

TORT LAW IN AUSTRIA

WILLIBALD POSCH

2.9



Wolters Kluwer
Law & Business

Tort Law in Austria

Willibald Posch

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Tort Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Ingrid Boone



Wolters Kluwer
Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4638-0

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	15
§1. THE GENERAL BACKGROUND OF THE COUNTRY	15
I. Geography	15
II. History	15
III. Political System	18
IV. Economic and Social Values	22
§2. LEGAL SYSTEM	23
I. Primacy of Legislation and Codification	23
II. Position of the Judiciary	25
III. Distinction between Public and Private Law	27
IV. Sources of Private Law in General and of Tort Law in Particular	27
§3. FUNCTION OF THE LAW OF TORTS	30
§4. RELATIONSHIP BETWEEN TORTS AND CRIMINAL LAW	31
§5. RELATIONSHIP BETWEEN CONTRACTUAL AND DELICTUAL OR TORTIOUS RESPONSIBILITY	33
§6. PROTECTED INTERESTS	36
Part I. Liability for One's Own Acts	41
Chapter 1. General Principles	41
§1. UNLAWFULNESS AND FAULT	41

Table of Contents

§2. CONCEPT OF FAULT 44

§3. DUTY OF CARE 46

§4. CAPACITY (INFANTS, MINORS) 46

Chapter 2. Specific Cases of Liability 49

§1. LIABILITY OF PROFESSIONALS 49

 I. In General: Higher Statutory Standard of Care for ‘Experts’ 49

 II. Medical Practitioners 50

 III. Legal Practitioners 53

 IV. Builders and Architects 54

 V. Others 55

§2. LIABILITY OF PUBLIC AUTHORITIES 56

§3. ABUSE OF RIGHTS 57

§4. INJURY TO REPUTATION AND PRIVACY 58

§5. INTERFERENCE WITH CONTRACTUAL RELATIONS 61

§6. OTHER: LIABILITY FOR UNSAFE CONDITION OF PUBLIC ROADS 61

Part II. Liability for Acts of Others 65

Chapter 1. Vicarious Liability 65

§1. EMPLOYER/EMPLOYEE 65

§2. INDEPENDENT CONTRACTORS 67

§3. LIABILITY OF LEGAL ENTITIES FOR ACTS OF THEIR ORGANS 68

Chapter 2. Liability of Parents, Teachers and Instructors
 (for Minors and Insane Persons) 70

Chapter 3. Liability for Things and Animals 71

Part III. Forms of Strict Liability 73

Chapter 1. Road and Traffic Accidents 73

Table of Contents

Chapter 2. Product Liability	77
Chapter 3. Liability for Services	84
Chapter 4. Environmental Liability	85
Chapter 5. Others	89
§1. STRICT LIABILITIES UNDER THE GENERAL CIVIL CODE	89
§2. OTHER STRICT LIABILITIES FOR DANGEROUS ACTIVITIES	90
Part IV. Defences and Exception Clauses	95
Chapter 1. Limitation of Action	95
Chapter 2. Grounds of Justification	97
§1. CONSENT	97
§2. NECESSITY	98
§3. SELF-HELP AND SELF-DEFENCE	98
§4. OTHERS	99
Chapter 3. Contributory Fault	101
Chapter 4. Exemption Clauses	103
Part V. Causation	105
Part VI. Remedies	109
Chapter 1. General Principles	109
Chapter 2. Kinds of Damage	111
§1. INDIVIDUAL AND COLLECTIVE DAMAGE	111
§2. DIRECT AND INDIRECT DAMAGE	111

Table of Contents

§3. PECUNIARY AND NON-PECUNIARY LOSSES 113

§4. PURE ECONOMIC LOSS 116

§5. ACTUAL AND FUTURE DAMAGE (LOST PROFITS) 117

§6. OTHER COSTS 118

§7. MITIGATION OF DAMAGES 119

Chapter 3. Assessment and Compensation of Damages 120

§1. OBJECTIVE VERSUS SUBJECTIVE 120

§2. CONCRETE VERSUS ABSTRACT 121

§3. METHODS OF ASSESSING DAMAGE 122

§4. EQUITABLE LIMITATION OF DAMAGES 123

§5. METHODS OF PAYMENT 124

 I. Lump Sum 124

 II. Annuities 125

 III. Others 126

Chapter 4. Personal Injury and Death 127

§1. PECUNIARY LOSSES 127

§2. NON-PECUNIARY LOSSES 127

Chapter 5. Various Damages (Property) 131

Chapter 6. Interference with Collateral Benefits 132

§1. INSURANCE 132

§2. SOCIAL SECURITY 132

Chapter 7. Other Remedies 134

§1. RESTITUTION FOR UNJUST ENRICHMENT 134

§2. INJUNCTIVE RELIEF 134

Table of Contents

§3. PUNITIVE DAMAGES	135
Selected Bibliography	137
Index	143

Tort Law in Austria

Willibald Posch

This book was originally published as a monograph in the International
Encyclopaedia of Laws/Tort Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Ingrid Boone



Wolters Kluwer

Law & Business

Published by:

Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4638-0

This title is available on www.kluwerlawonline.com

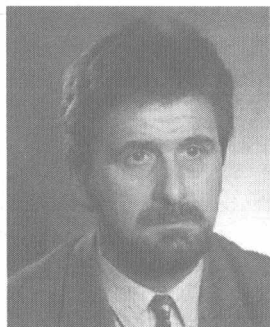
© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Willibald Posch was born on 18 August 1946 in Graz, Austria. He studied at the University of Graz and became Dr iuris there in 1969. He worked at the University of Salzburg School of Law and taught at the McGeorge School of Law in Edinburgh and Salzburg before being appointed in 1983 Assistant Professor and in 1988 Full Professor for Civil Law and Comparative Private Law at the University of Graz.

From 1991 until 1999 Professor Posch was Director of the Research Institute for European Law at the University of Graz School of Law. Since 1984 he is the head of the Department for Private International Law, Comparative Private Law and Uniform Private Law in Graz.

Professor Posch is the author of numerous books and articles and he contributed to several books, journals and looseleaves.

Table of Contents

The Author	3
List of Abbreviations	11
General Introduction	15
§1. THE GENERAL BACKGROUND OF THE COUNTRY	15
I. Geography	15
II. History	15
III. Political System	18
IV. Economic and Social Values	22
§2. LEGAL SYSTEM	23
I. Primacy of Legislation and Codification	23
II. Position of the Judiciary	25
III. Distinction between Public and Private Law	27
IV. Sources of Private Law in General and of Tort Law in Particular	27
§3. FUNCTION OF THE LAW OF TORTS	30
§4. RELATIONSHIP BETWEEN TORTS AND CRIMINAL LAW	31
§5. RELATIONSHIP BETWEEN CONTRACTUAL AND DELICTUAL OR TORTIOUS RESPONSIBILITY	33
§6. PROTECTED INTERESTS	36
Part I. Liability for One's Own Acts	41
Chapter 1. General Principles	41
§1. UNLAWFULNESS AND FAULT	41

Table of Contents

§2. CONCEPT OF FAULT	44
§3. DUTY OF CARE	46
§4. CAPACITY (INFANTS, MINORS)	46
Chapter 2. Specific Cases of Liability	49
§1. LIABILITY OF PROFESSIONALS	49
I. In General: Higher Statutory Standard of Care for 'Experts'	49
II. Medical Practitioners	50
III. Legal Practitioners	53
IV. Builders and Architects	54
V. Others	55
§2. LIABILITY OF PUBLIC AUTHORITIES	56
§3. ABUSE OF RIGHTS	57
§4. INJURY TO REPUTATION AND PRIVACY	58
§5. INTERFERENCE WITH CONTRACTUAL RELATIONS	61
§6. OTHER: LIABILITY FOR UNSAFE CONDITION OF PUBLIC ROADS	61
Part II. Liability for Acts of Others	65
Chapter 1. Vicarious Liability	65
§1. EMPLOYER/EMPLOYEE	65
§2. INDEPENDENT CONTRACTORS	67
§3. LIABILITY OF LEGAL ENTITIES FOR ACTS OF THEIR ORGANS	68
Chapter 2. Liability of Parents, Teachers and Instructors (for Minors and Insane Persons)	70
Chapter 3. Liability for Things and Animals	71
Part III. Forms of Strict Liability	73
Chapter 1. Road and Traffic Accidents	73

Table of Contents

Chapter 2. Product Liability	77
Chapter 3. Liability for Services	84
Chapter 4. Environmental Liability	85
Chapter 5. Others	89
§1. STRICT LIABILITIES UNDER THE GENERAL CIVIL CODE	89
§2. OTHER STRICT LIABILITIES FOR DANGEROUS ACTIVITIES	90
Part IV. Defences and Exception Clauses	95
Chapter 1. Limitation of Action	95
Chapter 2. Grounds of Justification	97
§1. CONSENT	97
§2. NECESSITY	98
§3. SELF-HELP AND SELF-DEFENCE	98
§4. OTHERS	99
Chapter 3. Contributory Fault	101
Chapter 4. Exemption Clauses	103
Part V. Causation	105
Part VI. Remedies	109
Chapter 1. General Principles	109
Chapter 2. Kinds of Damage	111
§1. INDIVIDUAL AND COLLECTIVE DAMAGE	111
§2. DIRECT AND INDIRECT DAMAGE	111

Table of Contents

§3. PECUNIARY AND NON-PECUNIARY LOSSES	113
§4. PURE ECONOMIC LOSS	116
§5. ACTUAL AND FUTURE DAMAGE (LOST PROFITS)	117
§6. OTHER COSTS	118
§7. MITIGATION OF DAMAGES	119
Chapter 3. Assessment and Compensation of Damages	120
§1. OBJECTIVE VERSUS SUBJECTIVE	120
§2. CONCRETE VERSUS ABSTRACT	121
§3. METHODS OF ASSESSING DAMAGE	122
§4. EQUITABLE LIMITATION OF DAMAGES	123
§5. METHODS OF PAYMENT	124
I. Lump Sum	124
II. Annuities	125
III. Others	126
Chapter 4. Personal Injury and Death	127
§1. PECUNIARY LOSSES	127
§2. NON-PECUNIARY LOSSES	127
Chapter 5. Various Damages (Property)	131
Chapter 6. Interference with Collateral Benefits	132
§1. INSURANCE	132
§2. SOCIAL SECURITY	132
Chapter 7. Other Remedies	134
§1. RESTITUTION FOR UNJUST ENRICHMENT	134
§2. INJUNCTIVE RELIEF	134

Table of Contents

§3. PUNITIVE DAMAGES	135
Selected Bibliography	137
Index	143