
CONTENTS

<i>Foreword</i>	v
<i>Contributors</i>	xv
1. Introduction: Civil Remedies and Human Rights in Flux	1
Dr Ekaterina Aristova and Dr Uglješa Grušić	
I. Scope of Inquiry.....	2
A. Selected Human Rights Violations.....	2
B. Focus Jurisdictions	4
C. Main Research Questions.....	4
D. Focus on Substantive Law	5
E. Comparative Approach: Flexibility v Coherence	5
II. Terminology	6
A. 'Civil'.....	6
B. 'Remedies'	7
C. 'Human Rights Violations'	9
III. Contribution to Existing Literature.....	10
IV. Comparative Issues	12
A. Domestic v International Law.....	12
B. Types of Cause of Action	13
C. Case Studies.....	15
D. Public v Private Defendants	17
E. Complex Business Structures.....	17
F. Primary and Secondary Liability.....	19
G. Remedies.....	21
V. Conclusion.....	22
2. Argentina: Untapping the Potential of Private Law Constitutionalisation	23
Professor Martín Hevia and Andrés Constantin	
I. Introduction	23
II. Understanding Civil Liability in Argentina.....	24
A. The 2015 Civil and Commercial Code and the 'Constitutionalisation' of Private Law	24
B. General Regime for Civil Liability.....	26
III. Civil Liability for Human Rights Violations.....	31
A. Liability for Environmental Damages.....	31
B. Harmful or Unfair Labour Conditions.....	33

C.	Unlawful Detention of Persons.....	35
D.	Liability within Corporate Groups and Supply Chains.....	38
IV.	Conclusion.....	41
3.	<i>Australia: Tort Law Filling a Human Rights Void.....</i>	43
	Professor Sarah Joseph and Dr Joanna Kyriakakis	
I.	Introduction.....	43
II.	Human Rights in Australian Law.....	44
III.	Australian Tort Law and Human Rights.....	46
A.	Basic Features of Australian Tort Law.....	46
B.	Illustrative Torts and Human Rights Issues.....	47
C.	Joint Liability.....	52
D.	Remedies.....	54
IV.	Case Studies.....	54
A.	Rights in Detention: Australian Asylum-Seeker Cases.....	54
B.	Harmful Labour Conditions: Australian Asbestos Exposure Cases.....	59
V.	Conclusion.....	64
4.	<i>Bangladesh: A Constitutional Solution for a Tort Law Deficit?.....</i>	67
	Taqbir Huda	
I.	Introduction.....	67
A.	Contextualising the Tort Law Deficit.....	68
B.	Enforcement of Fundamental Rights.....	70
II.	Civil Remedies for Environmental Harm.....	75
A.	Remedies in Private Law.....	75
B.	Constructing a Fundamental Right to Environment.....	76
III.	Civil Remedies for Unlawful Arrest and Detention.....	78
A.	Setting the Test for Public Law Compensation.....	78
B.	Public Law Compensation for Unlawful Arrest and Detention.....	79
C.	Remedies in Private Law.....	81
IV.	Civil Remedies for Harmful Labour Conditions.....	81
A.	Compensation under the BLA.....	81
B.	Unsuccessful Attempts at Seeking Public Law Compensation.....	84
V.	Conclusion.....	85
5.	<i>Brazil: A Progressive Framework on Civil Liability and Human Rights Protection?.....</i>	87
	Daniela Arantes Prata and Danilo B Garrido Alves	
I.	Introduction.....	87
II.	Civil Liability for Human Rights Violations in Brazil: General Provisions.....	89
A.	Causes of Action and Elements of Civil Liability.....	89
B.	Civil Liability of the State.....	93

C.	Civil Liability of Individuals and Corporations.....	93
D.	Civil Liability of Third Parties: Vicarious and Accessory Liability?	94
III.	Available Judicial Remedies.....	95
IV.	Civil Liability for Specific Categories of Human Rights Violations	97
A.	Environmental Pollution	97
B.	Assault, Unlawful Arrest and Unlawful Detention of Persons	102
C.	Harmful or Unfair Labour Conditions.....	104
V.	Conclusion.....	106
6.	<i>Canada: Backsteps, Barriers and Breakthroughs in Civil Liability for Sexual Assault, Transnational Human Rights Violations and Widespread Environmental Harm.....</i>	109
	Professor Penelope Simons and Professor Heather McLeod-Kilmurray	
I.	Introduction	109
II.	Direct and Vicarious Liability of Government and Legal Entities for Sexual Assault.....	111
A.	Sexual Assault and the Tort of Battery.....	111
B.	Direct Liability of Entities for Sexual Assault	112
C.	Vicarious Liability	114
D.	Remedies.....	118
III.	Civil Liability of For-Profit Entities for Transnational Human Rights Violations.....	118
A.	Novel Duty of Care in Negligence.....	119
B.	New Nominate Torts or Direct Liability for Violations of Customary International Law	121
C.	Liability of Parent Corporations and Complex Corporate Structures.....	122
IV.	Civil Liability for Widespread Environmental Damage	124
A.	Trespass to Property.....	125
B.	Nuisance	126
C.	Negligence: The Barriers of Duty and Causation	127
D.	Causation.....	129
E.	Standard of Care	130
F.	Strict Liability.....	131
G.	Remedies.....	131
V.	Conclusion.....	132
7.	<i>England and Wales: The Common Law's Answer to International Human Rights Violations</i>	135
	Russell Hopkins	
I.	Introduction	135
A.	Where Does International Human Rights Law Fit in Alongside Tort Law?	136

IV	B.	Why Pursue Civil Claims in Response to International Human Rights Violations?.....	138
II	II.	Causes of Action and Modes of Liability.....	142
IV	A.	Trespass to the Person.....	143
IV	B.	Negligence.....	145
IV	C.	Nuisance.....	150
IV	D.	Unjust Enrichment and the Tort of Conversion.....	151
IV	E.	Joint Torts, Common Design and Procuring.....	152
IV	F.	Vicarious Liability and Agency.....	154
III	III.	Conclusions.....	156
8.		<i>France: Untapping the Potential of Civil Liability to Remedy Human Rights Violations</i>	159
		Dr Virginie Rouas	
	I.	Introduction.....	159
	II.	Understanding Civil Liability in France.....	162
	A.	Foundations of Extra-Contractual Liability.....	162
	B.	General Extra-Contractual Liability.....	164
	C.	Special Extra-Contractual Liability.....	166
	III.	Civil Liability for Human Rights Violations.....	166
	A.	Unlawful Detention of Persons.....	166
	B.	Environmental Pollution.....	167
	C.	Harmful or Unfair Labour Conditions.....	171
	IV.	Civil Liability of Specific Perpetrators of Human Rights Violations.....	172
	A.	Civil Liability of the State.....	173
	B.	Duty of Vigilance of Parent and Controlling Companies.....	174
	V.	Available Remedies for Civil Claims.....	177
	VI.	Conclusion.....	178
9.		<i>Germany: Tort Law's Potential to Remedy Human Rights Violations</i>	181
		Dr Leonhard Hübner and Luca Kaller	
	I.	Introduction.....	181
	II.	Relevance of Human Rights Law in Civil Claims.....	182
	III.	Claims in Tort.....	183
	A.	Introduction to German Tort Law.....	183
	B.	Liability of Private Individuals and Companies.....	183
	C.	Joint and Vicarious Liability.....	193
	D.	Liability of the State According to §839 BGB and Article 34 GG.....	195
	IV.	The Law of Nuisance – Liability for Environmental Pollution According to §1004 BGB.....	199
	A.	Introduction.....	199
	B.	Case Law: RWE Litigation.....	200
	V.	Conclusion.....	201

10. <i>India: Constitutional Torts 'Ruling the Roost'?</i>	203
Professor Surya Deva	
I. Introduction	203
II. Legal Pathways of Civil Liability	205
A. Statutory Provisions	205
B. Tortious Liability	208
C. Constitutional Torts: Judicial Crafting of Civil Liability Principles	209
III. Liability for the Conduct of Third Parties	212
IV. Available Remedies	215
V. Focus on Selected Violations	217
A. Assault or Unlawful Arrest and Detention	217
B. Environmental Pollution	219
C. Harmful or Unfair Labour Conditions	220
VI. Conclusion	222
11. <i>Kenya: Constitution, Common Law and Statute in Vindication of Rights</i>	225
Jill Cottrell Ghai	
I. Introduction	225
II. Some Necessary Context	225
A. International Law	226
B. The Constitution	226
C. Constitutional Remedies	227
D. Courts and Procedure	227
III. Substantive Law	228
A. Assault or Unlawful Arrest and Detention	228
B. Environmental Pollution	230
C. Harmful or Unfair Labour Conditions	234
IV. Issues Relevant Across the Three Case Studies	236
A. Interaction between Constitution and Other Law	236
B. Time Limits	238
C. Expanding the Range of those Liable	238
D. Enforcement of Judgments	241
E. Remedies	242
V. Conclusion	244
12. <i>The Netherlands: A Wide Open Window for Human Rights Norms?</i>	245
Dr Lucas Roorda	
I. Introduction	245
II. The Dutch Wrongful Act Law	246
A. The Law of Non-Contractual Liability	246
B. Jurisdiction <i>Ratione Materiae</i> and Standing	247
C. Wrongful Acts	247

D.	Relativity	249
E.	Attribution and Defences	250
F.	Joint and Secondary Liability.....	251
G.	Causality and Remedies.....	251
III.	Direct and Indirect Application of Human Rights.....	253
A.	Direct Application of Human Rights	253
B.	Indirect Application of Human Rights in Vertical and Horizontal Relations.....	255
IV.	Human Rights Lawsuits in Practice	256
A.	Respecting and Protecting the Right to Life in Military Operations Abroad.....	257
B.	Climate Change and Pollution Litigation.....	259
C.	Suing Parent Corporations for Human Rights, Labour Rights and Environmental Rights Impacts	261
V.	Reflections.....	263
13.	<i>The Philippines: Civil Vindications for Uncivilised Wrongs</i>	267
	Gemmo B Fernandez, Isabel L Guidote, Raphael Lorenzo	
	A Pangalangan and Ruby Rosselle L Tugade	
I.	Introduction	267
II.	Crimes, Quasi-Delicts and Torts	268
A.	Crimes.....	268
B.	Quasi-Delicts and Torts.....	269
III.	Principles Applied.....	278
A.	Political Detentions and Limited Remedies.....	278
B.	Corporate Liability for Human Rights Violations and Environmental Damage	282
IV.	Conclusion.....	288
14.	<i>South Africa: Civil Liability for Constitutional Wrongs</i>	289
	Dr Alistair Price	
I.	Introduction	289
II.	Protection of Constitutional Rights.....	291
A.	Constitutional Rights Binding the State	291
B.	Constitutional Rights Binding Private Persons and Influencing Private Law	293
III.	The Law of Delict and Constitutional Rights and Remedies	296
A.	Partial Overlap of Delictual and Constitutional Rights and Remedies	296
B.	Developments of Delictual and Cognate Principles of Civil Liability	299
C.	Liability for the Conduct of Others.....	301
D.	Complex Business Structures.....	303

IV.	Three Prominent Types of Human Rights Violation.....	305
A.	Assault, Unlawful Arrest and Detention of Persons	305
B.	Environmental Pollution	307
C.	Harmful or Unfair Labour Conditions.....	308
V.	Conclusion.....	310
15.	<i>Switzerland: The Underuse of Civil Remedies for Corporate and State Human Rights Violations.....</i>	<i>311</i>
	Professor Nicolas Bueno and Professor Federica De Rossa	
I.	Introduction	311
II.	Civil Remedies for Corporate Human Rights Violations.....	313
A.	Extra-Contractual Civil Liability.....	313
B.	Civil Remedies for Human Rights Violations by Multinational Enterprises.....	317
III.	State Civil Liability for Human Rights Violations	322
A.	State Civil Liability	322
B.	State Civil Liability and Compensation for Human Rights Violations.....	324
IV.	Conclusion.....	328
16.	<i>Ukraine: The Untapped Potential of Tort Law.....</i>	<i>331</i>
	Dr Bohdan Karnaukh	
I.	Introduction	331
II.	General Provisions of Tort Law: Elements of Tort	333
III.	Special Torts.....	340
A.	Damage Caused by the Adoption of a Normative-Legal Act	340
B.	Compensation for Real Estate Destroyed in the Armed Conflict in Eastern Ukraine.....	342
C.	Damage Caused within Criminal Investigations and Criminal Proceedings.....	344
D.	Damage by Environmental Pollution.....	345
E.	Violation of Employee's Rights	347
IV.	Conclusion.....	349
17.	<i>United States: Potential Paths Forward after the Demise of the Alien Tort Statute.....</i>	<i>351</i>
	Dr Rachel Chambers and Professor Jena Martin	
I.	Introduction	351
II.	The Emergence, Development and Current State of Statute-Based Human Rights Litigation	352
A.	The Emergence and Development of the ATS.....	352
B.	The Current State of ATS Litigation.....	354
C.	Other Federally-Based Human Rights Litigation.....	358

III.	Conventional Tort Litigation of Human Rights Claims	364
A.	Tort Law Principles Applied to Human Rights	364
B.	Agency Law Principles.....	365
IV.	Corporate Law Principles	367
V.	Conclusion.....	369
<i>Index</i>	371