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**ДЕЛИКТНЫЕ ОБЯЗАТЕЛЬСТВА И ДЕЛИКТНАЯ ОТВЕТСТВЕННОСТЬ В  
АНГЛИЙСКОМ, НЕМЕЦКОМ И ФРАНЦУЗСКОМ ПРАВЕ**  
- Tort Liabilities and responsibility for tort in English, German and French law

Учебное пособие Tutorial

The book under review is, as far as the author can see, the first dealing with the complex question of tortious or delictual responsibility on a comparative basis for Russian readers. This work is of a particular value for Russian readers but also for foreign scholars in view of the fact that the Russian law has been restated only fairly recently in the Grashdanski Kodeks (GK), which seems to be the latest and in that respect most modern legal codification in Europe. As the Russian legislation is still quite young, it cannot be expected that courts and scholars can already provide answers to the many questions which go with the topic. It is therefore helpful for students and practitioners alike to have this book which opens the eyes for the long standing European tradition in this field of law.

The book consists of 4 chapters. Chapter 1 ( p. 24 - 91) gives a general introduction to the law of delictual responsibility. Chapter 2 deals with the English law ( p. 92 – 293). Chapter 3 presents the German legislation and judiciary ( p. 295 – 346) and Chapter 3 ( p. 348- 68) covers the French law.

By far the longest chapter, longer than the German and French chapters combined, is on English law. This can be justified by the fact that the German and French law, at first glance at least, are more related to each other and that the English law, as can be expected, has some typical traits which need additional explanation. However, as the GK basically follows the continental European system (it is largely based on the German concept together with some French elements) the present author thinks that it would have been advisable, to give more emphasis to these two legislations, as it can be expected that Russian readers and Russian courts would profit most from a comparison of these two legislations instead of the English law. On the other hand, it is to be admitted that English law being the mother of the common-law family is of worldwide importance and that it does have an increasing influence on modern legal trends in Europe.

At the end of each chapter the reader finds questions for self-examination, recommended literature and a list of books in other languages. Here the author of this review finds ground for some criticism. Although it is to be appreciated the German and French languages are not anymore widely known in Russia, it would have been good, to give original citations or at least recommendations of law-books in these languages. Instead, references to German or French law are almost invariably taken from books in English language.

Chapter 1 (Introduction) gives an overview on a comparative basis. In European law almost everything starts with old Roman law. The *institutiones* of emperor Iustinian (6<sup>th</sup> century) say what liability is about: *alterum non laede - do not hurt another person*. If you do, you must make good the damage done. From this seemingly simplistic basis derive all questions of modern-day law of liability. The book aptly sets out the Latin roots of this law (p. 11) and emphasizes the great divide in private law: *contractual liability* and *delictual liability* (p. 12 ss). Parties to a contract enter into obligations voluntarily and must live up to these or pay damages if they don't. Non-contractual or delictual liability almost always derives from some "un-normal" or even illegal act. This is expounded with references to the three legislations under scrutiny in this book. The main characteristics of English, German and French law are explained in a scholarly way, e.g. concept and tort liability base (p.24), concept and content of "General tort." (p. 66) versus singular delictual acts (p.70). Modern trends like liability without fault (p. 43) product liability (p. 44) and presumption of fault (p. 47) are explained and compared in the three legislations.

## Chapter 2 – English Law

The law of delictual liability in German and French law is regulated in an abstract legal language: §§ 823 Bürgerliches Gesetzbuch – German Civil Code and Art. 1382 Code Civil, while the English law on torts exclusively rests on case law. This is why the English law of torts is not a clearly defined area of law. It is more an assembly of various aspects of delictual or rather non – contractual liability. While in German and French law we could speak of one law of delictual liability, in English common law we should rather speak of many laws covering the pertaining questions. It should therefore be avoided to speak of an "English "norm" as has been done (p. 92).

It would go beyond this book review to comment the various aspects of English law of tort. Suffice it to name just a few. The book rightly says that English law is not of Roman origin (p.92). But this does not mean that there are really substantially differences with German or French law. In most cases the difference lies in the systematic approach. This is, why our book diligently addresses the various aspects of the English law on torts, eg : Primary tort liability (p.145), violence or battery( p. 170), remoteness of damage (p. 230) et al.

The difference in the systematic approach can have bearings on e.g. procedural questions like presumption of fault, causation, force majeure etc. In this context it may be noted that English has a law of evidence, which differs from continental law. Differences, which exist between English and continental law, are therefore often differences in procedural law. A special difficulty in dealing with English law, or common law as a whole, is that English speaking legal writers are not in the habit of

taking knowledge of other legislations. Therefore they often do not realize that, what in their opinion is typical for English law, is really a common tradition of European law. Example : On p. 97 our book cites an American author as saying: *In the Anglo-American tradition of tort law differs from the contractual right; This division distinguishes the common law of European civil law....* This is some irritating, as the same distinction exists in German, French and other continental laws.

### Chapter 3 German Law

The book gives a good historical overview in pointing to the former *Gemeine Recht* (literally translated = *common law*) which developed from Roman sources. The Roman background is at least partly responsible for the highly systematic approach of German law in this and other fields.

The book describes the German law in 17 sub-chapters. Concept (p. 295 ss) : The basic norm is § 823 BGB, which seems to have been the model for Art. 1064 GK. The latter says: *A damage done to a person or to the property....* must be compensated. This is what § 823 says in slightly other words. A damage claim is given only if a certain right (*absolute Recht*) has been hurt - life, physical integrity, health, liberty property or any other right of that quality. Negatively said: If damage is done in any other way, there is no claim, unless certain named or enumerated tort (eg § 824, 826 ss) has been committed by the defendant. The book then goes through some of these, e.g. Liability for damage caused by animals (p. 334)

Special attention is given to damage caused by defects of goods (*Produkthaftung*; p. 337) and other modern developments like liability for damage caused by defect product design (*Konstruktionsfehler*; p. 342) or for mistakes in the instructions and manuals (*Instruktionsfehler*; p. 343). These are, however, mostly not German in the strict sense, but the German transformation of recently enacted European law.

### Chapter 4 French law

This chapter has 8 sub-chapters. It starts with a very important and justified remark: Tort Law in France is focused primarily on the injured party (p. 349).

*Sedes materiae* are art. 1382 ss code civil (p. 353). The equivalent to *tort* in English law and *illegal act (unerlaubte Handlung)* in German law is *faute*, literally translated "wrongdoing". As this word comprises the objective fact of a damage caused, the illegality of the act and responsibility or guilt including negligence of the defendant the notion of *faute* gives rise to many systematic problems.

A special feature of French law is emphasized on p. 385. Art. 1384 provides for a responsibility for *fait des choses – act of things under your control*. French courts have developed this to encompass a very wide scope of delictual liability without fault. If an umbrella in your hands causes damages to another person you are liable for damages, no further proof of negligence etc. being necessary, unless the defendant can prove that the umbrella "acted" under *force majeure*.

Generally it can be said that the French law and German law as well as other laws in the European Union have a tendency to converge. This is mainly attributable to the

constant influence exerted by the European bureaucracy particularly in modern areas like consumer protection , product liability and absolute liability without fault. As has been said: the systematic approach is different but the results in most cases would turn out to be about the same in French and German Law – and in most cases also in all English law.

### Summary

The book is a “Учебное пособие – Reader” for comparative delictual liability. In that it is a very good introduction into the field delictual liability in Europe. Some questions, however, remain untouched eg liability by omission, which is a special feature in German law. But this book is already quite comprehensive. The reader will appreciate that he is not flooded with too detailed information. Books on law of tort, in its many forms, do fill whole libraries. The reader will be grateful that he has here an easily accessible and readable book which leads him to the pertaining literature, if he wants to acquaint himself with further details.

One point of criticism may however be raised. Russian law of torts, as laid down now in article 1064 ss Grashdanski Kodeks, is left out. The author of this review feels that Russian students would profit from this book even more, if a comparison had been made with their own Russian law

It is recommended, that this book be printed and widely read

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