Table of Contents

A Brief Introduction: The Origins of Punitive Damages
(*Sir Henry Brooke*) 1

Country Reports 5

Punitive Damages in England
(*Vanessa Wilcox*) 7
I. Introduction 7
II. The Three Categories: The Categories Test 8
III. The Cause of Action Test Abolished 19
IV. Factors Relevant to an Assessment of Punitive Damages 25
V. The Case against Punitive Damages 32
VI. Alternative Remedies – Gain Based Damages 51
VII. Other 53
VIII. Conclusions 53

Punitive Damages in France
(*Jean-Sébastien Borghetti*) 55
I. Introduction 55
II. A Hidden Presence of Punitive Damages? 56
III. Towards the Official Introduction of Punitive Damages? 67

Punitive Damages in Germany
(*Nils Jansen and Lukas Rademacher*) 75
I. Introduction 75
II. The Debate on Punitive Damages 76
III. Conclusions 85

Punitive Damages in Hungary
(*Attila Menyhárd*) 87
I. Introduction 87
II. Definition of Punitive Damages 88
III. Function and Rationality of Punitive Damages 89
IV. Regulatory and Policy Context 89
V. No Punitive Damages in Hungarian Tort Law 91
VI. Punitive Elements in Hungarian Private Law 92
VII. Policy Aspects of Punitive Damages in Hungarian Tort Law 98
VIII. Conclusions 102

Punitive Damages in Italy
(*Alessandro P. Scarso*) 103
I. Introduction 103
II. Compensation for Damage in Personal Injury Cases 104
III. Punitive Damages under the Italian Legal System 106
IV. Statutory Provisions and the Punitive Purpose of Tort Law 109
V. Compensation for Damage and the Standard of the Wrongdoer's Conduct 111
VI. Conclusions 113

Punitive Damages in Scandinavia
(*Bjarte Askeland*) 115
I. Introduction 115
II. Elements of Punitive Damages under Norwegian Tort Law 116
III. Elements of Punitive Damages under Swedish Tort Law 120
IV. Elements of Punitive Damages under Danish Tort Law 121
V. Conclusions 122

Punitive Damages in South Africa
(*Johann Neethling*) 123
I. Introduction 123
II. Law of Delict 123
III. The Law of Contract 135
IV. Copyright Law 136

Punitive Damages in Spain
(*Pedro del Olmo*) 137
I. Introduction 137
II. Specific Legally Based Arguments 140
III. Other Arguments 151
IV. Difficulties and Plays on Words 152
V. Conclusions 153

Punitive Damages in the United States
(*Anthony J. Sebok*) 155
I. Introduction 155
II. The Three Eras of American Punitive Damages 159
III. The Purposes of Punitive Damages in American Tort Law 169
IV. Rules for Juries (Or Other Factfinders) 180
V. Constitutional Constraints 189

Punitive Damages in European Law
(*Bernhard A. Koch*) 197
I. Introduction 197
II. Conflicts of Concepts in Legislative Drafts 197
III. "Effective, Proportionate and Dissuasive" 200
IV. Equal Treatment of Damages Awards 202
V. Punitive Damages by Way of Import 205
VI. Competing for a New Standard 207
VII. Conclusions 208

SPECIAL REPORTS 211

Punitive Damages and Liability Insurance
(*Ina Ebert*) 213
I. Introduction 213
II. The Insurability of Punitive Damages 214
III. Conclusions 217

Economic Analysis of Punitive Damages
(*Louis T. Visscher*) 219
I. Introduction 219
II. Economic Reasons for Punitive Damages: Deterrence 222
III. Economic Reasons for Punitive Damages: Punishment 229
IV. Tension between the Goals of Deterrence and Punishment 232
V. Conclusions 236

Punitive Damages From a Private International Law Perspective
(*Marta Requejo Isidro*) 237
I. Introduction 237
II. Service of Claim Seeking Punitive Damages 239
III. Recognition and Enforcement of Punitive Damages Awards 245
IV. Punitive Damages as Part of the Applicable Law 252
V. Conclusions 254

Aggravated Damages
(*Anthony J. Sebok/Vanessa Wilcox*) 257
I. Introduction 257
II. Aggravated Damages under English Law 258
III. Aggravated Damages in Other Jurisdictions 266
IV. Aggravated Damages under American Law 269

Punitive Damages: Admission into the Seventh Legal Heaven or Eternal Damnation?
Comparative Report and Conclusions
(*Helmut Koziol*) 275
I. Introduction 275
II. The Common Law 276
III. Continental European Legal Systems 282
IV. The European Union 288
V. Shifting From Punitive to Preventative Damages 289
VI. Arguments in Favour of Punitive Damages and Counterarguments 293
VII. Further Arguments against Punitive Damages 296
VIII. Additional Observations 303
IX. Conclusions 305

ANNEX 309

Index 323

Publications 331