

Workshop Liability and Insurance/Procedural Law

Ius Commune Conference 2009

Friday, 27 November (13.45 - 15.45)

Location: Faculty of Law, Bouillonstraat 1-3

Room: Statenzaal

[Participants](#)

Theme: The power of injunctive relief in tort

Introduction: In traditional European scholarship, tort law is perceived by many as merely a system of awarding compensation after the tortious event, with an underlying assumption that such awards may give ex ante incentives for careful behaviour. Others hold the view that awarding damages in tort is merely the outcome of the tort process and that tort law begins with a substantive right of the potential victim not to be injured. The second view has less difficulty with blending tort law with, e.g., procedural law and other parts of the law of obligations that shape the position of claimant and defendant. Indeed, it can be argued that injunctive relief, judicial instruction on the defendant's future behaviour, interest group actions and disgorgement of profits are more easily fitted into the tort law system if we depart somewhat from the idea that tort law is about compensation in the first place.

In this workshop, keeping this distinction in mind we aim at sketching a picture of the legal surroundings of tort law in Europe (most notably procedural law, but also economic and empirical insights) and analyze the extent to which these surroundings shape tort law. Then, possibly, the more fundamental issue can be addressed to what extent tort law actually can steer behaviour, preferably ex ante, rather than merely shifting bags of money from defendants to claimants. Questions that arise in this respect are:

- Is it the task of private law to prevent wrongs from happening? If so, what would be the best/most efficient/just way of doing so?
- And can tort effectively vindicate rights? If so, how?
- In this respect: to what extent are courts able and willing to grant injunctive relief (positive and mandatory injunction) in European legal systems?
- What role does or can tort law play in that regard? Is tort law only used as the exclusive ground for the requested injunction/relief or are the goals of tort law itself also served here?
- How does the domestic procedural setting of such relief influence tort law and vice versa?
- Is injunctive relief available for (wrongful) acts that hurt some but at the same time generate large benefits for society? Should there be?

- Chair:** **Remco van Rhee** (Maastricht University)
- 13.45 – 14.20 **Anthony Ogus & Louis Visscher** (EUR)
A law and economics perspective on injunctive relief
- 14.20 – 14.30 **Short discussion/questions**
- 14.30 – 15.05 **Caroline Cauffman** (Maastricht University)
Tort law injunctions and (other) cease and desist orders in competition law
- 15.05 – 15.30 **Group discussion on all previous lectures**
- 15.30 – 15.45 **Closing remarks by Remco van Rhee**