

THE BORDERLINES OF TORT LAW

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Interactions with Contract Law

Edited by
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À notre collègue Suzanne Carval, *in memoriam*

PREFACE

This book by the European Group on Tort Law (EGTL) deals with the borderlines between tort and contract and, more specifically, with the distinctions between liability in contract and liability in tort established in the legal systems under analysis. By exploring the main differences between the tortious and contractual legal regimes when damage occurs, it aims to shed some light on where the respective borderlines are currently traced in the corresponding legal systems, and what trends there are to suggest the course of the future development of the distinction.

The book includes 15 national reports, a report giving the perspective of an economic analysis of law and, finally, a comparative report. The reports analyse the differences across legal systems as regards the rules that may be relevant to the issues at the borderline between contract and tort and the extent to which actions in tort and actions in contract are mutually exclusive and, when this is not the case, how their concurrence is regulated. The reports also devote some attention to specific situations, such as pre-contractual liability and professional liability, where the contractual or tortious nature of the claim is hotly debated in some legal systems, and end with an analysis of the borderline problems between tort and contract posed by 16 hypothetical case scenarios. Finally, the comparative report, based on the national reports and on other materials, provides a number of comparative conclusions.

The book has been made possible thanks to the ongoing financial and organisational support of the European Centre of Tort and Insurance Law (ECTIL) and the Institute for European Tort Law (ETL) in Vienna, as well as that of the Institute of European and Comparative Private Law (IECPL) at the University of Girona. The generosity of the National Research Program of the Spanish Ministry of Sciences, Innovation and Universities, through research grants (DER2013-40613-R and DER2016-77229-R) awarded to the IECPL in Girona over the last few years, has also been crucial in allowing the organisation of several meetings of the EGTL.

On behalf of the Group, I would like to thank the current director of the ECTIL and the ETL, Ernst Karner, and the former director of both institutions and one of the founding fathers of the EGTL, Helmut Koziol, from whom many of us have learned so much, for their ongoing support and encouragement. I would also like to thank the staff of the Institutions that have made this project possible, especially Lisa Zeiler, Donna Stockenhuber, Kathrin Karner and Andrew Bell at

the ECTIL and the ETL, in Vienna, and Maria Olivas and Maria Subirós at the IECPL in Girona. Our thanks are also owed to Ann-Christin Maak-Scherpe and Ahmed Hegazi at Intersentia.

As editor of this book, I would also like to thank personally my colleagues who have written the national and the economic perspective reports for their infinite patience with a project that has been ongoing for many years.

Finally, I would like to emphasise that at a meeting of the Group held in Girona in 2018, the European Group on Tort Law decided to dedicate this book to our late colleague, Suzanne Carval, whom we all miss very much and will never forget.

Miquel Martín-Casals
Girona, June 2019

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