

Workshop Liability and Insurance

Ius Commune Conference 2008

Friday, 28 November (13.45 - 15.45)

Location: Faculty of Law, Oudemanhuispoort 4

Room: C217

[Participants](#)

Thema: Issues of Enforcement in Tort and Insurance

Traditionally, tort law is about compensating wrongs committed by means of awarding damages. But is this traditional view suitable for the 21st century? Consider for instance these questions:

- If individuals attach value to apologies, should there not be a remedy giving 'a right to apology'?
- If tort law procedure is increasingly used as a tool for societal fact-finding ('I want to know why my daughter died in this mass disaster and whether it could have been prevented by the local government'), does procedural law reflect this function?
- If economic theory tells us that 'trivial damage' - damage spread in small amounts over a large group of individuals - can be bad for economic welfare, should the 'de minimis' maxim then not be reconsidered?
- If the EU considers introducing some form of punitive damages in competition law infringements in order to incentivize consumers and competitors to act as private prosecutors, should we then not embark on a rediscovery the foundations of private law enforcement?
- If an insurer wilfully obstructs payment of the policy, is the mere 'sanction' of statutory interest enough to deter the insurer from such company policy?

If we consider these questions, we cannot but consider the underlying goals of tort and insurance.

If the choice of enforcement is instrumental to the goals of substantive law, what then is (are) the goal(s) of tort and insurance law? Are the remedies available in private law merely of a compensatory nature or do they also allude to prevention (or even to other goals)? How do 'remedies' often considered to be of a strictly procedural nature - e.g., declaratory judgements, prohibitory and mandatory injunctions, recurring penalty payments, mass claim settlement procedure, imprisonment - influence the functions of tort and insurance? And how does private law compete with other systems of regulating behaviour such as administrative law, criminal law, or even self-regulation? In this workshop, we aim at addressing these issues. Possibly, the outcome of the day will be the development of a framework for tort and insurance law remedies in the 21st century!

- Chair:** **Michael Faure** (UM/EUR)
- 13.45 – 14.15 **Laura Tilindyte** (UM)
Liability for occupational injury: does it help prevent accidents?
- 14.15 – 14.25 Short discussion
- 14.25 – 14.55 **Kiliaan van Wees** (VU)
The power of Apology
- 14.55 – 15.25 **Johann Neethling** (UNISA)
The right to an apology and punitive damages as enforcement issues in tort law: A South-African and comparative perspective
- 15.25 – 15.45 Discussion and closing remarks