

## Employers' Liability and Workers' Compensation

Bearbeitet von  
Ken Oliphant, Gerhard Wagner

1. Auflage 2012 2012. Buch. XL, 660 S. Hardcover

ISBN 978 3 11 026996 3

Format (B x L): 15,5 x 23 cm

Gewicht: 1077 g

[Recht > Arbeitsrecht > Arbeitsvertrag, Kündigungsschutz, Mutterschutz, Personalwesen](#)

schnell und portofrei erhältlich bei



Die Online-Fachbuchhandlung beck-shop.de ist spezialisiert auf Fachbücher, insbesondere Recht, Steuern und Wirtschaft. Im Sortiment finden Sie alle Medien (Bücher, Zeitschriften, CDs, eBooks, etc.) aller Verlage. Ergänzt wird das Programm durch Services wie Neuerscheinungsdienst oder Zusammenstellungen von Büchern zu Sonderpreisen. Der Shop führt mehr als 8 Millionen Produkte.

# Table of Contents

<b>Preface</b> . . . . .	V
<b>List of Contributors</b> . . . . .	XXVII
<b>Introduction</b> . . . . .	XXIX
 <i>Mark Lunney</i>	
<b>Employers' Liability and Workers' Compensation: Australia</b> . . . . .	1
I. Introduction . . . . .	1
A. Basic system of compensation and liability . . . . .	1
B. Interaction with other institutions . . . . .	3
C. Empirical evidence . . . . .	4
II. Workers' Compensation . . . . .	5
A. Scope of cover . . . . .	5
1. When can workers' compensation be claimed? . . . . .	7
2. Spatial and temporal dimensions of course of employment . . . . .	8
B. Compensation trigger . . . . .	10
C. Scope of protection . . . . .	14
D. Heads and levels of benefit . . . . .	15
1. Medical care . . . . .	15
2. Rehabilitation assistance . . . . .	16
3. Lost earnings . . . . .	17
4. Non-pecuniary losses . . . . .	19
5. Dependents' benefits . . . . .	20
6. Comparison with damages in tort . . . . .	22
7. Lump sum or periodical payments? . . . . .	23
E. Funding systems . . . . .	25
1. Types of system . . . . .	25
2. Contribution to the workers' compensation fund . . . . .	27
3. Incentives . . . . .	27
F. Administration and adjudication of claims . . . . .	28
1. Organisational framework of workers' compensation institutions . . . . .	28
2. Who decides claims for benefits . . . . .	28
3. Reviews and appeals: special tribunals or general civil justice system? . . . . .	29
4. Speed of claims' resolution and administrative costs . . . . .	30

G.	Rights of recourse of workers' compensation institutions . . . . .	32
1.	Recourse against employer . . . . .	32
2.	Recourse against a co-worker . . . . .	32
3.	Recourse against third parties . . . . .	33
H.	Interaction with general social welfare provision and private insurance . . . . .	34
1.	Fund of first resort? . . . . .	34
2.	Deductibility of benefits . . . . .	34
3.	Recourse of social welfare agencies, social health insurance, private health insurers against workers' compensation institutions . . . . .	35
I.	Interaction with employers' liability . . . . .	36
1.	Availability of damages in addition to workers' compensation benefits . . . . .	36
2.	Deductibility of benefits provided by workers' compensation in action against employer . . . . .	37
3.	Subrogation of workers' compensation into the claim of worker against employer . . . . .	38
III.	Employers' Liability . . . . .	38
A.	Classification . . . . .	38
1.	Contract or tort? . . . . .	38
2.	General law or a special category . . . . .	39
B.	Elements of liability . . . . .	39
1.	Liability of employers for their own acts or omissions . . . . .	39
2.	Liability of employers for the acts or omissions of their employees and others . . . . .	39
3.	Relevance of health and safety legislation in establishing liability . . . . .	40
4.	Overall a fault-based or strict liability system . . . . .	41
5.	Causation . . . . .	41
6.	Effect of victim's contributory conduct . . . . .	41
C.	Scope of protection . . . . .	42
D.	Heads and levels of damages . . . . .	43
1.	Same level as in other cases of personal injury . . . . .	43
2.	Heads of recoverable damage . . . . .	44
3.	Costs of medical care . . . . .	44
4.	Costs of rehabilitation assistance . . . . .	44
5.	Lost earnings, loss of earning capacity, and loss of pension entitlements . . . . .	45
6.	Non-pecuniary loss . . . . .	45
7.	Dependents . . . . .	46
8.	Form of payment . . . . .	46
E.	Administration of claims . . . . .	47
1.	Courts or specialised tribunals . . . . .	47
2.	General civil procedure or special procedures? . . . . .	47

## Table of Contents

3. Reviews and appeals . . . . .	48
4. Speed of claims' resolution and administrative costs . . . . .	48
F. Rights of recourse . . . . .	49
1. Against other employees or their liability insurer? . . . . .	49
2. Against third parties . . . . .	49
G. Interaction with social welfare systems and private insurance . . . . .	50
1. Deductibility of benefits received from social welfare agencies . . . . .	50
2. Recourse of social welfare agencies and private insurers against the employer . . . . .	50
H. Insurance . . . . .	51
1. Voluntary or mandatory? . . . . .	51
2. General liability insurance or special policy . . . . .	51
3. Basic principles of employers' liability insurance . . . . .	52
IV. Evaluation and Conclusions . . . . .	53
A. Compensation . . . . .	53
B. Prevention . . . . .	54
C. Overall costs . . . . .	55
D. Interaction between workers' compensation and private law . . . . .	55
E. Plans for reform . . . . .	56
F. Overall quality of each system independently and in combination . . . . .	58

*Ernst Karner and Felix Kernbichler*

<b>Employers' Liability and Workers' Compensation: Austria . . . . .</b>	63
I. Introduction . . . . .	63
A. Basic system of compensation and liability . . . . .	63
1. Historical development . . . . .	63
2. Basic system . . . . .	65
3. Relation to private law remedies . . . . .	66
B. Interaction with other institutions . . . . .	67
C. Empirical evidence . . . . .	68
II. Workers' Compensation . . . . .	68
A. Scope of cover . . . . .	68
1. Protected sphere of life . . . . .	69
2. Attribution . . . . .	70
B. Compensation trigger . . . . .	72
C. Scope of protection . . . . .	73
1. Personal injury . . . . .	73
2. Sexual harassment . . . . .	73
3. Dignitary injuries . . . . .	74
4. Property damage and pure economic loss . . . . .	74
D. Heads and levels of benefit . . . . .	75
1. Benefits in kind . . . . .	75
2. Cash benefits . . . . .	76

E.	Funding systems . . . . .	81
1.	Funding through contributions . . . . .	81
2.	Financial equalisation ( <i>Finanzausgleich</i> ) . . . . .	83
F.	Administration and adjudication of claims . . . . .	83
G.	Rights of recourse of workers' compensation institutions . . . . .	87
1.	General . . . . .	87
2.	Recourse against the employer . . . . .	89
3.	Recourse against a colleague? . . . . .	90
4.	Recourse against third parties . . . . .	91
H.	Interaction with general social welfare provision and private insurance . . . . .	91
1.	Relationship between health and accident insurance . . . . .	91
2.	Relationship between Social Insurance and Minimum Insurance . . . . .	93
I.	Interaction with employers' liability . . . . .	93
III.	Employers' Liability . . . . .	94
A.	Classification . . . . .	94
1.	General tortious fault-based and the employer's liability privilege . . . . .	94
2.	Work accidents caused by vehicles for which there is enhanced liability . . . . .	98
B.	Elements of liability . . . . .	98
1.	Fault-based liability . . . . .	98
2.	Strict liability . . . . .	100
3.	Liability for risks without fault . . . . .	101
C.	Scope of protection . . . . .	103
D.	Heads and levels of damages . . . . .	103
1.	Personal injuries . . . . .	103
2.	Material damages . . . . .	104
E.	Administration of claims . . . . .	104
F.	Rights of recourse . . . . .	105
G.	Interaction with social welfare systems and private insurance . . . . .	105
H.	Insurance . . . . .	105
IV.	Evaluation and Conclusions . . . . .	106
A.	Compensation . . . . .	106
B.	Prevention . . . . .	106
C.	Overall costs . . . . .	107
D.	Interaction between workers' compensation and private law . . . . .	107
E.	Plans for reform . . . . .	109
F.	Overall quality of each system independently and in combination	110

## Table of Contents

*Vibe Ulfbeck*

### **Employers' Liability and Workers' Compensation: Denmark . . . . .** 111

I.	Introduction . . . . .	111
A.	Basic system of compensation and liability . . . . .	111
B.	Interaction with other institutions . . . . .	112
C.	Empirical evidence . . . . .	112
II.	Workers' Compensation . . . . .	112
A.	Scope of cover . . . . .	112
B.	Compensation trigger . . . . .	115
C.	Scope of protection . . . . .	117
D.	Heads and levels of benefit . . . . .	118
E.	Funding systems . . . . .	120
F.	Administration and adjudication of claims . . . . .	120
G.	Rights of recourse of workers' compensation institutions . . . . .	121
H.	Interaction with general social welfare provision and private insurance . . . . .	122
I.	Interaction with employers' liability . . . . .	123
III.	Employers' Liability . . . . .	124
A.	Classification . . . . .	124
B.	Elements of liability . . . . .	125
C.	Scope of protection . . . . .	127
D.	Heads and levels of damages . . . . .	128
E.	Administration of claims . . . . .	130
F.	Rights of recourse . . . . .	131
G.	Interaction with social welfare systems and private insurance . . . . .	132
H.	Insurance . . . . .	133
IV.	Evaluation and Conclusions . . . . .	134
A.	Compensation . . . . .	134
B.	Prevention . . . . .	134
C.	Overall costs . . . . .	135
D.	Interaction between workers' compensation and private law . . . . .	135
E.	Plans for reform . . . . .	135
F.	Overall quality of each system independently and in combination	135

*Richard Lewis*

### **Employers' Liability and Workers' Compensation: England and Wales** 137

I.	Introduction . . . . .	137
A.	The basic system of compensation and liability . . . . .	137
1.	Tort . . . . .	138
2.	Workers' compensation . . . . .	140
3.	Why preferential compensation for workers? . . . . .	141
B.	Interaction with other institutions . . . . .	143
C.	Empirical evidence . . . . .	143

II.	Workers' Compensation . . . . .	144
A.	Scope of cover . . . . .	144
1.	Workers covered . . . . .	144
2.	Spatial, temporal and other limitations . . . . .	145
3.	Effect of the victim's contributory negligence . . . . .	152
B.	Compensation trigger . . . . .	153
1.	Accidents . . . . .	154
2.	Disease . . . . .	156
C.	Scope of protection . . . . .	159
1.	Personal injury . . . . .	159
2.	Other than personal injury . . . . .	161
D.	Heads and levels of benefit . . . . .	161
1.	Assessment . . . . .	163
2.	Rate of payment . . . . .	165
3.	Comparison of the industrial injuries pension with damages in tort . . . . .	166
E.	Funding systems . . . . .	167
F.	Administration and adjudication of claims . . . . .	168
1.	Claims and appeals . . . . .	168
2.	Tribunals not courts . . . . .	169
3.	Administrative cost . . . . .	169
G.	Right of recourse of workers' compensation institutions . . . . .	170
1.	Rights of recourse against the employer . . . . .	170
2.	Rights of recourse against a co-worker or third party . . . . .	171
H.	Interaction with general social welfare provision and private insurance . . . . .	171
1.	The sources of funding . . . . .	171
2.	Deductibility of benefits . . . . .	172
I.	Interaction with employers' liability . . . . .	173
III.	Employers' Liability . . . . .	174
A.	Classification . . . . .	174
B.	Elements of liability . . . . .	174
1.	Vicarious liability . . . . .	175
2.	Breach of common law duty . . . . .	177
3.	Breach of statutory duty . . . . .	178
4.	Effect of the victim's contributory conduct . . . . .	179
C.	Scope of protection . . . . .	180
1.	Accidents and disease . . . . .	180
2.	Personal injury . . . . .	181
3.	Other than personal injury . . . . .	182
D.	Heads and levels of damages . . . . .	184
E.	Administration of claims . . . . .	185
1.	Number and cost of claims . . . . .	186
2.	Insurers and the administration of the tort system . . . . .	187

## Table of Contents

3. The speed of settlement . . . . .	189
4. The administrative cost of tort . . . . .	189
F. Rights of recourse . . . . .	190
1. Rights of recourse against other employees . . . . .	190
2. Rights of recourse against third parties . . . . .	191
G. Interaction with social welfare systems and private insurance . . . . .	191
1. Recourse of social security agency against the employer . . . . .	191
2. Reducing damages to take account of the benefits paid . . . . .	193
3. Recovering the cost of National Health Service treatment . . . . .	193
H. Insurance . . . . .	194
1. The scope of compulsory insurance . . . . .	194
2. Policy limits and insurance triggers . . . . .	195
3. Apportionment . . . . .	196
IV. Evaluation and Conclusions . . . . .	197
A. Compensation . . . . .	197
1. Scope of each scheme . . . . .	197
2. Amount and purpose of compensation . . . . .	197
3. Fault and no-fault . . . . .	199
B. Prevention . . . . .	199
C. Overall costs . . . . .	200
D. Interaction between workers' compensation and private law . . . . .	201
E. Plans for reform . . . . .	201
F. Overall quality of each system independently and in combination	202
 <i>Florence G'sell and Isabelle Veillard</i>	
<b>Employers' Liability and Workers' Compensation: France</b> . . . . .	203
I. Introduction . . . . .	203
A. Basic system of compensation and liability . . . . .	203
B. Interaction with other institutions . . . . .	204
C. Empirical evidence . . . . .	204
II. Workers' Compensation . . . . .	206
A. Scope of cover . . . . .	206
1. Workers covered . . . . .	206
2. Spatial, temporal and other limitations . . . . .	207
3. Effects of the victim's contributory conduct . . . . .	212
B. Compensation trigger . . . . .	213
1. Accidents . . . . .	213
2. Diseases . . . . .	214
C. Scope of protection . . . . .	217
1. Personal injury . . . . .	217
2. Pure economic loss . . . . .	218
3. Property damage . . . . .	220
4. Sexual harassment – dignitary injuries . . . . .	220

D.	Heads and levels of benefit . . . . .	221
1.	Medical care and rehabilitation assistance . . . . .	221
2.	Lost earnings . . . . .	223
3.	Dependents' benefits . . . . .	223
4.	Comparison with damages in tort . . . . .	223
5.	Lump sum or periodical payments? . . . . .	224
E.	Funding systems . . . . .	224
F.	Administration and adjudication of claims . . . . .	226
1.	Accident . . . . .	226
2.	Disease . . . . .	227
3.	Litigation . . . . .	227
4.	Speed of claims' resolution and administrative costs . . . . .	228
G.	Rights of recourse of workers' compensation institutions . . . . .	228
1.	Recourse of workers' compensation institutions against employers . . . . .	229
2.	Recourse of workers' compensation institutions against co-employees . . . . .	230
3.	Recourse of workers' compensation institutions against third parties . . . . .	230
H.	Interaction with general social welfare provision and private insurance . . . . .	230
1.	Fund of first resort . . . . .	230
2.	Deductibility of benefits . . . . .	231
3.	Recourse of social welfare agencies, social health insurance, private health insurers, etc, against workers' compensation institutions? . . . . .	232
I.	Interaction with employers' liability . . . . .	232
1.	Availability of damages in addition to workers' compensation benefits? . . . . .	232
2.	Deductibility of benefits provided by workers' compensation institutions from claim against employer (collateral source rule) . . . . .	233
3.	Subrogation of workers' compensation institutions into the claim of workers against employer . . . . .	234
III.	Employers' Liability . . . . .	234
A.	Classification . . . . .	234
1.	Inexcusable negligence (art L 452-1 Social Security Code, CSS) . . . . .	235
2.	Wilful misconduct (art L 452-5 CSS) . . . . .	236
3.	Liability of a third party (art L 454-1 CSS) . . . . .	237
4.	Traffic accident . . . . .	238
5.	Criminal offence . . . . .	238
B.	Elements of liability . . . . .	241
1.	Liability of employers for their own acts or omissions . . . . .	241
2.	Liability of employers for the acts or omissions of their employees and others (the scope of vicarious liability; the effect of any 'common employment' exclusionary rule) . . . . .	244

## Table of Contents

3. Relevance of health and safety legislation in establishing liability	245
4. Overall a fault-based or strict liability?	246
5. Causation	246
6. Effect of the victim's contributory conduct	247
C. Scope of protection	248
1. Inexcusable negligence on the part of the employer	248
2. General civil liability	249
D. Heads and levels of damages	251
1. Inexcusable negligence of the employer	251
2. General civil liability	251
E. Administration of claims	254
1. Inexcusable negligence	254
2. Civil liability	255
F. Rights of recourse	255
1. In case of employers' liability	255
2. In case of a third party's liability	257
G. Interaction with social welfare systems and private insurance	257
H. Insurance	259
IV. Evaluation and Conclusions	259
A. Compensation	259
B. Prevention	260
C. Overall costs	261
D. Interaction between workers' compensation and private law	262
E. Plans for reform	263
F. Overall quality of each system independently and in combination	264

Raimund Waltermann

<b>Employers' Liability and Workers' Compensation: Germany</b>	265
I. Introduction	265
A. Basic system of compensation and liability	265
1. History and expansions	265
2. Insurance and liability	266
B. Interaction with other institutions	266
C. Empirical evidence	266
II. Workers' Compensation	267
A. Scope of cover	267
B. Compensation trigger	268
1. Accidents	268
2. Diseases	268
C. Scope of protection	269
1. Occupational accident	269
2. Occupational disease	270
3. Insured 'categories of damage'	270
D. Heads and levels of benefit	270
E. Funding systems	274

F.	Administration and adjudication of claims . . . . .	275
G.	Rights of recourse of workers' compensation institutions . . . . .	276
H.	Interaction with general social welfare provision and private insurance . . . . .	277
I.	Interaction with employers' liability . . . . .	277
III.	Employers' Liability . . . . .	280
A.	Classification . . . . .	281
B.	Elements of liability . . . . .	281
C.	Scope of protection . . . . .	283
D.	Heads and levels of damages . . . . .	285
1.	Personal injuries . . . . .	285
2.	Material damages . . . . .	287
3.	Liability agreements . . . . .	287
E.	Administration of claims . . . . .	287
F.	Rights of recourse . . . . .	288
1.	Against other employees who caused the harm . . . . .	288
2.	Against third parties (eg equipment/component manufacturers, suppliers of raw materials, etc) . . . . .	288
G.	Interaction with social welfare systems and private insurance . . . . .	289
1.	Problems concerning the extended exemption from liability . . . . .	289
2.	Are benefits received from social welfare agencies deducted from claims against the employer? . . . . .	289
3.	Recourse of social welfare agencies and private insurers against the employer . . . . .	290
H.	Insurance . . . . .	290
IV.	Evaluation and Conclusions . . . . .	291
A.	Compensation . . . . .	291
B.	Prevention . . . . .	292
C.	Overall costs . . . . .	293
D.	Interaction between workers' compensation and private law . . . . .	293
E.	Plans for reform . . . . .	294
F.	Overall quality of each system independently and in combination . . . . .	294
1.	Statutory accident insurance . . . . .	294
2.	Employers' liability . . . . .	296
<i>Alessandro P Scarso and Massimo Foglia</i>		
<b>Employers' Liability and Workers' Compensation: Italy</b> . . . . .		297
I.	Introduction . . . . .	297
A.	Basic system of compensation and liability . . . . .	297
B.	Interaction with other institutions . . . . .	299
C.	Empirical evidence . . . . .	299
II.	Workers' Compensation . . . . .	301
A.	Scope of cover . . . . .	301
B.	Compensation trigger . . . . .	304
C.	Scope of protection . . . . .	305

## Table of Contents

D. Heads and levels of benefit . . . . .	306
1. Medical care and rehabilitation assistance . . . . .	306
2. Non-pecuniary losses . . . . .	307
3. Dependent's benefits and benefits to their relatives . . . . .	310
4. Comparison with damages in tort . . . . .	310
5. Lump sums or periodical payments? . . . . .	311
E. Funding systems . . . . .	312
F. Administration and adjudication of claims . . . . .	313
G. Rights of recourse of workers' compensation institutions . . . . .	315
H. Interaction with general social welfare provision and private insurance . . . . .	316
I. Interaction with employers' liability . . . . .	316
III. Employers' Liability . . . . .	317
A. Classification . . . . .	317
B. Elements of liability . . . . .	318
C. Scope of protection . . . . .	322
D. Heads and levels of damages . . . . .	323
E. Administration of claims . . . . .	326
F. Rights of recourse . . . . .	326
G. Interaction with social welfare systems and private insurance . . . . .	327
H. Insurance . . . . .	328
IV. Evaluation and Conclusions . . . . .	328
A. Compensation . . . . .	328
B. Prevention . . . . .	328
C. Overall costs . . . . .	329
D. Interaction between workers' compensation and private law . . . . .	330
E. Plans for reform . . . . .	330
F. Overall quality of each system independently and in combination	331

*Keizo Yamamoto and Tomohiro Yoshimasa*

<b>Employers' Liability and Workers' Compensation: Japan . . . . .</b>	333
I. Introduction . . . . .	333
A. Basic system of compensation and liability . . . . .	333
B. Interaction with other institutions . . . . .	334
C. Empirical evidence . . . . .	334
II. Workers' Compensation . . . . .	335
A. Scope of cover . . . . .	335
B. Compensation trigger . . . . .	335
C. Scope of protection . . . . .	336
D. Heads and levels of benefit . . . . .	336
1. Medical compensation . . . . .	336
2. Compensation for absence from work . . . . .	337
3. Compensation for disabilities . . . . .	337
4. Compensation for bereaved family . . . . .	338

5. Non-pecuniary losses . . . . .	338
6. Medical examination benefits . . . . .	338
E. Funding systems . . . . .	339
F. Administration and adjudication of claims . . . . .	339
G. Right of recourse of workers' compensation institutions . . . . .	340
H. Interaction with general social welfare provision and private insurance . . . . .	340
1. Interaction with general social welfare provision . . . . .	340
2. Interaction with private insurance . . . . .	342
I. Interaction with employers' liability . . . . .	342
III. Employers' Liability . . . . .	343
A. Classification . . . . .	343
B. Elements of liability . . . . .	344
C. Scope of protection . . . . .	345
D. Heads and levels of damages . . . . .	345
E. Administration of claims . . . . .	346
F. Rights of recourse . . . . .	346
1. Against another employee . . . . .	346
2. Against third parties . . . . .	347
G. Interaction with social welfare systems and private insurance . . . . .	347
H. Insurance . . . . .	348
IV. Evaluation and Conclusions . . . . .	348
A. Compensation . . . . .	348
B. Prevention . . . . .	349
C. Overall costs . . . . .	349
D. Interaction between workers' compensation and private law . . . . .	350
E. Plans for reform . . . . .	350
F. Overall quality of each system independently and in combination	350
<i>Siewert D Lindenbergh</i>	
<b>Employers' Liability and Workers' Compensation: The Netherlands</b>	<b>351</b>
I. Introduction . . . . .	351
A. Basic system of compensation and liability . . . . .	351
B. Interaction with other institutions . . . . .	351
C. Empirical evidence . . . . .	353
II. Workers' Compensation . . . . .	353
III. Employers' Liability . . . . .	355
A. Classification . . . . .	355
B. Elements of liability . . . . .	357
C. Scope of protection . . . . .	361
D. Heads and levels of damages . . . . .	362
E. Administration of claims . . . . .	363
F. Rights of recourse . . . . .	363
G. Interaction with social welfare systems and private insurance . . . . .	364
H. Insurance . . . . .	364

## Table of Contents

IV.	Evaluation and Conclusions . . . . .	365
A.	Compensation . . . . .	365
B.	Prevention . . . . .	366
C.	Overall costs . . . . .	366
D.	Interaction between workers' compensation and private law . . . . .	367
E.	Plans for reform . . . . .	367
F.	Overall quality of each system independently and in combination . . . . .	368
 <i>Dominika Dörre-Nowak</i>		
<b>Employers' Liability and Workers' Compensation: Poland . . . . .</b>		369
I.	Introduction . . . . .	369
A.	Basic system of compensation and liability . . . . .	369
B.	Interaction with other institutions . . . . .	370
C.	Empirical evidence . . . . .	370
II.	Workers' Compensation . . . . .	370
A.	Scope of cover . . . . .	370
1.	Workers covered . . . . .	370
2.	Spatial, temporal and other limitations . . . . .	371
3.	Effect of the victim's contributory conduct . . . . .	371
B.	Compensation trigger . . . . .	373
1.	Accidents . . . . .	373
2.	Disease (occupational diseases) . . . . .	379
C.	Scope of protection . . . . .	381
1.	Personal injury . . . . .	381
2.	Sexual harassment . . . . .	381
3.	Property damage . . . . .	381
4.	Pure economic loss . . . . .	381
D.	Heads and levels of benefit . . . . .	381
1.	Medical care . . . . .	381
2.	Rehabilitation assistance . . . . .	383
3.	Lost earnings, loss of earning capacity and loss of pension entitlements . . . . .	383
4.	Non-pecuniary losses . . . . .	383
5.	Defendant's benefits . . . . .	383
6.	Comparison with damages in tort . . . . .	384
7.	Lump sum or periodical payments . . . . .	384
E.	Funding systems . . . . .	384
1.	Type of system . . . . .	384
2.	Incentives . . . . .	386
F.	Administration and adjudication of claims . . . . .	386
1.	Organisational framework of workers' compensation institutions . . . . .	386
2.	Reviews and appeals: Special tribunals or general civil justice system? . . . . .	386
3.	Speed of claims' resolution and administrative costs . . . . .	387

G.	Rights of recourse of workers' compensation institutions . . . . .	387
H.	Interaction with general social welfare provision and private insurance . . . . .	387
I.	Interaction with employers' liability . . . . .	387
III.	Employers' Liability . . . . .	388
A.	Classification . . . . .	388
1.	Contract or tort? . . . . .	388
2.	General law or special category? . . . . .	388
B.	Elements of liability . . . . .	388
1.	Liability of employers for their own acts and omissions . . . . .	388
2.	Liability of employers for the acts or omissions of their employees and others . . . . .	389
3.	Overall a fault-based or strict liability? . . . . .	389
4.	Causation . . . . .	389
5.	Effect of the victim's contributory conduct . . . . .	389
C.	Scope of protection . . . . .	389
1.	Personal injury . . . . .	389
2.	Sexual harassment . . . . .	390
3.	Dignitary injuries . . . . .	391
4.	Property damage . . . . .	391
5.	Pure economic loss . . . . .	392
D.	Heads and levels of damages . . . . .	392
1.	Main heads of recoverable damages . . . . .	392
2.	Costs of medical care . . . . .	392
3.	Costs of rehabilitation assistance . . . . .	393
4.	Lost earnings, loss of earning capacity and loss of pension entitlements . . . . .	393
5.	Dependents' benefits . . . . .	393
6.	Non-pecuniary losses . . . . .	393
7.	Form of payment . . . . .	393
E.	Administration of claims . . . . .	394
1.	Courts or specialised tribunals? . . . . .	394
2.	General civil procedure or special procedures . . . . .	394
3.	Reviews and appeals . . . . .	394
4.	Speed of claims' resolution and administrative cost . . . . .	394
F.	Rights of recourse . . . . .	395
1.	Against employees . . . . .	395
2.	Against third parties . . . . .	395
G.	Interaction with social welfare systems and private insurance . . . . .	395
H.	Insurance . . . . .	395
1.	Voluntary or mandatory? . . . . .	395
2.	General liability insurance or special policy? . . . . .	395
3.	Basic principles of employers' liability insurance . . . . .	396

## Table of Contents

IV.	Evaluation and Conclusions . . . . .	396
A.	Compensation . . . . .	396
B.	Prevention . . . . .	396
C.	Overall costs . . . . .	397
D.	Interaction between workers' compensation and private law . . . . .	397
E.	Plans for reform . . . . .	397
F.	Overall quality of each system independently and in combination . . . . .	397
 <i>Christian Alunaru and Lucian Bojin</i>		
<b>Employers' Liability and Workers' Compensation: Romania . . . . .</b>		399
I.	Introduction . . . . .	399
A.	Basic system of compensation and liability . . . . .	399
B.	Interaction with other institutions . . . . .	400
C.	Empirical evidence . . . . .	401
II.	Workers' Compensation . . . . .	402
A.	Scope of cover . . . . .	402
1.	Spatial limits . . . . .	403
2.	Temporal limitations . . . . .	404
B.	Compensation trigger . . . . .	404
C.	Scope of protection . . . . .	406
1.	Personal injury . . . . .	406
2.	Sexual harassment and injury to one's dignity . . . . .	407
3.	Property damage and pure economic loss . . . . .	408
D.	Heads and levels of benefit . . . . .	409
1.	Medical care . . . . .	409
2.	Rehabilitation assistance . . . . .	410
3.	Lost earnings, loss of earning capacity and loss of pension entitlements . . . . .	411
4.	Expenses refund . . . . .	412
5.	Non-pecuniary losses . . . . .	413
6.	Dependants' benefit . . . . .	413
7.	Comparison with damages in tort . . . . .	414
8.	Form of payment . . . . .	414
E.	Funding systems . . . . .	414
1.	Type of system . . . . .	414
2.	Contributions to the workers' compensation fund . . . . .	415
3.	Risk-rating of contribution . . . . .	415
F.	Administration and adjudication of claims . . . . .	416
1.	Organisational framework of workers compensation institutions . . . . .	416
2.	Who decides over claims for benefits? . . . . .	417
3.	Reviews and appeals: special tribunals or general civil justice system? . . . . .	418
4.	Speed of claims resolution and administrative costs . . . . .	419

G.	Rights of recourse of workers' compensation institutions . . . . .	419
1.	Recourse against the employer . . . . .	419
2.	Recourse against a co-worker or against third parties . . . . .	420
H.	Interaction with general social welfare provisions and private insurance . . . . .	420
I.	Interaction with employers' liability . . . . .	421
III.	Employers' Liability . . . . .	421
A.	Classification . . . . .	421
B.	Elements of liability . . . . .	422
1.	Liability of employers for their own acts or omissions . . . . .	422
2.	Liability of employers for the acts or omissions of their employees and others . . . . .	423
3.	Relevance of health and safety legislation in establishing liability . . . . .	424
4.	Overall a fault-based or strict liability system? . . . . .	424
5.	Causation . . . . .	425
6.	Effect of the victim's contributory conduct . . . . .	426
C.	Scope of protection . . . . .	426
1.	Personal injury . . . . .	427
2.	Sexual harassment and injuries to dignity . . . . .	427
3.	Property damage and pure economic loss . . . . .	428
D.	Heads and levels of damages . . . . .	428
E.	Administration of claims . . . . .	430
F.	Rights of recourse . . . . .	430
G.	Interaction with the social welfare system and private insurance . .	431
H.	Insurance . . . . .	431
IV.	Evaluation and Conclusions . . . . .	432
A.	Compensation . . . . .	432
B.	Prevention . . . . .	433
C.	Overall costs . . . . .	434
D.	Interaction between workers' compensation and private law . .	434
E.	Plans for reform . . . . .	434
F.	Overall quality of each system independently and in combination	435

*Michael D Green and Daniel S Murdock*

<b>Employers' Liability and Workers' Compensation: United States</b> . .	437	
I.	Introduction . . . . .	437
A.	Basic system of compensation and liability . . . . .	437
B.	Interaction with other institutions . . . . .	438
C.	Empirical evidence . . . . .	438
II.	Worker's Compensation . . . . .	439
A.	Scope of cover . . . . .	439
B.	Compensation trigger . . . . .	441

## Table of Contents

1. The ‘accident’ requirement . . . . .	441
2. Arising out of and in the course of employment . . . . .	442
3. Occupational Disease . . . . .	444
C. Scope of protection . . . . .	446
1. Sexual Harassment . . . . .	447
2. Dignitary Injuries . . . . .	449
3. Property Damage . . . . .	449
4. Pure Economic Loss . . . . .	450
D. Heads and levels of benefit . . . . .	450
1. Medical Care . . . . .	450
2. Rehabilitation . . . . .	453
3. Lost Earnings . . . . .	455
4. Non-Pecuniary Losses . . . . .	459
5. Dependents’ Benefits . . . . .	459
6. Comparison with Tort . . . . .	461
7. Lump Sum Payments . . . . .	462
E. Funding systems . . . . .	463
F. Administration and adjudication of claims . . . . .	465
G. Rights of recourse of workers’ compensation institutions . . . . .	467
H. Interaction with general social welfare provision and private insurance . . . . .	468
I. Interaction with employers’ liability . . . . .	470
III. Employers’ Liability . . . . .	470
A. Classification . . . . .	470
B. Elements of liability . . . . .	471
C. Scope of protection . . . . .	473
D. Heads and levels of damages . . . . .	474
E. Administration of claims . . . . .	474
F. Rights of recourse . . . . .	475
G. Interaction with social welfare systems and private insurance . . . . .	475
H. Insurance . . . . .	476
IV. Evaluation and Conclusions . . . . .	476
A. Compensation . . . . .	477
B. Prevention . . . . .	478
C. Overall costs . . . . .	479
D. Interaction between workers’ compensation and private law . . . . .	480
E. Plans for reform . . . . .	481
F. Overall quality of each system independently and in combination	481
<i>Thomas Thiede</i>	
<b>The European Coordination of Employers’ Liability and Workers’ Compensation . . . . .</b>	<b>485</b>
I. Introduction . . . . .	485
II. Empirical Evidence . . . . .	486
III. Workers’ Compensation . . . . .	487

A.	Limitation to national territory . . . . .	487
B.	European coordination of social security systems . . . . .	488
C.	Sources of law . . . . .	489
D.	Scope of cover . . . . .	491
E.	General rules for determining the legislation applicable . . . . .	492
1.	General application of the law of the country of employment	492
2.	Special provisions for determining the legislation applicable .	493
3.	Pursuit of activities in two or more Member States . . . . .	494
4.	Freedom of choice . . . . .	495
F.	Special provisions for determining the legislation applicable in cases of accidents at work and occupational diseases . . . . .	496
G.	Administration and adjudication of claims . . . . .	497
H.	Rights of recourse of workers' compensation institutions and interaction with employers' liability . . . . .	498
IV.	Employers' Liability . . . . .	501
A.	Classification . . . . .	501
B.	The Law applicable to contractual duties . . . . .	505
1.	Source of law . . . . .	505
2.	Scope of protection . . . . .	505
3.	General rules for determining the legislation applicable . .	506
4.	Special provisions for individual employment contracts .	508
C.	The Law applicable to extra-contractual duties . . . . .	510
1.	Source of law . . . . .	510
2.	Scope of protection . . . . .	510
3.	General rule . . . . .	510
4.	Escape clause . . . . .	511
D.	Adjudication of claims . . . . .	512
1.	Source of law . . . . .	512
2.	Scope . . . . .	512
3.	Rules for international jurisdiction in relation to contracts of employment . . . . .	513
E.	Rights of recourse and interaction between employers' liability and workers' compensation . . . . .	515
V.	Alternatives, Evaluation and Conclusions . . . . .	515
<i>Ken Oliphant</i>		
<b>The Changing Landscape of Work Injury Claims: Challenges for Employers' Liability and Workers' Compensation</b>	.....	519
I.	Introduction . . . . .	519
A.	The Changing Landscape of Work Injury Claims . . . . .	519
B.	The social construction of injury claims . . . . .	521
C.	The compensation and liability framework . . . . .	523
1.	Workers' compensation . . . . .	523
2.	Employers' liability . . . . .	524
D.	Plan . . . . .	526

## Table of Contents

II.	Recognition issues ('naming problems') . . . . .	526
A.	Issues for Workers' Compensation . . . . .	526
1.	An accident preference . . . . .	526
2.	Disease . . . . .	529
3.	Mental illness . . . . .	533
4.	Harassment and discrimination . . . . .	536
B.	Issues for employers' liability . . . . .	537
1.	An accident preference . . . . .	537
2.	Disease . . . . .	539
3.	Mental illness . . . . .	539
4.	Harassment and discrimination . . . . .	540
III.	Attribution issues ('blaming problems') . . . . .	542
A.	Issues for employers' liability . . . . .	542
1.	A violation of the required standard of care . . . . .	543
2.	Causation . . . . .	545
3.	Time limits (prescription) . . . . .	546
4.	Insurance . . . . .	548
5.	The risk of insolvency . . . . .	549
B.	Issues for workers' compensation . . . . .	550
IV.	Challenges for Employers' Liability and Workers' Compensation . . . . .	552
A.	Introduction . . . . .	552
B.	Challenges for Workers' Compensation . . . . .	553
C.	Challenges for Employers' Liability . . . . .	553
D.	Coordination of the two systems . . . . .	556
V.	Conclusion . . . . .	558

## *Gerhard Wagner*

<b>New Perspectives on Employers' Liability – Basic Policy Issues . . . . .</b>	<b>561</b>	
I.	Introduction . . . . .	561
II.	Systems of Workers' Compensation: Basic Features . . . . .	563
A.	Compensation regardless of fault of employer and contributory fault of employee . . . . .	563
B.	Insurance or collectivisation of claims . . . . .	564
C.	Scope of protection . . . . .	564
D.	Limited compensation, simplified assessment . . . . .	565
E.	Resolution of disputes out of court . . . . .	567
F.	Immunity of employers from damages suits . . . . .	567
III.	Employers' Liability: Basic Features . . . . .	568
A.	Bases of liability . . . . .	568
B.	Central features of private liability regimes . . . . .	569
C.	Thresholds for establishing civil liability . . . . .	569
IV.	The Revival of Employers' Liability . . . . .	570
A.	Against the industrial preference . . . . .	570
B.	The promise of social security . . . . .	572

Table of Contents

C. The failure of social security . . . . .	573
D. Conclusion . . . . .	576
<b>V. Functional Analysis . . . . .</b>	<b>576</b>
A. Compensation . . . . .	577
1. Needs-based interpretation of the compensation goal . . . . .	577
2. Corrective justice interpretation of the compensation goal . .	578
B. Deterrence . . . . .	579
1. Strict liability vs fault-based liability . . . . .	579
2. Insuring against liability . . . . .	580
3. Conclusion . . . . .	582
C. Administrative Costs . . . . .	583
D. Conclusion . . . . .	586
<b>VI. Challenges for Workers' Compensation Systems . . . . .</b>	<b>586</b>
A. The common root of current challenges . . . . .	586
B. Inroads into the immunity principle . . . . .	587
1. The expansion of aggravated fault . . . . .	587
2. The substantive issues: Full income replacement and damages for non-pecuniary losses? . . . . .	588
3. The administrative issue: upgrading workers' compensation benefits vs private suits against employers . . . . .	591
C. Claims against third parties . . . . .	593
1. The US experience . . . . .	593
2. Explanation . . . . .	594
3. Evaluation . . . . .	596
<b>VII. Final Remarks . . . . .</b>	<b>597</b>
<b>Index . . . . .</b>	<b>599</b>
<b>Publications . . . . .</b>	<b>609</b>