Index

Accursius 169, 170, 171
Africa
  African Charter on Human and Peoples' Rights 81–2
  Art 25 73
  Protocol on ACtHR 82
  reparatory powers 82
African Court of Human and Peoples' Rights 75
Ethiopia 1960 Civil Code 12
South Africa
  personal injury awards 329
  pure economic loss 294
Sub-Saharan see Sub-Saharan Africa
tort law 12
agency 3, 407
  respondeat superior 31
Albania 31–2
American Convention on Human Rights 78–9
  Art 63(1) 79
Aquinas T 174–7, 185
Aristotle 166, 174–5, 185
Asia-Pacific
  Association of Southeast Asian Nations 75
  Australia personal injury awards 326
causation and karma 23
China see China
  Hong Kong personal injury awards 326–7
India see India
  Indonesia Dou Donggo law 27
Japan see Japan
New Zealand
  common law tradition 11
  compensation 188
  no-fault compensation 11, 188
Philippines 250–1, 260
Solomon Islands Kwaio law 27–8
South Korea double-actionability rule 52
Southeast Asia causation 23
Taiwan 43, 44, 49, 55–6
  Civil Code 404
  product liability 521
Thailand
  karma 21
  liability 29
  product liability 251
Aubry, C 180
Azo 170

Barbeyrae J 117
Bentham, J 101
Blackstone, W 101, 161, 164
Boissonade, GE 374, 377, 380
Brazil 539–40, 552–3
  1916 Civil Code 541, 542
  1988 Federal Constitution 549, 550
causal relation 547, 548
  adequate causality theory 547
  concurrent causation 548
  exemptions 547–9
  force majeure 548, 549
  fortuitous cases 548, 549
consumer accident concept 539
Consumer Protection Code (Law No. 8.884/90) 541, 545, 548
damage 547, 549
  agents' liability 551–2
  compensation for 549
  moral 549–50
  property/material 549
  reflex/bounce 550
  reparation measured by extent of 551
  victim contribution to 547–8
damages 544
  collective 550
  decreasing quantum of compensation 547–8
  full compensation of 550–51
data protection 352
extracontractual civil liability 539, 548
  and nominem laedere principle 540
  and obligations 540
  tort as 539
fault 541, 542
  essentiality for liability 543
  lato sensu 542
  no-fault distinction 547
  presumption of 543
  stricto sensu 542–543
Federal Constitution 550
liability 539, 540–42, 544–5, 549
  causal relation see above
  contractual 539, 540
  damage see above
determining 539–40
  dualist system 540–41
Comparative tort law

extracontractual civil see above
fault see above
general 545
obligation distinction 540
responsibility elements 541
strict see below
strict liability 541–2
product liability 547
risky activity 545–7
state treatment of 543–4
unlawful act 542
see also Latin-America

Bulgaria 170

Canada
causation preponderance of evidence
standard 279
personal injury awards 324–5
proximate cause 268
pure economic loss (Quebec) 293
causation 22–5, 264, 283
adequacy theory 268
adequate 368
alternative 267–8
burden of proof 279
but-for test 22, 25, 267–8, 281, 305, 308, 462, 492
restraining 268
and cognitive sciences 265–6
context dependency 270–71, 280
defendant's subjective behaviour/state of mind 269, 270
plaintiff's social standing 270
potential externalities 271
relative loss-bearing capacities 270
substantive and procedural technicalities 271
type of accident 270
‘direct’/‘indirect’ 268
dual 280–2, 281
Anglo-American practice 281
evidentiary rules 282
factual causation/proximate cause distinction 281–2
Wagon Mound No. (1) 282
factual 267
and force majeure 22–3, 269
cognitive biases 23
foreseeability 268
formulae 267
conflict between 269–70
functions 267, 367
increase of statutory attention 271–2
legal 267
legal actors
courts 275–6
legal scholars 273–5
legislators 271–3
legislative circumspection 271
and liability regimes 276–8
and natural losses 269
no liability without 264
proximate cause 268
reciprocal view of 265
relativeness of 265
scope of the rule 268
significance of facts 276
and sociology 266–7
sphere of the risk 268
standard of proof 279–80
taking the victim as found 269
variable approaches 24
Western mode of 265–6
see also individual jurisdictions/regions
cause of action 25, 269, 270, 278, 305, 415, 461, 516

China 5–6, 397–8, 425–6
1901 Draft of Civil Code of Great Qing 404
Civil Code (2020) 397, 410–11
Cultural Revolution 408
Emperor Wu (Han dynasty) 399
General Principles of Civil Law (1986) 408, 409
guocuo 416
guoshi 416
imperial
Confucianism 399
corrective justice 400–401
damage to property 402–3
distributive justice 400, 401–2
fault 403–4
Li 398–400
personal injury 403
liability 414
fault liability 414–17
liability in equity 418–19
application 421
and financial status 420–22
and social status 419–20
presumption of fault 417
strict 417–18
private law 409
abolition of 408
reinstatement 409
Qing Dynasty (1644–1911) 404
Republic of
1929 Civil Code 404
employers’ vicarious liability 407–8
familial/individualistic shift 406–7
fault liability regime 407
reasonable care standard 408

tort law as source of obligations 407–8
tort law 409–10
damage 409–10
doctoral differences in 410–11
fault liability regime 409–10
legislation 409
liability in equity 409
liability see above
personal injury awards 327–9
personality rights 424–5
protection of rights granted by public
law 411–12
pure economic loss 412–15
remedies 32
scope 410–14
strict liability 202 409
Supreme People’s Court opinions 409
Tort Liability Law (2010) 202, 409, 410
vicarious liability 410

traditional law 398

West Han Dynasty 419

Westernized civil law system 397–8
codification 404
and customs 405–6
effectiveness of transplants 404–5
and imperial law 406

Xinhai Revolution (1911) 406

see also Confucius

choice of law

in product liability 56–9
content-neutral rules 56–7
favor laesi principle 56

see also conflict of laws; product liability

civil law 160, 184–5

common law commonalities 160
consolidation 168–9
corpus iuris civilis 169
German 160, 168

harm 160

Late Scholastics 174–7
commutative justice 174, 175
compensation 175–7
fault 174, 175
iniuria 176
liability 168–9, 275–6
absent fault 169
medieval & early modern jurists 169–71
fault 169
grievance 169–71
medieval canon law 171–4
compensation 173–4
decretals 171

fault 172–3

northern natural law school 177–8

Roman origins 166–8

see also individual jurisdictions/regions;

Roman law

Coase, R 265

common law 161, 184–5

action in negligence 162

American 160
cause in fact/remoteness distinction 281
civil law commonalities 160
damages for pure economic loss 190
fault-based liability 161–4
grievance 164–6
assault 165
battery 164–5
trespass 161–3, 166

harm 160
liability 163–4, 276
organization 161
recognized forms of action 161
strict liability 161, 162
as anomaly 162

see also individual jurisdictions; liability;
strict liability

compensation 81

adjustments 78

alternative public 140–42, 152–3, 158

as choice 143
coverage 150–52
dissemination effect 155–6
emergency 141, 144–5
financing 141
history 143–4
ideological factors 154–5
legal & institutional factors 156–8
limits 140–41, 145–6
medical misfortune 144, 146
non-state non-formal 142
political social & economic factors 153–4
and restitutio in integrum 150–51
road accidents 143, 145
tort law interaction 146–50
violent crime 143
workers’ compensation 143, 145, 155

before criminal courts 92, 96
England 91–3
France 88
Germany 90–91
Spain 88–90

damages 69

horizontal equity 144

and human rights 63–6, 69–71

functionalist approach 65–6

non-monetary remedies 69–70
Comparative tort law

as inadequate remedy 69
legislative 141
monetary 30
of moral injury 70
see also damages; human rights; reparation
conflict of laws 35, 60
false conflict 50
lex loci delicti see lex loci delicti
'multistate' torts 35
party autonomy 55–6
private international law codifications 60–61
rules of conduct and safety 53–5
USA 36–7, 39–41, 42–3
see also choice of law
Confucius 399
Confucianism 397, 399, 400, 401
concept of family 402
Doctrine of the Mean 402
Great Learning 401
see also China
contingency fees 134, 239, 244, 245, 260, 277
Covid-19 pandemic 141, 348
Council of Europe 66
Convention on Human Rights and
Bio-Medicine 232
ECHR 232
Art 13 76
Art 14 350
Art 41 76, 79
ECtHR 68, 75, 76
human rights system 76–8
principles of use of AI 346
Recommendation (85) 11 (1985) 96
crime 84
victim 93–7
Council of Europe Recommendation
(85)11 (1985) 96
Directive 012/29/EU 96–7
England 94
France 93, 94
Germany 95–6
Italy 93–4
UN Declaration (1985) 96
crime/tort interaction 84, 110–11
burdens/standards of proof 98–9
causes 108–10
competence 109
constitutional values 109
efficiency & regulation 109
fairness certainty intellectual
robustness 109
intelligibility of legal system 108
personal motivation 109–10
criminal compensation 87–93, 96
defences 106
demarcations 85–7
enforcement of orders 100
England 106, 107
equality v hierarchy 106–8
France 106, 107
Germany 107–8
homicide 105
indicia 86–7
institutions 85
integrating external standards 104–5
England 104–5
Germany 104
the Netherlands 104
Spain 104
legal actors 87
medical law 105–6
normative theories 101–3
prescription & limitation periods 99–100
prior determinations of criminal court 97–8
Spain 97–98
procedure 87
separation/interchangeability 108
Spain 106, 107
substance 103–6
USA 107
see also compensation
culpability 3, 86, 297, 425, 426, 462
customary rules 13–16, 450, 465
damages 305, 336–8
aggravated 310
amount prediction 344
automatic classification tools 340
bereavement 350
case law 341–2
data mining 342, 345, 346
text mining 342, 343–4
collectability 31
for economic loss 305
pure economic loss 190
exemplary 80
heads of damages 341, 342, 344
impact of technologies on 338–41
machine learning analysis 339, 344–6
predictors 340
use of AI 346
moral 69
nominal awards 69
for non-economic loss 305
non-pecuniary 305, 306–8, 318, 321, 322,
329, 331
changing concept of 344, 345
consolation money 385–6
impact of technology on 338–41
pecuniary 69, 73, 305, 391, 457
Index 557

personal injury see personal injury
professional liability 227–9
punitive 80–81, 277, 309–10
see also individual jurisdictions;
non-economic loss; pure economic loss
David, R 12
de Bellapertica, P 171
delict 46, 47, 54–5, 160, 179
general 358, 362, 372
quasi- 179
Roman conception of 163, 166
Russian conception of 357
de Molina, L 174, 175, 176
demolombe, C 173
de Pistoia, C 171
de Saxoferrato, B 171
de Soto, D 174
de Ubaldi, B 171
de Vitoria, F 174
dispute pyramid 16–19
Domat, J 178–9, 185
double-actionability rule 43, 51–2, 198
Durandus, G 170
Duranton, M 180
Durkheim, E 443–4, 451
duty of care 294, 295, 401, 434
Austria 192
breach of 191–193
in common law 190
and fault 187
France 189
Germany 4, 189
higher 4, 186, 201, 204
medical 224, 229
reasonable care 188–90, 206, 212, 394–5, 407
breach 191–3
reasonable person standard 401, 415–16, 419
enforcement
choice of law
post-dispute agreements 55
pre-dispute agreements 56
England
action in negligence 162
burdens/standards of proof 98
causation
balance of probabilities standard 279
common law tradition 11
Congenital Disabilities (Civil Liability) Act (1976) 229
Damages for Bereavement (Variation of Sum) (England and Wales) Order (2020) 350
data mining 346
European Legal Development Project 216–17
Fatal Accidents Act 1976 (Remedial) Order (2020) 350
intra-family tort 349
Judicature Act (1873) 429
liability 162
National Health Service Litigation Office 217
National Patient Safety Agency 223
personal injury awards 321, 323–4
pure economic loss 294
standard of proof in England & Wales 279
strict liability 162, 195, 432
titlement 19, 70, 194, 216, 245, 439
equality
in Islamic law 475, 479, 496, 497
principle 337–8
sovereign 80
between spouses 349–50
see also Islamic law
equity 180, 448
Dou Donggo 27
horizontal 144, 314–18, 337, 351, 353, 651
liability in 409, 414, 418–22
USA 314–15
vertical 314–18, 324, 337, 340, 351, 353
EU
Directive 012/29/EU 96
Draft Common Frame of Reference 202–3
ECJ competition jurisprudence 198–9
European Commission draft directive on the
liability for services (1991) 232
harmonisation
professional liability 231–3
Luxembourg Declaration on Patient Safety 232
Products Liability Directive (1985) 4
Regulation 2016/679 (GDPR) 351
Regulation (EC) 864/2007 (Rome II) 39, 44,
46, 48, 50, 51, 53, 54–5
Art 4 46–7, 50
Art 5 48–9, 57–8
Art 14 56
Art 17 54
TFEU 198, 199
Europe
Austria
causation 272
medical law 105
personal injury awards 321
pure economic loss 293
Belgium
data mining 346
pure economic loss 293
Council of Europe see Council of Europe
Croatia 293
Czech Republic 272–3
England see England
Estonia 273
exemption clauses 229
Finland
Patient Injuries Act (1987) 230
Patient Insurance Centre 217
pure economic loss 293
France see France
Germany see Germany
Greece 232, 293, 302, 321
Ireland 232, 318
    personal injury awards 321, 337
Italy
causation 272
crime/tort interaction 106
intra-family tort 349–50
Luxembourg 252
the Netherlands
EU integration 104
health-care finance 218–19
limitation period 99
medical liability 219, 221
omkeringsregel 226
post-dispute agreements 55
personal injury awards 321
Poland
causation 272
personal injury awards 331
pure economic loss 293
Portugal
1966 codification 53
pure economic loss 293
pure economic loss 293, 294
Romania 273
Shifts in Compensation Project 216
Slovenia 272
Spain
pure economic loss 293
Sweden
pure economic loss 293
Tort Liability Act (1972) 277
Switzerland
Civil Code 190
double-actionability rule 52
duty of care 192
owner liability 196
Yugoslavia 53
European Group on Tort Law 205
European Union see EU
‘floodgates’ problem 4
Foo Ping-sheung 406
force majeure 22–3, 24, 200, 202, 269, 548–9
burdens/standards of proof 98–9
causation 268, 271–2
degre suffisant de probabilité standard 279
Civil Code 179
Art 1242 195, 200, 211
as culmination of quest for clarity 179–80
interpretation 180
obligations in 179
quasi-delict in 179
scope 410
data mining 346
dual causation 281
fault 178
hazardous activities 195
negligence 178–9
ONIAM 217
Ordre des médecins 221
personal injury awards 321
professional conduct 221
pure economic loss 293
neminem laedere principle 292
standard of proof 279
strict liability 179, 200
Gaius 166, 174
Gény, F 180
Germany 181–4
causation 272, 274
dual 281
überwiegende Wahrscheinlichkeit
standard 279
Civil Code 183, 214
absolute/relative right distinction 184
compensation in 183
damages in 183–4
fault in 183
grievances in 183
injuries to dignity or privacy 411
liability exceptions 183
scope 410
compensation 181
crime/tort interaction burdens/standards of
proof 98–9
double-actionability rule 52, 198
duty of care 189
breach of 191
fault 181, 182–3
harm 182
liability 182
absent fault 169
exemption clauses 230
natural law theory 181
Pandektist school 182
Index

Patientenrechtesgesetz (2013) 214
pure economic loss 292
rationalism 181
Rechtswidrigkeit 5
standard of proof 279
Volksgeist 182, 185
global contingency 3
globalization 2
economic 539
Gratian 171, 172
grievance 164–6, 168, 169–71
grievances 17–18, 24, 183
Grotius, H 121, 169, 177–8, 185

Hague Convention on Products Liability Art (5) 48–9
Art 4 56–7
Art 5 56
Hague Products Convention (1972) 53
Hague Traffic Accidents Convention (1971) 53
Han Feizi 399
Harper, FV 163, 164, 165
Hastings, W 429
Heck, P 185
Hegel, GWF 189
human rights
and horizontal relationships 64
non-state actor abuses 65
right to reparation 63
states’ obligations 64–5
treaties 64
human rights and tort law 67–71, 82–3
African system 81–2
Council of Europe system 76–8
declaratory statements 70–71
hierarchical compliance 68
Inter-American system 78–81
international law 72–5
regional 75–82
court powers 75–6
relationship 67–8
scope of compensable HR infringements 74–5
state liability 71, 72–3

India 7, 13, 427–8
Bhopal disaster 430–35
Bhopal Gas Leak Disaster (Processing of Claims) Act (1985) 431
compensation 433
impact of 430–35
liability 431
settlement 431
British courts in 429–30

Carriage of Goods by Sea Act (1925) 441
chemical Accidents Rules 434–5
Civil Liability for Nuclear Damage Act (2010) 435
Code of Civil Procedure scope 441
colonial influence 429
common law tradition 11, 429
Constitution 436
Environment Protection Act (1986) 434
Indian Carriage by Air Act (1934) 441
Indian Railways Act (1890) 441
Judicial Plan (1772) 429
impact of 434–5
liability
legislation 441
state see tortious liability of the state below
litigiousness 11–12
Manufacture
Motor Vehicles Act (1939) 441
nuisance 439–41
damage standard 440
origins 439–40
private/public distinction 439
remedial measures 441
Penal Code tortious liability under 441
personal injury awards 331–2
polluter pays principle 433
precautionary principle 433
Public Liability Insurance Act (1997) 435
impact of 433
liability attribution 432
Storage and Import of Hazardous Chemical Rules 434
Storage and Import of Hazardous Chemicals Rules (1989) 434
tort law 429–30
development 441–2
largely uncodified 430
tortious liability of the state 435–9
sovereign immunity 436
Workmen’s Compensation Act 441
injury 19–22
as cultural construction 19–20
cultural factors 20
space 21
time 20–21
variances in 21–2
see also personal injury
insurance 133–9
crises 222
first-party 137–9
as form of collective responsibility 30
Comparative tort law

liability
coverage and reputational risk 137
dangerous activities 136
and fault 135
minimum coverage 134–5
and moral hazard 136–7
reduction clauses 135–6
victim compensation 133–4
risk allocation 113
social 137–8, 141, 142, 143–5, 147, 150, 218
tort law relationship 133
integrative comparative view
intentional harm 296–7
non-intentional harm 88
intentional tort 3, 31
intentional wrongdoing 3, 149, 167, 296
Inter-American Commission on Human Rights 78
International Convention for the Protection of All Persons from Enforced Disappearance 73
intra-family tort 348–51
abandonment of immunity doctrine 349
agent position 349
damages 350–51
defining family 349
infringement of spousal or parental duties 349–50
reasonable parent standard 349
Islamic law
contractual liability 483
criminal 469–70
hudad (divine prescribed punishments) 469
teft 469
Islamic tort law 6, 469–70, 516
academic studies 470–71
animal protection 502–5
cruelty 503–4
hunting 503
liability for value 504–5
theft 505
arsh (compensation) 469–70, 481
causation 491–2
alternative 493
combined 493–4
factual 492
immediate cause 494
successive or consecutive causes 492–3
civil wrongs 483
damage without legal wrong 484–5
damn (liability) 472–9
based on damage 478
based on transgression/negligence 478
definition 472–3
intention as measure of 478–9
intentional act for direct cause 478
intentional act for indirect cause 478
and kafalah (suretyship) 473
and legal permission 473–77
and obligation (iltizam) 473
and ta‘ōid/gharamah 473
unintentional act for direct cause 478
unintentional act for indirect cause 478
direct tortfeasors 490–91
diyah (blood-money/blood-wit) 469, 480–81, 482
diyah mughallah 479, 480
diyah mukha-fafah 480, 481
evidence 487
fault 490
functions 483
ghash (usurpation) 470
hukumatal-‘adl (discretionary punishment) 469, 481
interpretation 489
legal wrong without damage 485
liability
for specific punishment 482
for unspecific punishment 482–3
loss/damage in prevention of greater evil 486–7
loss/damage to avoid general harm 485–6
on motive 489–90
necessity 491
no action with assent 487–8
no mistake defence 491
no one should hurt another by word or deed 483
nuisance 489
personal protection 495–9
insult/defamation 498
newborn girls 496
privacy 497–8
societal protection balance 497
source of 496
in treaties and ordinances 498–9
unborn children 496–7
without prejudice 496, 497
women 496
property rights 488–9
protection of property 499–502
freedom of ownership 501
peaceful enjoyment of possessions 501
privacy 500
security of ownership 500–501
state acquisition 501–2
trespass 500
qisas (retaliation) 469, 479–80, 482
recognised damage 490
remedies against wrongdoer 484
remoteness
direct consequence test 494, 495
reasonable foreseeability test 494, 495
rights of another must be protected 483–4
siyal (assault) 470
sources 470–72
Hanafi school 470
Hanbali school 470
legal maxims (al-qawa‘id al-fiqhiyyah) 471
legal opinions (fatawa) 471
Maliki school 470
principles of Islamic law (usul) 471
secondary 470
Shafi‘i school 470
traditions of the Prophet 470, 472
strict liability 491, 506
damage 515–16
direct tortfeasors 511
'escape' of water 515
hadiths on 507–8
indirect tortfeasors 512–13
juristic opinions 509–13
legal maxims 508–9
in the Majallah 509, 511–12
mubasyarah (direct cause) 510
mubasyir (direct causer) 515
mutasabbib (indirect causer) 515
non-natural use of land 513–15
Qur’anic verses on 506–7
ta’addi (trespass/transgression) 510, 511, 512
tasabbub (indirect cause) 510
subsequent cases 493
sulh (compromise) 470
superiority of public interest 490
torts actionable per se 495
Israel
personal injury awards 329–31
Privacy Protection Act (5741-1981) 352
pure economic loss 294
Japan 5, 12, 13, 373–4, 392–3
1890 Civil Code 377
1895 Civil Code 12
1898 Civil Code 394–6
Book of Obligations 373
flexibility in 373
right to life see below
Commercial Code (1899) 374
consolation money 384–5, 386, 387
calculating 388–9
Constitutional Law 374
damages 388
anticipated earnings 387, 388
tables of standards 388, 389
data protection 353
double-actionability rule 51–2
duty of care 192
standard of care 196
general rule of liability 377–8
criticism of interpretation 382, 384
damages 378
holding elements in parallel 382–4
infringement of a right 377, 378, 382, 385
intention or negligence 378, 381
limitations 377–8
prerequisites 381–382
rights to be protected 378
unlawfulness 378, 379–80
kashitsu 381
law
medical 105–6
mixed nature of 374–5
modernisation through translation 376–7
uniqueness of 376–7
Meiji Restoration (1868) 374
'objectified' fault theory 382, 383
personal injury 391–2
awards 325
pollution cases 389–2
comprehensive damage 390–91
Niigata Minamata Disease 391
peculiarity of 390
personal injury suits 389–90
pure economic loss 293
remedies 32–3
right to life 384–92
and infringement of a right 385
succession of victim's right 385–7
standardised damage claim 391
statutes 396
traffic accidents 387–9
calculation of damages 388–9
strict liability 387
Westernisation of law 374
Jhering, R von 184, 185, 188
John of Salisbury 185
Latin-America 6, 517
Argentina
Aeronautic Code (1954) 526
Civil Code (2015) 526
Mining Code (1866) 526
Brazil see Brazil
civil codes 521–2, 528
Argentina 521, 523
Chile 527–8
civil law tradition 520, 537
colonisation 518
cultural diversity 518
 damages 533
 Argentina 534–5
 economic/non-economic distinction 533
 immaterial harms 533–4
 extra-contractual liability 253–7
 Argentina 523
 Colombia 253–4
 liability based on fault 523
 fault-based liability 523–4
 crisis in 524–5
 formants 524
 IACtHR 75, 78
 awards adjustment 80
 broad view of reparation 79
 jurisdiction 78–9
 on punitive damages 80–81
 legal pluralism 518–19, 521–2
 history 519–20
 official/unofficial law division 522
 legal scholarship in 535–7
 drawing on transnational trends 536–7
 focus 536
 lack of critical comparative thinking 536
 as positivistic formalistic and conceptualistic 535
 modernisation 518
 obligation
 debt 540
 liability 540
 special laws 528, 532
 strict liability 524
 Argentina 525–7
 factual basis for 529
 introduction of 525
 without fault 528–9
 tort law 521, 527, 537–8
 burden of proof 529
 constant evolution of 533
 evidence 529
 formants 532–5
 general clause of liability 527
 moral damages 531
 not autonomous 523
 purpose 533
 reparable damages 530–31

 Laurent, F 180
 League of Arab States 75
 legal stratification 14
 Leibnitz, GW 181
 lex loci delicti rule 34, 35
 closer connection exception 45
 closer connection with examples 46
 closer connection without specific examples 45–6
 common party affiliation 47
 from lex loci & common law 46–7
 UK 46
 in cross-border torts 44–5
 exceptions
 common domicile 47–9
 common party affiliation 53
 domicile in states with same law 49–50
 double-actionability rule 51–2
 Portugal 53
 pre-existing relationship 50–51
 favor laesi principle 44–5
 in intrastate torts 43–4
 see also conflict of laws
 liability 25–8, 112–13, 129, 163, 186
 allocation 117–18, 122
 negligent loss 126–7
 non-negligent loss 124–6
 causation comparative 121
 common law jurisdictions 188
 continental Europe 188, 189
 cost of accidents 112
 cost–benefit calculus 112
 cultures of 9–10
 duty of care in 186, 187
 ex delicto 97–8, 100, 102, 107, 110
 fault-based 161–4, 277–8
 game theory in 118
 grounds see negligence; strict liability
 group rules 29–30
 intent in 163
 medical see professional liability
 negligent/fault-based see negligence
 optimization problem 113
 owner 196
 primary rules 116, 118–20
 negligence see negligence
 no liability 116, 118
 secondary rules relation 117
 strict liability see strict liability
 products see product liability
 professional see professional liability
 risk based 187
 rules 116–21, 122
 secondary rules 116–17, 120–21
 apportionment 120–21
 comparative negligence 116, 120
 comparative non-negligence 117, 121
 contributory negligence 116, 120
 contributory non-negligence 116–17, 121
 no defense 116
 single penalty 119
 tort models 113–16
 Brown formalization 114–15, 118
minimization of administrative costs 113–14
reduction of total accident costs 113
risk allocation 113
triggering 160
vicarious
respondeat superior 193
see also individual jurisdictions/regions
loser pays rule 260, 308
loss 28–30
and collective understanding of victims and wrongdoers 29
consequential economic 285
cultural factors 28
making good 30–34
non-economic see non-economic loss
pure economic see pure economic loss
see also remedy

natural law 86, 174, 178, 180, 181, 185
compensation in 175
dispensation from 172
jurists 3
northern school 169, 177–8
Spanish school 174
negligence 3, 186, 187, 277
action in 162
comparative 116
conduct-based liability allocation 118
contributory 116
defenses 116, 120, 128–9
duty of reasonable care 188–90, 196
breach 191–3
precautionary care incentives 119–20, 122–3
game-theoretic framework 118–19
liability for 277
reasonable person standard 26–7
simple 122
strict liability bounds 186–7
strict liability choice 3–4
see also individual countries/regions;
liability, liability rules; strict liability
non-economic loss 5, 305–6, 334–5
absence of harmonized awards 336
compensation plans 318
invasion of privacy 310–11, 351–3
recovery for non-physical injury 310–11
within families see intra-family tort
determinants in machine learning 341–4, 345, 353
formants cryptotypes 343

path dependence 5, 217
Permanent Observatory on Personal Injury Damages 340
personal injury 306–8, 309, 353
amounts recoverable 311
automatic classification 342
awards
absence of common core 338
Australia 326
Canada 324–5
China 327–9
cross-national comparison 332–4
Denmark 321
England 323–4
Hong Kong 326–7
India 331–2
Israel 329–31
Japan 325
Poland 331
for prior work 321–2
South Africa 329
specified injuries 323
thresholds 316–17, 332
vertical and horizontal differences 338
awards variation 318–19
and legal systems 320
and national income/wealth 319
and social values 320
and social welfare 319–20
compensation
amount prediction 344
non-physical injury 348
use of AI in 347
disparity in treatment 338
emotional distress 311
equity considerations 314–18
age 318
award cap 317
disability levels 316–17
horizontal 314, 316, 337
inflation 315–16
and jurisprudence 315
type of accident 318
USA 314–15
vertical 314, 316, 317, 337
evaluating loss 311–13
ADD insurance policies 313
inequalities in 312
willingness to pay 312–13
health impairment 337, 338
impact of technologies on 338–41
loss of QALYs 317
medical evaluation 337–8
descriptive tables 337
monetary barèmes 337
Comparative tort law

methodological approaches 336–8
punitive damages 309–10
Pollock, Sir F 163
Portalis, JEM 180, 182, 185
positivism, legal 14, 86–7, 102, 535
Pothier R 178
Pound R 425
privity of contract 188, 252
product liability 236, 241
academic literature 239–41
choice of law 56–9
comparative 241
applicability 244–2
black letter rules 242–4
correlation/divergence 235–6
economics 254–5
enforcement 258–9
EU harmonisation 255–6
functionality 247–9
legal transplants 250–51
liability regimes 251–3
litigation costs 259–60
need for empirical approach 257–8
non-Western 260–61
politics 261–2
practicality 241–2
praesumptio similitudinis 246–7
history 237–9
'Chicken Pest' decision 237–8
Restatement (Third) of Torts: Products Liability (1998) 238
Thalidomide scandal 216, 237, 248–9
major developments 236–41
recommendations 262–3
as strict 193
professional liability 214, 215–16, 226–7, 233–5
Austria 218, 221
bond with claimant 214–15
causation 226
and clients' rights 223
Czech Republic 214
damages 227–9
medical negligence 228–9
pure economic loss 227–8
data 217–18
Denmark 223
England 214, 218, 221, 223–4
EU harmonisation 231–3
exemption clauses 229–30
Finland 215, 218, 230, 234
France 218, 219, 221
Germany 214, 219
history 221–3
Italy 219
medical liability 214, 217–18, 219
codification 214
contract/tort choice 220, 220–21
damages 228–9
and disciplinary board decisions 221
negligence 214–15
Nordic patient insurance scheme 230–31
Project on Medical Liability 216
proof and causation in 225–6
rise in cases 221–2
who is liable 226–7
move from tort to contract 214
the Netherlands 214, 218–19, 221–2, 224
professional conduct 221
professions 215
proof 225–6
reversal of burden of 226
research 216–17
Spain 219
standard of care 223–5
informed consent 224
institutional 225
legal profession 225
USA 222
see also individual jurisdictions/regions
Prosper, WL 163, 164, 165
Puchta GF 182
Pufendorf, S 177–8
pure economic loss 227, 284–5, 303–4
Austria 227
losses of public markets transportation
infrastructures 288–9
compensation
absolute rights 296
duty of care standard 296
flexible causal determinations 295
rigid causal techniques 295
consequential economic loss 296
appearance v. reality 291–3
conservative 293–4
liberal 293
pragmatic 294
the Netherlands 227
no common theory of 295
present/future wealth distinction 290–91
France 290
Germany 290
reliance on flawed information/services 289
ricochet loss 286–7
selective protection 297–8
Spain 227
transferred loss 287–8

Rau, C 180
remedies 10
compensation see compensation
damages see damages
injury mutually constitutive relationship 30
monetization of losses’ compensation 30–31
official/unofficial dissonance 13
preventive 70
rehabilitation 70
reparative 81
restitution 69
restoration 69–70
satisfactory 70
structural 70
unofficial enforcement 33–4
wrongful birth 24–5
remedy 30–33
as cultural construct 30
effective 73–4
right to 71
reparation
compensation see compensation
corrective justice 69
economic approach 68–9
restitutio in integrum 150
risk
allocation 113
created risk theory 546
materialization of 194–7
residual 197–9
risk-benefit theory 546
risks activity 545–7
special 193–4
Roman law 166–185
actio in factum 168
actio utilis 168
grievance 168
iniuria 166, 168
lex Aquila 166
liability in 167–8
tort/contract distinction 166
see also civil law
Rome Convention Art 4 46–7
Russia 7

causation 367–8
adequate 368
burden of proof 367–8
damage caused jointly 368–70
standard of proof 367
victim fault 370
Civil Code 356–9, 360–61, 363, 364, 365, 368–9
Civil Code (1922) 420
compensation 358
in kind 358
pecuniary 358
damage 358–62
concept of 358–9
non-pecuniary/moral 361–62
pecuniary damage in causing death 360–61
pecuniary damage to health 359–60
to property 362
proving amount of losses 359
duty of care
standard of care 196
fault 371
intent 372
negligence 372
Federation 359–60
1995 Civil code 208, 356
Supreme Court 370
general delict principle 357, 358
liability
in equity 422
joint and several 365–6, 368
limits 368
Mandatory Medical Insurance Fund 360
non-contractual obligations 355
in tort 356
unjust enrichment 356
pure economic loss 362
tort liability
delimiting 355–7
functions 357
grounds 358
wrongfulness 362–6
circumstances excluding 363–4
mentally disabled 365
minors 364–5
wrongful behaviour 362–3

Sacco, R 339
Salmond, J 163, 164, 165, 166
sanctions 10, 37, 69, 72, 189, 249
administrative 351
as evils 101
compensation as form of 81
criminal 86, 135, 137, 249
see also individual jurisdictions/regions
Study Group on a European Civil Code 205
Suárez, F 174
Sub-Saharan Africa 6, 13–14, 443–6
acceptable/prohibited conduct distinction 14
adultery 460–61
Azande people 458
causation 24
common law tort 446–8
colonial imposition 447–8
compensation 452–3
competing interests in 453
defining 446–7
interests protected 447
loss-shifting 453
origins 447
primary function 447
as protecting human interests 446
customary law 448, 468
customary law conflicts 465–7
defining 449–50
diversity of 450
as ethnic group-specific 466–7
premised on custom and practice 451
of seduction 463
customey tort law 467
adultery 460–61
applicable law 463–4
core 451
focus of 453
foundation 449–52
function 453
interests protected by 452
remedies 468
strict liability 453
effects of colonialism 447–8
enticement & seduction 461–3
in Akan customary law 461–2
automatic liability 461
in Fanti society 462
familial/marital torts 459–60
geographic scope 443
Ghana
commencement of civil actions 464–5
Constitution 448
Courts Act (1993) 463–4
definition of customary law 450
Frafra ethnic group 460
High Court (Civil Procedure) Rules 2004 (CI47) 464–5
Konkomba people 460
Slander of Women Act (1891) 457–8
Kenya 458
Index 567

kinship systems 451, 453

descent groups 451–2

legal systems 448–9
effects of colonization 448–9

liability 29

Liberia 450

Nigeria 458
definition of customary law 450

polyandry 460
polygyny 460

Uganda 458

verbal torts 452–9
abuse or insult 458, 459
accusation of witchcraft 458
damages 457
false accusation 458
imputation of unchastity (Ghana) 457–8
slander 453–4, 456

Zimbabwe definition of customary law 450

Sun Yat Sen 406

Teutonicus I 172

Third Industrial Revolution 524
tort law
central problem of 112
complexity of 34
as managing social conflicts 9, 10
principle purpose 112

traditional dispute resolution mechanisms 10

tragedy of the commons 16

Tung Chung-shu 400

Turkey
double-actionability rule 52
owner liability 196

UN

Convention on the Rights of the Child Art (39) 72–3

General Assembly
Declaration (1998) 53/144 74–5

ILC Articles 72

Remedy and Reparations Principles 75

Human Rights Committee 73

Victims’ Declaration (1985) 96

Universal Declaration of Human Rights Art 8 72

unlawfulness 5, 293, 378, 379–80, 382–4, 386, 541–2

Germany 381

Japan 381
requirement 295

unwritten codes of conduct 15

USA
action in negligence 162

American Restatement (Third) of Torts § (20) 206

causation 274, 279
preponderance of evidence standard 279

common law tradition 11

conduct-regulating rules 53

conflict of laws
choice-of-law 36–7
common-domicile cases 38–9

conduct regulation/loss distribution differentiation 37–8

lex loci delicti 36

Louisiana codification (1991) 37, 39, 40–41, 48, 50, 57, 517

Oregon codification (2009) 37, 39, 40, 41, 44, 48, 50, 57

split-domicile cross-border torts 40–41

split-domicile intrastate torts 39–40

contingency fees 134

equity in non-economic loss 314–15

Federal Patient Safety and Quality Improvement Act (2005) 223

intra-family tort 349

liability 162

litigiousness 11–12

loss allocation rules 37

loss distribution rules 37

New York Diamond Dealers Club (DDC) 15

personal injury awards 321–2

Project on Medical Liability 216

proximate cause 268

pure economic loss 294

Restatements 163–4, 165

Restatement (First) (1933) 36, 55

Restatement Second of Torts (1966) 237

Restatement (Second) (1971) 36, 196, 237

Restatement (Third) of Torts: Products Liability (1998) 238

Restatement (Third) of Torts: Liability for Physical and Emotional Harm (2010) 206, 210, 279

Third Conflicts Restatement draft (2020) 39, 40, 41

tort law objectives 37

wrongful birth 24–5

Valette, A 176

Van Gerven, W 228, 235

Voet, J 170

Watson, A 250

Wendell Holmes Jr, O 101

Wolff, C 181, 182

World Health Organization 233

Xun Zi/Hsun Tzu 400