

## Book Reviews

**Ernst Karner/Ken Oliphant (eds), *Loss of Housekeeping Capacity*** (De Gruyter, 2012) ISBN: 978 -3-89949-814-1. xiii + 337. €109.95 (hardback).

Reviewed by **Frédéric Krauskopf**: Professor of Law, Head Department of Civil Law, University of Bern, E-Mail: frederic.krauskopf@ziv.unibe.ch and

**Jessica Kim Sommer**: Master of Law, Teaching and Research Assistant, Department of Civil Law, University of Bern, E-Mail: jessica.sommer@ziv.unibe.ch

DOI 10.1515/jetl-2015-0006

The upkeep of a home requires an array of chores. Each legal system has its own ways of defining what qualifies as such a chore and how in case of loss of capacity to perform those chores damages are assessed and awarded. At the request of the Swiss Insurance Association the two editors Ernst Karner and Ken Oliphant undertook a comparative legal study aimed at creating an overview of the different methods used in European legal systems to compensate the loss of what is needed to keep house – until now, an issue that has barely been examined comparatively. The editors made an effort to choose a terminology which is as unaffiliated with concepts of individual nations as possible and at the same time describes the damage of interest comprehensively – they settled on the term *housekeeping*.

Volume 28 of the Tort and Insurance Law series is the result: ten country reports that are followed by a comparative summary written by the editors. In order to cover the major European legal families, the editors selected the following countries: Austria, Germany and Switzerland (German legal family), France, Italy and Spain (Romanic legal family), England and Wales (Common Law), Norway (Nordic systems), Poland (an example of a post-communist system) and the Netherlands (an example of a country with a recent Civil Code).

Every report consists of a precisely formulated questionnaire which is divided into two parts. The first part (*General Part*) offers insight into each legal system's approach to awarding damages for loss of housekeeping.<sup>1</sup> The second part (*Concrete Assessment Examples*) comprises case studies that illustrate the application of the previously presented rules and principles and furthermore permit the authors to state concrete figures for damages awarded. This cleverly compiled

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<sup>1</sup> The *General Part* is divided into four questions: A. Compensable Harm and the Right to Sue; B. Doctrinal Justifications; C. Assessment of Damages; D. Relationship to Social Welfare Law.

questionnaire enables one to discern the dogmatic essence of the loss of housekeeping in each legal system, and to compare bare figures of damages that would be awarded in specific cases. The structure gained from the questionnaire is also what adds special value to this book. The fact that each report has the same structure allows for easy and quick access when it comes to comparing specific questions and aspects. The comparison of the concrete assessment of damages is additionally visualised in table format in the comparative report. The numerical examples give a broad idea of the range of awarded damages. The editors specifically note that the calculations and amounts exhibited in these examples claim nothing more than to show general tendencies and that the concrete figures have to be taken with a pinch of salt since they tempt to make clear-cut statements.

Indeed, producing a completely accurate comparison is impossible and the reasons therefor are obvious: due to the countries' vastly diverging systems, it is very difficult to create questions that can be answered within each legal system in a similar way or at all; on account of this, some authors could not provide concrete figures. For example, Spain's tariff-based compensation system combines pecuniary and non-pecuniary losses, making it impossible to determine the amount awarded for loss of housekeeping capacity. Another factor that might have a bearing on the significance of the concrete figures is the conversion into Euros which leads to figures not adjusted to individual nations' purchasing power or income level.

The comparative study reveals that housekeeping capacity is deemed to have an economic value and that the loss of this capacity is to be considered compensable damages in all reviewed countries (p 278). Beyond this common denominator, all surveyed countries feature some peculiarities with respect to legal terminology, damage calculation methods, and the damages awarded. Interestingly, the compensated amount for an hour of housekeeping work ranges from € 8 to € 46 (see table on p 306). Here a few snippets to show where different concepts complicate a direct comparison: generally, typical activities around the house, such as looking after the family and parenting, preparing meals, cleaning, washing clothes as well as outdoor tasks, are qualified as compensable housekeeping chores. But while Austria and Germany, for instance, consider gardening compensable, Norway makes a more strict distinction as to whether or not the level of gardening is essential for being able to run a family. Most surveyed countries take the actual circumstances of the individual case into account when trying to assess the degree of impairment of the capacity to perform housekeeping chores. The factors that are weighed include the victim's disability, the chores the victim performed prior to the injury, the size of the family and the measures required to keep up the established standard of housekeeping, as well as the former paid

employment situation of the victim. Germany and Switzerland generally evaluate the individual case, but their approach differs from other countries significantly as they rely heavily on statistical information and charts concerning the average amount of housework. If, in a particular case, a household helper is actually employed, an exact assessment of the damages is possible, and the relevant question is which services in detail are taken into account in the determination of the compensable damages. Here, the surveyed countries show important differences as to which household help related expenses are compensable and which are not. In addition, the study shows that actual expenses are not required in any surveyed country in order to render the damaged party entitled to recover damages. However, the required qualifications of a replacement, relevant wage levels or whether gross or net pay should be the basis for calculating damages are further questions to which the surveyed countries offer different answers. So, by delving more deeply into the various concepts and methods pursued by the studied nations, one can piece together a more complete picture and gain a better understanding of the reasons for the wide range of awarded damages in Europe.

In summary, the advantages of this book are twofold:

- It offers a quick and insightful overview not only with its comparative report (p 275 ff), which compiles and compares the information gathered from the ten country reports, but also in the detailed country reports, written by professionals native to the individual systems (p 1ff). The well-structured questionnaire makes it convenient for the reader to find answers to a specific question quickly, without having to scan the entire report. The country reports present the issues in a nutshell and, along with the accompanying references, serve as a good starting point for assessing international cases.
- In addition, this compact book of a little more than 300 pages offers a distinguished and multilayer analysis of European nations' current approaches to dealing with a category of damages that typically comprises a large part of personal injury damages.

This book is highly recommended to scholars who intend to do comparative legal research on the issue as well as to courts and practitioners that are either dealing with transnational cases or would like to resort to foreign solutions in order to make them accessible to their own domestic law.