

## Book Review

**Ken Oliphant/Barbara Steininger (eds)**, *European Tort Law – Basic Texts* (Jan Sramek Verlag, Vienna 2011). xvi + 330 pp. ISBN 978-3-902638-50-2. € 29,90 (paperback).

The book ‘European Tort Law – Basic Texts’ makes selected legal provisions in the field of tort law available in English. It renders access to these provisions much easier for foreign lawyers, and thus considerably facilitates comparative research in the field of tort.

Tort law has always been less densely codified than, for example, the law of contracts or property law. Apart from the provisions implementing the European Product Liability Directive, for example the French *Code civil* comprises just five provisions on torts, with the Belgian *Code civil* comprising six. The German *Bürgerliches Gesetzbuch* (BGB) contains 30 provisions on torts, which is roughly 15 times fewer than it does on contracts. With respect to the modern codifications of the Netherlands and the Baltic states, the situation is similar, with 13 (admittedly very detailed) articles on tort in the Estonian Code of obligations, 12 in the Civil Code of Lithuania, and a remarkable 41 in the most modern civil code in Western Europe – the Dutch *Burgerlijk Wetboek*. The Principles of European Tort Law contain 36 (for some issues, extensive) provisions, whereas the Draft Common Frame of Reference comprises 57 rules on torts.<sup>1</sup> In most jurisdictions statutory provisions existing outside the code have to be added, in particular on strict liabilities. The combination of code provisions and other statutory law, often spread over a large number of statutes, makes it particularly difficult for foreign lawyers and comparatists to have a full picture of foreign law in the field of tort, delict or extra-contractual liability.

With tort provisions in the codes being less numerous and less detailed, case-law plays an important role in torts not only in Common Law countries but also on the continent. This is why the Institute for European Tort Law and the European Centre of Tort and Insurance Law in Vienna have set themselves the task of researching, collecting, commenting on and publishing recent case-law from approximately 30 European jurisdictions. These efforts have culminated so far in two volumes of the ‘Digest of European Tort Law’ (vol 1: Essential Cases on

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<sup>1</sup> The Draft Civil Code of the People’s Republic of China, presented in 2007, contains an impressive number of almost one hundred provisions on tort. See *L Huixing*, *The Draft Civil Code of the People’s Republic of China, English Translation*: Leiden/Boston, Martinus Nijhoff, 2010.

Natural Causation,<sup>2</sup> vol 2: Essential Cases on Damage),<sup>3</sup> both conceived and edited by Bénédict Winiger, Helmut Koziol, Bernhard Koch, and Reinhart Zimmermann. A third volume on 'Misconduct' is currently in preparation. In addition, since 2001, ETL and ECTIL have been publishing annual 'European Tort Law Yearbooks', compiling (in English) the most important court decisions in the field of tort law from about 30 European jurisdictions. These works make it possible to have an up-to-date overview of European case-law in tort. There is currently nothing similar in any other field of law.

What was missing so far was an easily accessible collection of provisions from codes and statutes in the field of tort, in a language that is comprehensible to an audience all over Europe. To have access to such provisions is essential given that, in tort as in basically any other area of law, in continental jurisdictions the Code or statutes are the starting point for any legal analysis. These statutory provisions on tort differ considerably from one jurisdiction to another. As Andrew Tettenborn has concisely stated in this journal: 'there is a world of difference between the terms of the German BGB art 823 with its explicit *numerus clausus* of protected interests (... *das Leben, den Körper, die Gesundheit, die Freiheit, das Eigentum oder ein sonstiges Recht* ...) and the more open (but very differently understood) approaches in the Austrian *Allgemeines Bürgerliches Gesetzbuch*, ABGB art 1295 (... *Ersatz des Schadens, welchen [der Beschädiger] ihm aus Verschulden zugefügt hat* ...) and the French Code Civil 1382 (... *qui cause à autrui un dommage* ...). In all such cases the underlying legislation always needs to be at the forefront of the reader's attention ...'.<sup>4</sup>

It is thus needless to say that there is a pressing need for good, reliable and authoritative translations. Translations of tort law provisions into English, available on the internet, are often not reliable, and even the semi-official translations on many governmental websites lack precision. With respect to some jurisdictions, several translations differing in their respective wording are circulating. Using these sources is consequently a risky business, in particular if the user is unable to verify the translation. The difficulty in accessing foreign statutory law is even more regrettable given that tort law is the branch of law where courts are traditionally the least reluctant to embark on a comparative analysis.

The book 'European Tort Law – Basic Texts', conceived and presented by Ken Oliphant and Barbara Steininger, fills this gap. It contains codal and statutory provisions from 27 jurisdictions, ranging from Austria and Belgium to Sweden

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<sup>2</sup> 632 pp, Vienna/New York 2007.

<sup>3</sup> 1175 pp, Berlin/Boston 2011.

<sup>4</sup> A Tettenborn, Book Review: Digest of European Tort Law, Vol 2: Essential Cases on Damage, (2013) 4 JETL 113.

and Switzerland. EU law is presented with a brief extract from the Treaty on the Functioning of the European Union, the Product Liability Directive, and extracts of the most important ECJ decisions on State liability.<sup>5</sup> The ‘Basic Texts’ further contain extracts from the Brussels I Regulation and the full text of the Rome II Regulation, as well as short extracts from the most important ECJ decisions on art 5.3 of the Brussels I Regulation. Last but not least follow the Principles of European Tort Law and the Draft Common Frame of Reference’s rules on tortious liability.

The main, and most important, part of the ‘Basic Texts’ is dedicated to national legislation. The book contains extracts from the domestic civil codes (for jurisdictions having a code – which is not the case for the Nordic countries) as well as extracts from statutory law. The extracts are not limited to the rules to be found in the chapters on torts in the continental codes but also contain some other rules of importance for tortious liability. This is particularly helpful for foreign users who might otherwise easily miss these rules. To give an example: the chapter on German law contains not only § 823 ff of the BGB (that is, the tort law *stricto sensu*) but also the relevant rules in the general part of the law of obligations (§ 249 ff BGB), provisions on joint and several liability (§ 426 BGB) and some rules on the standard of liability in the BGB’s book on family law (§§ 1359, 1664), followed by extracts from two statutes establishing strict liabilities. A further example can be found in the chapter on Swiss law which contains extracts of the Swiss Code of Obligations, of the Civil code and of ten statutes establishing specific – and mostly strict – liability regimes.

Many of the contributors responsible for the country reports in the ‘Basic Texts’ chose to concentrate on the most important provisions, while leaving out others. Of the Danish Liability for Damages Act, for example, only seven provisions are included, leaving out, for example, the rules on the quantification of loss of income, non-pecuniary damages and damages for permanent impairment to body or health. Of the 17 provisions of the Italian *Codice civile* on the law of torts, 12 are reproduced; of the 30 provisions of the BGB, 15 are included. These choices certainly make the whole book very handy. On the other hand it might well be questioned whether such omissions are really necessary and appropriate. The current years are times of important legal reforms, and this even in areas as fundamental as the law of torts.<sup>6</sup> In such times comparative law plays a particu-

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<sup>5</sup> For more information the reader might want to consult the book: Tort Law of the European Community, edited by *H Koziol* and *R Schulze*, 2008.

<sup>6</sup> See *B Winiger* (ed), *La responsabilité européenne de demain: projets de révision nationaux et principes européens = Europäisches Haftungsrecht morgen – Nationale Revisionsentwürfe und europäische Haftungsprinzipien* (2008); see for China, fn 1.

larly important role and it would arguably be interesting to see exactly which issues are currently covered by the different national codes and statutes. In this respect it is arguably regrettable that some of the provisions are left out, even if they may not be applied on a daily basis. In some chapters the rules on tort in the civil codes are fully reproduced (for example, in the chapters on Austria, Greece, and the Netherlands), showing that this is perfectly feasible without overloading the book. (Should some provisions be left out in further editions of the 'Basic Texts', it would be helpful to indicate precisely where that was done).

In England and Ireland, tort law is largely uncodified. With respect to these jurisdictions, Oliphant and Steininger's work makes an original choice: short and very concise extracts of the leading court decisions are reproduced for the law of England (the responsible author is Ken Oliphant himself) and Ireland (the author is Eoin Quill). They cover a whole series of central issues of tort liability and are almost as concise as the articles of continental codifications that are reproduced in the book. This is an innovative and highly welcome approach to the presentation of the law of England and Ireland in the 'Basic Texts'. And it is a perfect alternative to simply saying nothing for want of legislation in these jurisdictions.

In the 'Basic Texts', the codal and statutory provisions are reproduced in English, without providing the original texts. In the past, other works have made a different choice.<sup>7</sup> Adding the original language versions has advantages: It would make it possible for the users to verify the translations before using them, provided they have the necessary language skills. However, most of the country reporters cite websites on which the original language versions are available. In times of the internet, this might be a viable compromise. (Where these references are missing, such as in the report on Denmark, they could be added in further editions.)

The quality of a project on translation of legal texts depends largely on the persons who organise it. The persons responsible for the 'Basic Texts' are experienced tort lawyers and comparatists: Ken Oliphant teaches tort law at the University of Bristol, authors several leading text- and casebooks on English tort law, is general editor of the *Journal of European Tort Law (JETL)* and Director of the Institute for European Tort Law (ETL) at the Austrian Academy of Sciences in Vienna. The ETL, together with the European Centre of Tort and Insurance Law (ECTIL), is currently the leading research centre for comparative tort law, certainly in Europe and possibly worldwide. Barbara C Steininger has worked for

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<sup>7</sup> One might, for example think, of *H Grothe/A Spickhoff/Cvon Bar* (eds), *Deliktsrecht in Europa – Systematische Einführungen, Gesetzestexte, Übersetzungen* (1994), which provided texts from 12 jurisdictions in the original language versions with (German) translations.

first ECTIL and then ETL for more than a decade and been involved in many of their projects. The country reports were prepared by tort lawyers and comparatists from the respective jurisdictions, many of whom have been cooperating with ETL or ECTIL for a long time. All the translations were reviewed by lawyers and native English speakers on the ETL and ECTIL staff. The book was dedicated to Helmut Koziol, who founded both organisations and remains Director of ECTIL, and was presented to him on the occasion of the 10<sup>th</sup> Annual Conference on European Tort Law in Vienna in April 2012.

Some of the texts reproduced are taken from English language translations that were already available (this is the case for Latvia, Slovenia and Switzerland); others were updated and/or the translation was revised (such as the texts from Bulgaria, Greece, the Netherlands, Norway, Poland and Portugal). Yet others were translated specifically for inclusion in the ‘Basic Texts’ (for example, the texts from Austria, the Czech Republic, Germany, Hungary, Italy and Slovakia). The translations are of outstanding quality and perfectly coherent in terms of the terminology used. The texts benefited greatly from the tremendous experience in translating (or revising translations) that the ETL and ECTIL staff have acquired over the last decade. If the translations are compared to translations available on the internet (including some of the semi-official translations on government websites), it is evident to what extent the ‘Basic Texts’ benefited from the vast legal and language skills of ETL and ECTIL staff in Vienna (notably Colm McGrath, Vanessa Wilcox und Emma Witbooi). Working with many of the texts available before the ‘Basic Texts’ required a lot of imagination and ingenuity – as much as the translators of such texts applied when translating them into English. The translations made available in the ‘Basic Texts’ change this. They set new standards!

Many national legislators are currently working on the reform of their domestic tort law.<sup>8</sup> These reforms will further enhance the importance of legislation in the field of tort and will give even more importance to reliable translations of these provisions. At the same time, the reforms make it evident how important it is that the ‘Basic Texts’ be regularly updated (and possibly completed with provisions that were omitted in the first edition). Given the impressive productivity and output of the ETL and ECTIL there should be a good chance that the ‘Basic Texts’ will be kept up-to-date and that new editions will be made available on a regular basis. They will then become an important and reliable source for comparative work in the field of tort. The Basic Texts, the Digest of European Tort Law and the European Tort Law Yearbooks will make a truly multilateral comparison

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<sup>8</sup> See *Winiger* (fn 6).

from a European perspective much easier in the future. These three fruits of the activities of the ETL and ECTIL are of interest well beyond Europe. One might just think of the case of *Tabet v Gett* in which the High Court of Australia heavily relied on the rich information provided in vol 1 of the Digest only a short time after its publication.<sup>9</sup> The ‘Basic Texts’ now offer an easy and reliable access to the legislation on which the European case-law in the law of tort is built, and they will from now on often be the starting point for comparative research in the law of tort.

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<sup>9</sup> *Tabet v Gett* [2010] High Court of Australia 12 (21 April 2010) <[www.austlii.edu.au/au/cases/cth/HCA/2010/12.html](http://www.austlii.edu.au/au/cases/cth/HCA/2010/12.html)>.

