## CONTENTS

	Preface page xiii Table of Cases xv Table of Legislation xxvi	
	PART I Background 1	
1	Introduction 3  I The Four Premises 3  II The Propriety of Awarding Damages for Non-Pecuniary Loss to Corporations 3  III Jurisdictions Covered 4 A The EctHR and England 4 B Discounting other Council of Europe Member States  IV Structure 12	7
2	Corporations, Damage and Damages 15  I The Corporation 15  A Definition and Terminology 15  B Attributes of a Corporation 16  C The Corporate Structure: Separation of Ownership and Control 19  D Conclusion 20  II Damage 20  III Damages 23  IV Conclusion 25	
3	PART II The European Court of Human Rights  Corporate Rights under the ECHR 29  I Introduction 29  II Principles of Interpretation 30  A Canons of Interpretation 31	27

viii CONTENTS

4

	B Aids to Interpretation 33 C Conclusion 34
III	Corporations and the Victim Status 34 A Direct Actions 34
	B Indirect Actions 38
IV	Corporate Rights under the ECHR 39
	A Art. 2 ECHR 40
	B Art. 3 ECHR 40
	C Art. 4 ECHR 41
	D Art. 5 ECHR 41
	E Art. 6 ECHR 42
	F Art. 7 ECHR 42
	G Art. 8 ECHR 42
	1 Home 43
	2 Correspondence 44
	3 Family Life 45
	4 Private Life 45
	H Art. 9 ECHR 49
	I Art. 10 ECHR 50
	J Art. 11 ECHR 50
	K Art. 12 ECHR 50
	L Art. 13 ECHR 50 M Art. 14 ECHR 51
	M Art. 14 ECHR 51 N Art. 34 ECHR 51
	O Art. 41 ECHR 51
	P Protocols to the ECHR 51
	Q Conclusion 53
V	Just Satisfaction 54
*	A Legislative History 54
	B The EctHR's Early Jurisprudence on Damages 56
	C Non-Pecuniary Loss and Damages for Such Loss
	before the EctHR 57
	D A Finding as Sufficient Just Satisfaction 58
VI	Conclusion 60
Ect	HR's Approach to Corporate Non-Pecuniary Loss 62
	Introduction 62
	The State of Affairs Pre-Comingersoll 62
**	A Tentative Beginnings 62
	B A Finding as Sufficient Just Satisfaction 63
	C Damages for Non-Pecuniary Loss to Corporations? 64
	D Other Instructive Cases 64
	E Conclusion 65
III	Comingersoll SA v. Portugal 66
	A The Facts and Reasoning 66

	2	States' Responses or Lack Thereof 67	
	3	The Previous Case Law of the EctHR 68	
	4	The Practice of the Member States of the Council of	
		Europe 69	
	5	The Need to Guarantee Rights that are Practical and	
		Effective 69	
]	B TI	he Decision and Dissenting Opinion 69	
		ds of Damages for Non-Pecuniary Loss to Corporations	
		r the ECHR 70	
		ctive and Subjective Non-Pecuniary Loss 71	
1	IT A	ne Violation of Art. 6 ECHR 72	
		ne Company's Reputation 76	
		ncertainty in Decision-Planning 76	
I	) D	isruption in the Management 77	
]	E Aı	nxiety and Inconvenience Caused 77	
]	F O	ther Suffering 78	
(	G Lo	oss of (Real) Opportunities 79	
1	H La	ick of Reasoning 79	
VI A	Fin	ding as Just Satisfaction 80	
		lusion 81	
		irect Non-Pecuniary Loss 82	
		direct Non-Pecuniary Loss 83	
•		direct Note 1 countary 2000	
PAR	TI	II English Law 85	
	_		
Tort	Lav	v and the Corporation 87	
II	ntro	duction 87	
II T	The C	Corporate Nature 88	
		ne Legal Person 88	
		orporate Personality Theories: The Nature and Origins	
		Corporations 89	
(		onclusion 94	
шт	orts	Committed against Corporations 95	
		eneral Tortious Liabilities 96	
1	1	Negligence 96	
	2	Public Nuisance 97	
	3	Special Liability Regimes and Breach of Statutory Duty	97
	4	Misrepresentation 98	31
	1	(a) Deceit 98	
		(c) Misrepresentation Act 1967 99 (d) Malicious Falsehood 100	
T	Y T		
1	10	orts to Specific Interests 101	

5

1 The Practice of the Committee of Ministers 66

	1	forts Affecting Land 101
		(a) Trespass to Land 101
		(b) Private Nuisance 102
	2	Wrongful Interference with Goods 103
	3	
		(a) Infringement of Copyrights, Patents and
		Trademarks 104
		The state of the s
	4	
	4	
		(a) Conspiracy 106
		(b) Inducement of Breach of Contract 106
		(c) Unlawful Interference with Economic Interests 107
		(d) Intimidation 107
	5	1
		(a) Defamation 108
		(i) Prerequisites 108
		(ii) The Expansion of the Law from Sole Traders to
		Corporations 108
		(iii) The Criticism of South Hetton 110
		(iv) The Defamation Act 2013 and its Application 112
		(v) Corporate Reputation Examined 116
		(b) Misuse of Private Information and Related Actions 119
	6	
		(a) Trespasses to the Person 123
		(b) Wrongs to the Person not Amounting to Trespasses 124
		(i) Intentional Infliction of Physical or Emotional
		Harm 124
	7	(ii) Harassment 124
	7	Malicious Use of Process 125
		(a) Malicious Prosecution and Analogous Actions 125
		(b) Malicious Issue of Civil Proceedings 126
	IV Non-	-Pecuniary Loss and Damages for Such Loss 127
	A P	ersonal Injury 127
	1	Physical Impact 127
		(a) Pain and Suffering 127
		(b) Loss of Amenities of Life 128
	2	Non-Physical Impact 128
	BN	Ion-Personal Injury 129
	1	Physical Inconvenience and Discomfort 129
	2	
	3	Mental Distress 130
	4	Bereavement Damages 131
	V Cone	
	v Colle	.1031011 1.71
6	Aggrava	ated Damages for Corporate Victims? 137
		oduction 137

CONTENTS xi

II Availability 137
III An Examination of the Cases 138
IV The Real Object of an Aggravated Award 142
V Legislative Reform 143
VI Attributed Aggravated Damage? 144
VII Conclusion 145
Attribution Theory 146
I Introduction 146
II Corporate Liability under Tort Law 146
A Indirect Liability 146
B Direct Liability 148
III Attribution of Non-Pecuniary Harm 151
IV Directors 151
A Arguments in Favour of Attributing Director's
Non-Pecuniary Harm 151
1 A Statutory Prerequisite 151
2 Core Directors' Duties 152
B Arguments Against Attributing Director's
Non-Pecuniary Harm 154
1 Multiple Directors 154
2 Various Types of Directors and the Variation of
Responsibilities 154 3 Corporate Directorships 155
3 Corporate Directorships 155 4 Evaluation 156
V Managers 157
VI Shareholders or Members 157
VII Evaluation of the Attribution Theory 158  A The Case in Favour 158
B The Case Against 159
VIII The Importation of the Attribution Theory 163
IX Conclusion 166
1A Conclusion 166
PART IV Comparative Analysis and Conclusion 167
Comparative Analysis 169
I Introduction 169
II The Nature of Damages for Non-Pecuniary Loss 169
III Corporations and Damages for Non-Pecuniary Loss 170
A Interference with the Bodily, Mental or Emotional Spheres 170
B Interference with the Personality Sphere 173
C Attribution Theory 176
IV Conclusion 179

7

9	Con	clusion 180			
	II	ntroduction 180			
	II Theoretical and Legal Foundations of the Four Premises				
	A	Non-Pecuniary Spheres 181			
	E	3 The Nature and Attributes of Corporations 181			
	C	C Corporate Rights 182			
	I	Corporate Remedies 183			
		1 Direct Non-Pecuniary Loss 183			
		2 Indirect Non-Pecuniary Loss 186			
	III C	Conclusion 188			

Index 189