Singapore Journal of Legal Studies
[2025] 232–241

BOOK REVIEWS

Common Law and Civil Law Perspectives on Tort Law BY MAURO **BUSSANI**, ANTHONY J **SEBOK** AND MARTA **INFANTINO** [New York: Oxford University Press, 2022. 262 pp. Hardcover: £93.00]

Common Law and Civil Law Perspectives on Tort Law is a comparative work that provides both contextual insights into and practical analysis of tort law in selected common law and civil law jurisdictions, including France, Italy, Germany, England, and the United States. The book is divided into eight chapters, with Chapter 1 setting out the place of tort law in the respective legal systems. This is in some ways the most interesting chapter as it locates tort law within the social, cultural, and political contexts of the jurisdictions. As the authors note, tort law reflects to some degree the values a society places on risk allocation, mutual obligations, and protection of the vulnerable. It is dynamic and shaped both by legislation and judicial decisions. While the book purports to deal with tort law, in fact it is largely concerned with the tort of negligence.

The authors offer three insightful observations on the historical development of law and its role in nation-building and regulation. First, the authors highlight the dichotomous development of law in the Western world both as a bureaucratic tool for nation-building and an egalitarian virtue to defend individual liberty and rights. Second, they note the importance of differences in terms of the balance between labour and capital. The United Kingdom and Europe to a large extent developed strong labour movements while the United States favoured capital interests over labour. These socio-political developments influenced tort law. The effect of the ebb and flow of the labour movement on the economic torts, for example, has been articulated by Lord Hoffmann (L Hoffmann, "The Rise and Fall of the Economic Torts" in S Degeling, J Edelman & J Goudkamp, eds, *Torts in Commercial Law* (Sydney: Law Book Co, 2011)). Third, they point to the ideology of individualism which has influenced tort law in some jurisdictions, giving rise to litigious cultures as individuals use tort law to advance their rights claims.

Chapter 1 goes on to set out three axes of comparative analysis of the tort systems in the common law and civil law jurisdictions. The first is based on comparing tort law across the jurisdictions based on fault; the second is based on the requirement of a duty owed to the plaintiff; and the third is based on the nature of the interests that are protected. The rest of the chapter compares the five jurisdictions on these three axes. France is described as having the most general – and generous – approach with no requirement of duty or wrongdoing. Any unreasonable act that causes harm to another person may give rise to a cause of action. However, tort liability is restricted

by contractual liability; thus, where there is a contract the claimant may not pursue a tort claim and is limited to contractual remedies. The German approach differs from the French; instead of a general liability regime, German tort law builds on specific legal rights or protected interests. German courts have continued to expand these protected interests, including expanding contractual liability to include duties to third parties. The Italian approach is described as sitting somewhere between the French and the German.

Chapter 2 deals with the evolution of tort law from strict liability to negligence, focusing on the standard of care. The reasonable person is here described as "the person without qualities" (at 26). Much of the discussion here is elementary. It is unfortunate that there is little discussion of the general concept of duty apart from fleeting reference to American jurisprudence. The chapter ends with a discussion of strict liability, drawing on land-related cases including *Rylands v Fletcher* [1866] LR 3 HL 330 and *Cambridge Water Co v Eastern Counties Leather* [1994] 2 AC 264. Chapters 3 to 6 deal with specific areas of negligence, namely personal injury in the context of medical negligence; non-pecuniary losses for primary victims; liability to secondary victims for psychiatric harm and economic loss; and liability for pure economic loss.

Chapter 3 provides some data on the extent to which healthcare is provided by the State in the various jurisdictions. Not surprisingly, in European jurisdictions, including England, public healthcare services account for between 75% and 90% of all healthcare. The US stands starkly apart with only 50% of healthcare services provided by the State. A significant difference between common law and civil law jurisdictions is the extent to which contract law is relied on for medical negligence claims. In the US and the UK, medical negligence claims are almost exclusively dealt with under tort law, unlike the civilian jurisdictions where contract law is relied on. While Italy and Germany permit actions in both contract and tort, France has an exclusionary approach, privileging contract over tort. The test for the standard of care is comparable across the jurisdictions, except that in the civilian jurisdictions medical negligence may also amount to a criminal offence and the court has the power to award compensation under the criminal process.

Chapters 4 and 5 deal with non-pecuniary loss and compensation to secondary victims. France has the most liberal regime for recovery of non-pecuniary losses, followed by Italy and Germany with the most restrictive rules. Some quantitative data is presented showing the quantum of damages for non-pecuniary losses in the US far exceeding that in Europe by a factor of 10 to 1 (at 110). The chapter on secondary victims deals with those who suffer psychiatric harm upon witnessing a catastrophic incident affecting a primary victim and those who suffer economic loss as a result of death or injury to a primary victim, although the focus is on the former. The rules are similar to secondary victim rules in the common law with France having the most liberal rules, allowing even distant relatives to make a claim if they can prove loss.

Pure economic claims are covered in Chapter 6. Here again, France has the most liberal regime, with economic loss recoverable if it is caused by an unlawful act. The authors argue that the French experience suggests that the fear of indeterminate liability which has served to restrict liability in the common law may have been exaggerated. The Italian approach is similar to the French, with liability hinging on

whether the injury was wrongful or unjustified. This is a question that is resolved by the judiciary on a case-by-case basis. Germany has the most restrictive approach to strict liability as a result of its rights-based approach to tort law. The list of rights set out in the German legislation does not include financial interests. This restriction has been ameliorated in part by judicial interpretation which has included some aspects of financial interests. The mainstay of economic loss claims in Germany remains with contract law which has an expansive approach both in terms of implied terms and lowering of the privity barrier.

Chapter 7 sets out the law on causation. In France, causation rules for tort law are developed by the courts based on legislation on causation for contract law which limits damages "to the direct and immediate consequences of the breach of contract" (at 178). Italian law does have legislation dealing with causation in tort cases, and is broadly similar to French law. The legislation expressly provides for contributory negligence and joint and several liability. Germany also has a statutory framework dealing with causation in tort law. The authors demonstrate that all jurisdictions adopt a similar approach, dealing with causation in fact and causation in law. The final chapter deals with products liability.

This book is an easy read and sets out the various positions clearly with some comparative analysis and critique. Its structure could have been improved by having two parts – one on general principles and one on specific examples. Thus, causation could have been dealt with early, immediately after the chapter on standard of care. The treatment of the duty of care was scant and that is unfortunate as the duty question is perhaps the most intriguing. There was some repetition and overlap between the chapters that could have been avoided, freeing up space for more in-depth analysis. The theoretical framework set out in Chapter 1 was not fully utilized in the comparative analysis, thus taking away from the richness of the analysis. These are minor quibbles. I believe the book will be of interest to scholars and students who wish to learn more about tort law in common law and civil law jurisdictions.

KUMARALINGAM **AMIRTHALINGAM**
Professor
Faculty of Law, National University of Singapore

Criminal Law in Singapore BY STANLEY **YEO**, NEIL **MORGAN** AND **CHAN** WING CHEONG [Singapore: LexisNexis, 2022. lxxxii + 1056 pp. Softcover: S$267.05. eBook: S$213.64]

This work is essentially an update of the authors' earlier three editions of *Criminal Law in Malaysia and Singapore* (2007, 2012, 2018) but with one crucial difference. This latest monograph deals only with Singapore, and no longer pairs it with Malaysia. One may justifiably wonder why this separation has taken 57 years more than the political event which created the two independent jurisdictions in 1965. There are two ways of regarding this phenomenon. First, one can attribute this to the near universality and timelessness of the original Indian Penal Code which both Singapore and Malaysia inherited during the days of Empire. Notwithstanding progressively growing divergences in the political, social, cultural and economic