396
action to compel public charges	fault, 386–7
(Klageerzwingungsverfahren),	federal, 367, 415
Germany, 166–7	federation, 367
adhesion, principle of see specific	incidence of tort and crime, 372-3
jurisdictions	institutions, 368–9
advocates see specific jurisdictions	insurance, 373–5
'antecedent concert', 298	intention, 387–9
'art and part', 296–7	introduction, 367–8
assault, case study see specific	legal culture, 368–9
jurisdictions	legal education, 370
attempt and liability, 31, 45-7, 145,	legal practice, 371–2
174, 442	legal scholarship, 370–1
Australia	liability
assault, case study, 492	accessory liability, 390–2
boat theft, case study, 491	children, 385–6
capacity, 385–6	defences, 392–6
car theft, case study, 490–1	fault, 386–7
case study, 490–2	insurance, 372–7, 413–4
causation, 389–90	no fault schemes, 490–1
changes in law	parallel proceedings, 404–6
conclusion, 415	parties, 398–9
external/non-legal factors, 411–15	procedure
generally, 406	crime prioritised over tort, 401–2
institutions, 408–11	evidence see evidence above
legal fields, 406–8	judicial organisation, 396–8
children's liability, 385–6	parties, 398–9



494	INDEX
Australia (cont.)	counsel see specific jurisdictions
remedies, 399-400	courts see specific jurisdictions
rules, 401	Crime victim compensation, 66–7,
reasoning, 375–6	190–2, 380, 399, 429
recourse to law, 377–8	criminal law
remedies, 399-400	cumulation see Sweden
res judicata, 405	
substantive interactions	defamation and fault, France, 99
classification of wrongs, 378-82	defences
generally, 378	substantive interactions, 443-5
legal theory, 382–5	see also specific jurisdictions
tort law reform, 370, 375-6	delict see tort
	disparagement of product or services,
boat theft, case study see specific	99–100
jurisdictions	
bodily physical integrity, invasions of,	employers' vicarious liability, 110–13
289–92	England
<i>see also</i> assault	accessory liability, 35–6
	assault, case study, 478–9
capacity	boat theft, case study, 478
substantive interactions, 437–9	breach of stationary duty, 306, 379
see also specific jurisdictions	capacity, 29–33
car theft, case study see specific	car theft, case study, 476–8
jurisdictions	case study, 476–9
case study, 17, 476–92	causation, 44–8
causation	coherence, 69
substantive interactions, 441–2	collateral attack, 462
see also specific jurisdictions	compensation order, 53–9
changes in law see legal change	conclusion, 71–2
children's liability see specific	consent, 36–40
jurisdictions	consistency, 51, 69
chose jugée see France	deceit, 39–42
common purpose, 227, 488	defamation, 29, 60–2, 66
'common criminal purpose', 297–8	defences, 49–51
compensation	self defence, 50
beginning and end of claim, 449–50	
enforcement, 453–4	fraud, 42–3
limits, 450–3	illegality, 28
nature of claim, 449	institutions, 19–23
orders, 55–9, 285–6, 377–98, 449–5	
state and inter-state rules, 454–5	intention, 40–1 interaction, reasons for, 68–70, 71–2
complicity and vicarious liability, France, 114	
	introduction, 18–19
see also accessory liability; specific	jurisdiction, 51–7
<i>jurisdictions</i> consent	liability for others, 33–6 negligence, 43–4
substantive interactions, 439–40	normative theories, 25–7
see also specific jurisdictions	procedure, 51, 57–61, 71
see aiso specific jurisaiciioris	procedure, 31, 37-61, 71



INDEX 495

property, 48-9 complicity and vicarious liability, reasonableness, 44 reasoning, 23-5, 71 conclusion, 121-2 recklessness, 41-2 defamation and fault, 99 resolutions, 66-8 defences to liability, 114-15 separation of tort and crime, 71 disparagement of product or substantive differences, 29 services, fault and, 99-100 substantive interactions, 27-9, 71 employers' vicarious liability, 110–13 evidence family immunities as to theft, 101 questionnaire, 15 fault see liability below trial procedure, 456-9 finality principle, 84-5 see also specific jurisdictions imputation see accountability above institutions, 74-8 insurance, 96 family immunities as to theft, 101 fault intention and fault, 94-8 introduction, 73-4 substantive interactions, 440-1 see also liability; specific jurisdictions legal persons' vicarious liability, 113 liability accessory liability see vicarious accessory liability, 110-14 liability below accountability see accountability accountability above capacity and, 108 arising of, 91-2 children, 108-9 civil law relevant to criminal law, defences, 114-15 100 - 1mentally disordered persons, defamation, 99 defences, 114-15 109 - 10disparagement of product or vicarious and accessory liability, 110-14 services, 99-100 assault, case study, 481 erosion of unity between tortious boat theft, case study, 480-1 and criminal fault, 92-4 capacity and accountability, 108 family immunities as to theft, 101 car theft, case study, 480 intention and fault, 94-8 case study, 479-81 scope of criminal liability, 98 causation vicarious liability, 110-14 direct or indirect causality, 106-8 mentally disordered persons, existence of cause, 101-5 accountability of, 109–10 requirements for, 101 procedure children, accountability of, 108-9 chose jugée, 86-9 chose jugée finality, 84–5 basis of, 87-8 generally, 78-9 consequences of acquittal and material scope, 82-3 discharge, 88-9 personal scope, 83-4 res judicata, 85-6 consequences of conviction, 88 scope of, 86-7 victim's role in selecting, 79-82 compensation in criminal cases punitive damages, 115-18 compensation as goal, 118-19 res judicata, 85-6 judge's powers, 119-21 stay of civil claim, 89-91 public prosecutor's powers, 119 substantive interactions, 91, 98



496	INDEX
France (cont.) theft case study, 480–1 family immunities as to, 101	differences in general requirements, 144–5 general clause: 'small' general clauses, 142–4 guilt, 155–9
unity principle, 92–4 vicarious liability academic debates as to, 110	injury of protected legal interest, 146
complicity, 114 employers, 110–13	legislative styles, differences in, 145
legal persons, 113	negligence, definition of, 155–7
fraud see specific jurisdictions functionalism, 7–8	protection of different legal interests, 147 wrongfulness, 152–5
general integrative technique, 436–7, 466	negligence, definition of, 155–7 procedure
Germany	differences, 163–4
action to compel public charges	interactions, 164–9
(Klageerzwingungsverfahren),	remedies, 169–72
166–7	substantive interactions
adhesion ( <i>Adhäsionsverfahren</i> ), 160	
assault, case study, 483–4 attempt and liability, 145	unity principle, 142 suspension rules, 168–9
boat theft, case study, 483	theoretical comparisons, 134–5
car theft, case study, 481–3, 484	unity of legal system
case study, 481–3, 484	criminal law looking to private
causation, 149–52	law, 160–3
children's liability, 159	preservation of, 140
conclusion, 172	principle of, 123–4
courts, 139–40	sameness across legal system,
division of legal system	159–60
constitutional basis, 137	tort law looking to criminal law,
criminal law from tort, 132–3	160
methodological differences, 141	
procedural law, 127	prosecutor (Nebenklage), 167
question of, 124	victim's right to initiate proceeding
theoretical basis for, 128–9	(Privatklageverfahren), 167–8
tort from criminal law, 132	wrongfulness and liability, 152–5
fault see liability below	guilt and liability, 155–9
guilt and liability, 155–9	historical devalorments 473 E
institutions, 137	historical developments, 473–5
insurance, 126, 154–8 legal practice, 138–9 legal scholarship, 138	homogeneity of the legal system, 16, 72, 319, 366, 468
liability	indicators of tort and crime, 419–21
attempt, 145	informal means of interaction, 466–7
causation, 149–52	institutions
children, 159	indicators of tort and crime,
definition of legal interests,	419–21
differences in, 147–9	legal actors see legal actors



INDEX 497

legal framework, 416-18 questionnaire, 13 reasons for imposing liability, 421-4 structural issues, 424-6 terminology, 3 see also specific jurisdictions insurance see specific jurisdictions intention fault and, 94-8 substantive interactions, 440-1 see also specific jurisdictions interaction between tort and crime aims of book, 1-2, 475 axes of, 465 boundaries, question of, 473 case study, 17 distinctiveness, question of, 473 historical developments, 473-5 informal means, 466-7 legal systems see legal systems mechanisms for, 465-7 non-interaction, question of, 473 outline of book, 2, 475 pinch points, 467 practical methodologies, 12-13 question of, 1 questionnaire, 13-17, 475 reasons for balancing of, 468-9 categories of, 467-8 patterns in expression of, 469-73 terminology see terminology theoretical methodologies, 6 see also specific jurisdictions invasions and threatened invasions see Scotland

'joint wrongdoing', 297

see also accessory liability
judges/judicial organisation see specific
jurisdictions
jurisdiction, 15

see also specific jurisdictions

language see terminology lawyers see specific jurisdictions lay judges, 184–5 legal actors in both tort and crime, 426–30

confined to tort or to crime, 431 crossing tort and crime, 430-1 specialisation, 431-2 legal change, 416-75 legal transplants, 10-12 path dependence, 9-10 understanding of, 9 see also specific jurisdictions legal culture see institutions legal scholarship see specific jurisdictions legal systems see specific jurisdictions change and development see legal change choice of jurisdictions, 2-3 Directness/Indirectness axis as to influence between, 465 doctrinal differences, 3-4 Equality/Hierarchy axis as to ranking of legal objects, 465 overlap of tort and crime, approaches to, 3 Partition/Permeability axis as to boundaries within, 465 structural differences, 3 legal transplants, 10-12, 466 liability reasons for imposing, 421-4 substantive interactions, 442-3 terminology, 4-5 see also fault; specific jurisdictions

mentally disordered persons' accountability see specific jurisdictions methodology in practice, 12 methodology in theory, 19

negligence
definition, 155–7
terminology, 4, 6
see also specific jurisdictions
Netherlands
adhesion, 341–3
admissibility, 'ten minute rule', 343–5
appeals, 346–7
assault, case study, 489–90
boat theft, case study, 489
car theft, case study, 489, 490



498 INDEX Netherlands (cont.) remedies see compensation above case study, 489, 490 routing of cases, 336-8 clarification of claims, 345 substantive differences, 329-33 compensation substantive interactions, 327-9 advance compensation, 351 normative theories, 3, 14 orders, 348-51 see also specific jurisdictions priority in statutory reform, overlap of tort and crime see 363 - 6interaction between tort and procedural interactions, 333-6 return of stolen property, order for, 351 substitute custody, 350 parties see specific jurisdictions conclusion, 366 path dependence, 9–10 personality rights, invasions of, 294 concurrent claims, 347-8 court rulings, 346 pinch points, 12, 13 evidence principles see reasoning burden of proof, 358-9 procedure connections between tort and comparisons, 462-3 crime, 354, 362-3 compensation see compensation disclosure, 361 questionnaire, 15 investigation powers, 360-1 terminology, 3-6 means and production of, 359-60 trials see trial procedure overlap of tort and crime, 354-5 victim's role in prosecutions, relationship between tort and 445 - 8see also specific jurisdictions crime, 362 standards of proof, 355-8 process see procedure introduction, 316 property see specific jurisdictions overlap of tort and crime, 320-6, prosecutors see specific jurisdictions 336-8 purposes of tort and crime see specific procedure *jurisdictions* adhesion, 341-3 admissibility, 'ten minute rule', questionnaire, 13-17 343-5 appeals, 346-7 reasonableness see specific jurisdictions clarification of claim, 345 reasoning compensation, 333-6 examples, 432 concurrent claims, 347-8 principles crossing into other areas connections between tort and of law, 435-6 crime, 352-4 see also specific jurisdictions convictions, 346 questionnaire, 14 interaction between tort and unity of legal system, 432-4 crime, 340-1 weighting of principles, 434–5 overlap of tort and crime, 338-40 recklessness see specific jurisdictions; remedies see compensation above fault routing of cases, 336-8 remedies, 16 choice, 463-4 purposes of tort law and criminal interaction, 464-5 law, 319-20 relationship between tort and crime, questionnaire 316-19 see also specific jurisdictions



> INDEX 499

res judicata, 460-2 location of tort and crime, 271 see also specific jurisdictions resolutions see remedies rules of procedure see procedure Scotland 'antecedent concert', 298 281 'art and part', 296-7 procedure assault, case study, 488-9 boat theft, case study, 488 above bodily physical integrity, invasions of, 289-92 breach of statute, 288-9 capacity, 287-8 car theft, case study, 487-8 281 case study, 487-9 causation, 305-7 children's liability, 287-8 'common criminal purpose', 297-8 compensation compensation orders in criminal courts, 285-6 private compensation, 282 state compensation, 282-5 conclusion, 313-15 Spain conduct, 288-9 defences, 307-13 distinctiveness of tort and crime, 276 intention, 288 introduction, 271 invasions and threatened invasions bodily physical integrity, 289-92 causation other personality rights, 294 property, 294-6 sexual integrity, 292-4 'joint wrongdoing', 297 judicial organisation, 273–5 legal actors, 275-6 legal scholarship, 272–3 liability accessory liability, 300-5 'antecedent concert', 298 'art and part', 296-7 children, 287-8 'common criminal purpose', 297 - 8joint and several liability, 299-300 'joint wrongdoing', 297 'spontaneous concert', 298-9

negligence, 288 overlap between civil and criminal proceedings, 281 personality rights, invasions of, 294 private parties in criminal courts, compensation see compensation generally, 278-80 overlap between civil and criminal proceedings, 281 private parties in criminal courts, property, invasions of, 294-6 purposes of tort and crime, 277-8 recklessness, 288 res judicata, 289 sexual integrity, invasions of, 292-4 'spontaneous concert', 298-9 substantive interactions, 286 secondary liability see liability sexual integrity, invasions of, 292-4 adhesion, 242 assault, case study, 487 boat theft, case study, 487 capacity, 250, 254-6 car theft, case study, 486, 487 case study, 486, 487 criminal law, 258-9 tort law, 258-9 changes in law, 229 children's liability, 261-2 civil action in criminal proceedings adhesion, 242 capacity and reduced liability, 250 civilly liable third parties, 250–1 'damaged party' as civil party in criminal proceedings, 247–8 defendants, 248-50 generally, 241 insurance, 249-50 liability, imposition of, 241 mentally disordered persons' liability, 250 offenders, 248-9



500 INDEX

Spain (cont.) vicarious liability, 261-3 victim's decision as to reserving mentally disordered persons' civil claim, 243-7 liability, 250, 261 civil procedure, 237–8 offenders, 248-9 civilly liable third parties, 250-1 procedure conclusion, 269-70 civil actions see civil action in courts, 240 criminal proceedings above civil procedure, 237-8 criminal judgments and civil claims enforcement of judgment, 254 criminal matters in civil joint actions and criminal proceedings, 240-1 criminal procedure, 238-40 acquittal, 252-3 interaction between civil and joint actions and criminal conviction, 252 criminal courts, 240 separate actions, 253-4 principles generally, 236 criminal matters in civil public authorities' liability, 262 proceedings, 240-1 purposes of tort law and criminal criminal procedure, 238-40 law, 228 'damaged party' as civil party in reasoning, 233-5 criminal proceedings, 247-8 reciprocal influences, 229 res judicata, 240, 241, 252, 253-4 damages in criminal proceedings, 251 restitution of property in criminal defendants, 248-50 proceedings, 251 dependent adults' liability, 261 separate actions, 253-4 divisions within tort law and sources of law, 231-2 criminal law, 232-3 substantive interactions and enforcement of judgments, 254 differences entrepreneurs' liability, 262-3 accessory liability, 263 ex delicto liability, 230, 239-43, 250 assessment of damages, 264-6 capacity, 254-6 fault, 256-8 historical developments, 224-5 causation, 258-60 insurance, 249-50, 266-7 defences, 264 intention, 258 fault, 256-8 introduction, 223-4 insurance, 266-7 judicial organisation, 235-6 intention, 258 lawyers, specialisation, 231 remedies, effects of, 267–9 legal scholarship, 230–1 vicarious liability, 261–3 liability unity of legal system, 225–8 accessory liability, 263 victim's decision as to reserving civil children, 261-2 claim, 243-7 civil action in criminal 'spontaneous concert', 298-9 proceedings, 241 stay of civil claim, 89-91 civilly liable third parties, 250-1 structuralism, 8 dependent adults, 261 substantive differences see specific entrepreneurs, 262-3, see Spain: jurisdictions ex delicto liability substantive interactions mentally disordered persons, 250, comparison between parallel rules, 261 436 public authorities, 262 general integrative techniques, 436–7



INDEX 501

questionnaire, 15	lawyers, 184
terminology, 3	lay judges, 184–5
see also specific jurisdictions	legal scholarship, 185
suspension rules, 459–60	mediaeval law, 175
see also specific jurisdictions	mentally disordered persons'
Sweden	liability, 204
adhesion	negligence, 206
before 1734, 209-10	norms
and cumulation, 216	damages, 197–8
post-1734, 210–11	distinctions between tort and
post-1948, 211–12	crime, 195–6
advocates, 189	generally, 192–3
aggrieved parties (målsägande),	overlap of tort and crime,
187–8	198–200
assault, case study, 485–6	purposes of tort law and criminal
boat theft, case study, 485	law, 193–4
capacity, 204–5	sentencing, 196–7
car theft, case study, 483–5	procedure
case study, 484–6	adhesion before 1734, 209–10
causation, 205	adhesion post 1734, 210-11
children's liability, 204–5	adhesion post 1948, 211–12
conclusion, 221–2	advantages and disadvantages of
counsel, 188–9	Swedish system, 218
courts, 183	evidence, 216–18
Crime Victim Compensation and	historical development, 209-11
Support Authority	tort tried in criminal cases,
(Brottsoffermyndigheten),	209-11
190–2	prosecutors
criminal code of 1864 (strafflagen),	duty to present claim, 214–16
180–1	role of, 185–7
cumulation of cases, 216	reform in early nineteenth century,
damages, 197–8	175–6
evidence, 216–18	remedies, 221
historical background, 174-5	secondary liability, 206–9
institutions, 183–92	sentencing, 196–7
insurance companies, 189–90	separation of cases, 216
intention, 205–6	substantive interactions
introduction, 173	capacity, 204–5
judges, 184	causation, 205
jurisdiction	civil law requirements in criminal
adhesion post-1948, 211–12	statutes, 203–4
connection between crime and	crime as a prerequisite in tort law,
civil claim, 212–14	201–3
cumulation and separation of	generally, 200–1
cases, 216	intention, 205–6
prosecutor's duty to present claim,	negligence, 206
214–16	secondary liability, 206–9
law code of 1734, 175–6	Tort Liability Act of 1972, 181–2



> INDEX 502 terminology res judicata, 460-2 common terms, 6 suspension rules, 459–60 language generally, 4-5 specific terms, 5-6 unity of legal system, 416-75, see system-neutral language, specific jurisdictions 4 terms of art, 6 vicarious liability theft legal persons', 113 case study, 17, 476-92 victim see also specific countries as civil party in criminal tipping points, 12 proceedings, 247–8 transplanted law see legal right to act as accessory prosecutor, transplants 167 trial procedure right to initiate proceedings, 167-8 evidence, 456-9 legal framework, 455-6 wrongfulness and liability, 152-5