

Workshop Liability and Insurance

Ius Commune Conference 2005

Friday, 2 December (09.15 - 12.15)

Location: Pollock Halls of Residence

Buildings: St. Leonard's Hall

Room: Nelson

Overview participants workshop

Theme: Liability of Supervisors

The *Liability & Insurance Workshop* is scheduled to deal with the liability of supervisors towards third parties. This is a topic that has received some attention across Europe lately, especially due to troubles in the financial world. However, the topic is broader than that because governmental failure in preventing certain types of disasters or mass accidents could also lead to supervisory liability questions. The theme of 'liability of supervisors' could thus lead to an interesting discussion and, giving that is a rather new topic, to new thoughts and ideas.

Instead of focusing on the exact legal definitions of what is supervision and on the precise borders of what would and would not constitute a tort (or maybe contractual breach) of a supervisory body towards a third party (not being the person under supervision) in several legal orders, this workshop aims at finding and weighing the legal and extra-legal arguments for and/or against liability of supervisors. This approach is taken because the legal systems will differ in this respect anyway while at the same time a sudden change in the state of the law might not be expected, at least not if not accompanied by a thorough analysis of what's really behind the current state of the (positive) law. That analysis concerns the policy arguments (and their value and weight) behind decisions made by judges and legislators.

In order to find these arguments, the topic will be dealt with first from a common law and second from a civil law perspective, since at first sight it looks as if the two systems might be rather different in this respect (the common law being reluctant in awarding damages while the Civil law systems seem to be less inclined to be reluctant). Of course, a mixed legal system should be studied as well, and Scotland would be a logical choice. The presentations will be held very brief in order to have a lot of room for the discussion. This discussion should then be used to find the common ground between the different approaches, and to decide on what arguments should really be considered relevant and what arguments should not. Preferably, a list of relevant and mistaken arguments might be drawn up.

Chair: Prof.Dr. M.G. Faure

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| 09.15 | Prof.Dr. M.G. Faure (Maastricht): <i>Opening remarks</i> |
| 09.20 | Prof.Dr. C.C. van Dam (BIICL): <i>The three most important Common Law arguments against or for liability of supervisors</i> |
| 09.35 | Prof.Dr. G.E. van Maanen (Maastricht): <i>The three most important Civil Law arguments against or for liability of supervisors I: a Dutch perspective</i> |
| 09.50 | Prof.Dr. H. Cousy (Leuven): <i>The three most important Civil Law arguments against or for liability of supervisors II: a Belgian perspective</i> |
| 10.05 | Short break for Coffee/Tea |
| 10.15 | Dr. E. Reid (Edinburgh): |

The three most important Scottish arguments against or for liability of supervisors

- 10.30 Mrs. M. Vanmeenen (Leuven):
The special case of supervision by the judiciary: an example from Belgium
- 10.45 Panel Discussion
This will be interrupted by brief statements (on the status quo up to that point) by Prof.Dr. J. Neethling (5 minutes, after 25 minutes of discussion) and later on by Prof.Dr. A. Akkermans (5 minutes, after 50 minutes of discussion) and Prof.Dr. M. Faure (5 minutes, after 75 minutes of discussion)
- The discussion will be led by the Chair and will be interrupted by a second short break.
- 12.05 Prof.Dr. I. Giesen (Utrecht):
Closing the gap: The list of arguments to be used and not to be used, based on the discussion of the day