

Ken OLIPHANT: Comparative Report**Four Case Clusters in 2011**

- Basis of Liability
- Liability for Intentional Acts of Others
- Non-Pecuniary Loss
- Interference with parental rights

I. Basis of Liability

- Starting point: liability for 'misconduct' (fault/unlawfulness) tends to blur into strict liability
- Cases:
 - Cass (Italy) 29 August 2011: blood transfusion
 - SC Hungary 20.184/2010: brain damage at birth
 - SC Estonia, 9 March 2011 : flood after road works
 - SC Lithuania, 18 November 2011: water slide
- Observation: liability for misconduct and strict liability better viewed as two points on a sliding scale, rather than distinct categories

II. Liability for Intentional Acts of Others

- Issue: when is one person (A) liable for harm intentionally caused by another person (B)?
- Cases:
 - SC Portugal, 15 December 2011: bank manager's fraud
 - SC Lithuania, 15 March 2011: insulted nightclub bouncer
 - Scotland, *Thomson v Scottish Ministers* [2011] CSOH 90: murder by prisoner on short release
 - HC Denmark, *Danica White*, UFR 2000.4900: pirates!
 - Ireland, *Flanagan v Houlihan* [2011] IEHC 105: publican owing no duty to prevent customer's drunk driving
- Observation: personal and vicarious liability shade together; same factors are often relevant to both

III. Non-Pecuniary Loss

- Rebelling against the restrictive approach to NPL of the Codes?
 - §253 I BGB: 'only ... in the cases specified by statute'
 - Art 1045 Malta CC: 'The damage which is to be made good by the person responsible [is] actual loss..., expenses [and] loss of earnings'
 - Nordic systems: (criminal) violation of person or personality rights
- Cases:
 - Const Ct Malta, *Abela v Malta Shipyards*, 11 April 2011: tort damages for NPLP for human rights' violations?
 - SC Sweden, 3 January 2011: distress at break-in of home
 - SC Norway, 17 February 2011: attempted child sexual abuse
 - SC Finland, 1 February 2011: mother's abduction of child (below)
 - Cass (Italy), 23 March 2011: emotional distress from car removal

IV. Interference with parental rights

- To compensate or not, and (if so) for what?
- Cases:
 - SC Finland, 1 February 2011: mother's abduction of child; mental suffering; violation of privacy and hence human dignity
 - [Cf STS (Spain) 30.6.2009: abduction an abuse of rights]
 - OGH (Austria), 12 April 2011: mother turning child against father; damages for mental harm amounting to injury to health
- Cf damages for marital infidelity?
 - OGH (Austria) 20 February 2003: no
 - Cass (Italy) 15 September 2011: yes! (if injury to mental health or human dignity)