Book Reviews

Christian von Bar, *The Common European Law of Torts – Volume Two – Damage and Damages, Liability for and without Personal Misconduct, Causality, and Defences*, Oxford: Clarendon Press (2000) pp. 1–607 and i–cxx.

This book is the companion volume to von Bar's treatment of foundations, continental Europe's codifications, Scandinavia's liability laws, EU unification efforts, and the law of tort in the context of private, constitutional and criminal law, which appeared with OUP as Volume One in 1998. Both volumes are translated from German. They can be contrasted with Walter van Gerven's 'Cases, Materials and Text on National, Supranational and International Tort Law' by Hart Publishing (1998 and 2001), and the The Common Law of Europe Casebook Project, in which Christian von Bar is also participating. While the casebooks are designed for student and classroom use, von Bar's volumes are for the serious academic use, representing a monumental and exhaustive research effort concerning the characteristics and commonalities of European tort law. This book will be an invaluable resource for further research and analysis and is more than impressive in both scope and depth.

The author deals first with the somewhat confusing distinctions which appear in the various European systems regarding loss, damage, and damages. Clearly the most confused treatment of these elements can be found in English law. The analysis of this issue is especially interesting and enlightening. Other topics covered, in order, are the theory and characteristics of liability for personal misconduct, liability without misconduct, causation, and general defences. Among these, the treatment of liability without personal misconduct (known as strict liability in some systems) stands out in the way it deals with the theoretical underpinnings of each major system and the differences in approach and corresponding results.

One of the implied purposes of the book is to argue that there are enough similarities within each of the major tort systems to establish a unified system of tort law of some form throughout Europe (or at least within the European Union). However, it sometimes appears as though the basic differences in approach in the countries analysed by von Bar are so diametrically opposed to each other that to think that they may be harmonised within the European Union is not always plausible. One could consider, for example, the same basic factual situation that arise in two distinct jurisdictions, one in England and the other in France, and come to completely different results. This illustrates the almost insurmountable differences which exist. To

the present reviewer it seemed, after having read von Bar, that to achieve any serious harmonization in the EU would require nothing less than throwing out the entire common law approach of pigeon-hole type tort structure and rewriting either the German or French tort code. While, from a theoretical standpoint, such a change may be desirable in the EU, it seems unlikely that England will be willing to give up its various forms of tort, or Germany to opt for a less restrictive and less theoretical approach such as found in the French Code Civil. Hence, to promote the idea of a common law of tort in Europe by emphasising the 'similarities' in the national systems seemed somewhat akin to trying to pound a square peg into a round hole. Naturally, these problems do not in any way diminish the achievement of von Bar.

Stylistically, the book is very well written/translated, both instructive and lucid. Sometimes it is somewhat heavy reading, with many pages consisting of equal parts text and footnotes. Occasionally, the author uses more or less lengthy phrases in French and other languages, which may be unintelligible to some readers and should have been supplemented by English translations in footnotes. Nevertheless, the rich bibliography and comprehensive tables of translated national legislation are very powerful arguments in and of themselves for acquiring this book.

Overall, it is an achievement that can only be commended and highly recommended to its potential readers.

William Burns

Thomas M.J. Möllers, *Die Rolle des Rechts im Rahmen der europäischen Integration*, Tübingen: Mohr Siebeck (1999), pp. 1–119 and i–viii.

Ulrich Beck once said that unless the national politics of European States become part of the transnational system of European integration, they would continue to react to the threats of globalisation, instead of pro-actively shaping globalisation for the opportunities it holds. This is the point of departure of Thomas Möllers' essay. He sees common tasks of the European States, such as overcoming the lipothymia of the nation state at the doorstep to the 21st century, as well as common goals, such as the desire to play a more constructive role in the world alongside the USA. Regional integration in the form of the European Union potentially provides the means. However, Möllers also diagnoses a fundamental weakness in this integration process: while it is built on law, the quality of its laws is often left wanting. One reason for this weakness, according to the author, is the lack of a common European methodology of law, which was as yet simply not developed, in spite of many common legal traditions of the EU Member States.

On the basis of this analysis, the second half of the book is dedicated to providing some stepping stones for a future common European methodology of law. Möllers focuses on methodology at the EU level, on methodology at the national level, when