

# Ius Commune Conference 2018

## Workshop: Liability & Insurance I

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Friday, 30 November (09.00 – 12.00)

Building: Aristo Amsterdam

Room: 2.03

### Participants

**Theme**      **Public Authorities and Tort Law: a Difficult Marriage?**

Due to the rapid growth and diversification of public services in modern day society, the government has become inextricably intertwined with many aspects of everyday life. In their participation in society, public authorities are not confined to public law. They can also engage with their citizens through private law. They can, for example, enter into contracts seemingly as private actors. Thus, an ever increasing number of persons comes into contact with diverse acts by a broad and varied range of public authorities.

This intensification of contact between public authorities and private individuals entails an increased risk of events occurring that wrong one of both parties. A question of particular interest is whether the relationship between the parties lends itself to a tort suit in order to remedy said wrong. Can a public authority act as an appellant or, conversely, be summoned as a defendant in such a suit? How to evaluate tort law as an instrument to pressurize and influence public authorities? Do public limitations exist? In what way – if at all – does private tort law have public aspects? Is there a strict divide between private tort law and public law, and if so where should the line be drawn?

The difference in nature of the opposing parties poses peculiar challenges. After all, governments hold state power, which not only grants them certain privileges, but also burdens them with the obligation to promote the interests of all their citizens. Therefore, they are not analogous to self-interested private actors, but represent the collective society as a whole. Does that nature neatly fit the framework of tort law?

The workshop on 'Liability and Insurance' addresses the possible public aspects of private tort law. It offers an opportunity to reflect on the issues that can arise when public authorities meet private tort law and to discern which challenges this legal area bordering both fields of law can pose.

The workshop starts with two presentations that concern the general and fundamental questions that surround state liability. They focus on the policy arguments at play in construing and molding the tortious framework of wrongful behavior by public authorities. The next set of speakers addresses a more specific topic. How does the nature of certain norms – or in a broader sense: rules – influence state liability? After a lunch break the program continues with two more specific topics of tort law that both deal with issues of a more environmental nature. Opening with a general theory on state liability and consequently establishing that the possibilities for state liability are varied and extensive, the program comes to a full circle with a final presentation that revolves around the remedies for wrongful acts by public authorities.

- Chair:**           **Prof.Dr. Ilse Samoy** (KU Leuven)
- 09.00 – 09.10    Opening Remarks
- 09.10 – 09.30    **Prof.Dr. Anne Keirse** (Utrecht University)  
*Policy Argumentation in Public Authority Liability: a Comparative Law Perspective*
- 09.30 – 09.50    **Pieter Gillaerts** (KU Leuven)  
*Tort Law as a Policy Instrument: Public Law in Disguise or in Chains? A Fundamental View on the Use and Usefulness of Tort Law for Public Goals*
- 09.50 – 10.20    **Discussion**
- 10.20 – 10.50    **Coffee break**
- 10.50 – 11.10    **Dr. Paul Verbruggen** (Tilburg University)  
*Liability for Standards Development in Europe and the US. Between Public and Private Authorities*
- 11.10 – 11.30    **Françoise Auvray** (KU Leuven)  
*Is the 'Direct Effect' of International Norms a (Pre)Requisite for State Liability?*
- 11.30 – 12.00    **Discussion**