

ABSTRACT

LEGAL LIABILITY: THEORETICAL AND COMPARATIVE ANALYSIS OF PURE ECONOMIC LOSS

The purpose of my thesis is to introduce the concept of pure economic loss and its setting in the jurisdictions of France, England, Germany and the Czech Republic. The comparative study of pure economic loss reveals that granting compensation for economic loss frequently interferes with the economic loss rule (or exclusionary rule), which states that a plaintiff can not recover damages for a pure financial loss. Legal doctrines provide little insight as to why liability should, or should not, be denied. On the other hand, economic models of liability provide some valuable guidance for classifying various categories of economic loss, and identifying cases in which denial of recovery for economic loss would lead to inefficient outcomes. A law and economics analysis shows that a key factor in determining the optimal scope of the economic loss rule is in the relationship between pure economic loss and social loss. Economic loss should be compensable in torts only to the extent that it corresponds to socially relevant loss. *A plaintiff cannot recover damages for a purely private economic loss.* Our *hypothesis* is that, although not formally adopting this economic criterion, European courts are attentive to efficiency considerations. The comparative analysis reveals that, in a few situations, the application of the optimal liability rule finds obstacles in entrenched principles of civil liability.

The thesis is composed of eight chapters. Chapter One is introductory and defines basic terminology used in this thesis: *pure* economic loss and *consequential* economic loss. Chapter Two lists and describes the standard case of pure economic loss: *ricochet loss*, *transferred loss*, impairment of public services and infrastructure and reliance on flawed data and professional services. Chapter Three provides an outline of most typical arguments against compensation of pure economic loss (i.e. in support of the exclusionary rule): the problem of foreseeability of pure economic loss, the *floodgates argument*, the hierarchy of protected interests and the historical perspective. Chapter Four introduces the liability systems of France, England, Germany and the Czech Republic with a view to pure economic loss. Chapter Five analyzes the economic grounds of liability and the economic loss rule. We suggest that the economic loss rule may be understood as a way to restrict liability to only socially relevant externalities. A restatement of the exclusionary rule consistent with the economic model of optimal liability requires distinguishing between private losses that generate a corresponding social loss and losses that are merely private, in the sense that, while generating a prejudice for some individuals, generate an offsetting benefit for other subjects so as to result in no net social loss. The exclusionary rule would state that: ‘a plaintiff can not

recover damages for a purely *private* economic loss.’ Chapter Six explores the economics of the standard pure economic cases which are described in Chapter Two and illustrates the optimal scope of liability. Finally, Chapter Seven involves a comparative case studies of pure economic loss in France, England, Germany and the Czech Republic. This chapter deals with two typical cases of *ricochet loss* (i.e. *cable cases* and the *loss of star* cases), the *loss of use* as a typical instance of *transferred loss*, an economic loss ensuing from traffic accidents as an example of closure of public services and infrastructure and professional liability of lawyers and expert liability as two representative cases of economic loss ensuing from reliance on flawed information. Conclusions are drawn in Chapter Eight, which recognises that the main aim of the thesis to prove my initial hypothesis has been reached. It is suggested that the issue of pure economic loss is addressed both theoretically and practically in Czech case law and academic literature. This thesis intends to provide an incentive to such a discussion.

KLÍČOVÁ SLOVA / KEY WORDS

Prostá ekonomická škoda / pure economic loss

Právní odpovědnost / legal liability