

*[May 2005: unchanged]*

## COMMON CORE OF EUROPEAN PRIVATE LAW

### COMPENSATION FOR PERSONAL INJURY

#### QUESTIONNAIRE –FINAL VERSION

##### CASE 1

Phil was a surveyor earning , EUR30,000 p.a. (gross) with partnership prospects, until last year when he was severely injured in a road accident for which Dick is solely liable. Phil sustained a fractured skull , which resulted in serious brain damage. He now requires constant attendance and there is a risk he may develop epilepsy. He is now 36 and is not expected to live for more than 10 years. He was receiving sickness benefit and is now receiving incapacity benefit. His firm have also made an ex gratia lump sum payment to him. His wife use to be a part-time teacher earning ,EUR30 p.w. but has had to give up her job to care for Phil. She has also arranged for him to receive private medical treatment although he had no medical insurance cover.

What principles would the court apply in assessing the damages recoverable?

##### CASE 2

Pete is left permanently unconscious after a car accident. His life expectancy is reduced from 25 to five years. He has no awareness of his predicament. What damages?

##### CASE 3

In a car accident, Pete, who earns EUR 1 million a year, and Chris, who earns EUR6,000 a year, both lose their right leg. Pete is able to return to work, but Chris is not. What damages?

##### CASE 4

Bruno is a young cyclist with great talent, with a promise of a brilliant future, as he has been selected for the world junior championships. He is the victim of an accident during training. He is seriously injured in his left leg and loses every hope to follow a career as a professional cyclist. Can he claim damages against the tortfeasor and for what?

##### CASE 5

Claudine suffers in the same accident a knock to her head and becomes colour blind. Her hobby before the accident was to collect and appreciate modern art, she can no longer continue with this hobby. What damages?

## CASE 6

John is working as a crane operator in the top crane box at a height of 25m. Suddenly the crane, badly assembled due solely to Dave's fault, starts to collapse. John trapped inside the box crashes on the ground and dies. Before that, and for the few moments that the box takes to hit the ground, he realises fully his predicament and shouts in terror: 'My God, I am going to die!' John is married with two children, and also has his mother and a younger sister. Any damages against Dave, and to whom?

## CASE 7

Pete must undergo a heavy surgical operation, after an accident for which Dave is solely responsible. He has a blood transfusion, and a few weeks later he learns that he is HIV positive, because the blood, not properly checked by the hospital, was contaminated. What damages can Pete recover, and against whom? Will any damages cover the possible development of full AIDS and the associated agony of Pete?

## CASE 8

Linda is a beautiful girl working as a prostitute. Her 'earnings' are high. She has a 5 year-old child to support. After a bad accident, she is left in a horrible condition, disfigured and crippled. Now Linda is totally unable to work. What kind of damages can she seek from the person responsible for the accident (if any)? Would it make any difference if Linda was not working as a prostitute but as a top model? Why?

## CASE 9

John is liable for the injury of Anna, a household aid. She is unable to move for 45 days and remains with a permanent invalidity limiting her ability to walk by about 15%. What kind of damages can she recover from the tortfeasor?

## CASE 10

Pete is an occasional labourer in a construction site, working for the Durand company, paid cash in hand. He is the victim of an injury for which Dave, a third party, is solely liable. Immobilised and unfit for work for six months, can Pete claim damages from Dave, and for what?

## CASE 11

Lucy volunteers to help the police by attending as an independent witness the interrogation sessions of a suspected serial killer. Hearing his grisly confessions she is traumatised psychologically and needs specialist medical treatment. The police failed in their duty to advise her to seek counselling before attending the sessions. Can she recover damages from the police?

## CASE 12

Pete is a cute 18 years' old living in a small town, a very 'puritan' society. His parents never got married. And since he was a young boy everybody was overtly or silently referring to him as a 'bastard' or 'the illegitimate child'. He sues his parents for having him put in this situation by not marrying. Can he recover any damages and for what?

## CASE 13

Dave, an educational psychologist employed by a local education authority fails to diagnose the dyslexia of Pete, a seven-year old pupil at a local State school. Pete is now 21 and suffers permanently from dyslexia, which could have been cured or significantly repaired if diagnosed at a very early age. Can Pete recover from Dave and/or the authority damages for his condition?

## CASE 14

Fred (aged 45) was driving his son Stan (aged 17) as a passenger in Fred's car. A collision occurred with a car driven by Tom, for which Fred and Tom were equally to blame. All three were injured, Fred so seriously that he died three months later without regaining consciousness. He left a widow, Wilma, as well as his son Stan and a step-daughter, Daisy; all of them had been entirely dependent on Fred. He had also been paying maintenance to his former wife Edith. Wilma has also received the proceeds of Fred's life assurance policy and has been drawing widow's benefit and income support. The funeral cost ,EUR500. Wilma is now about to remarry.

Advise what difference would it make if:

(a) Stan had been driving the car (and was partially to blame)?

(b) Fred did not die until 3 years after the accident, and (on her solicitor's advice) Wilma had not yet commenced proceedings on Fred's behalf at the time of his death?

## CASE 15

John developed mesothelioma caused by exposure at work to asbestos dust. He had been exposed to asbestos dust during periods of employment with more than one employer. Can he claim damages, and for what, against one or all of his previous employers who, in breach of their duty to protect him from the risk of contracting the disease, had exposed him to inhalation of asbestos dust or fibres? He is not able to establish, on a balance of probabilities, which of them had critically exposed him to the asbestos dust that had caused the disease, but it is beyond doubt that it was one or more of his previous employees.

## CASE 16

Pete is badly injured in a car accident, for which Dave is solely liable. As a result he suffers a personality change, becomes a violent rapist, rapes two women and is convicted to 18 years in gaol as a dangerous, Category A prisoner. He wants to sue Dave for compensation, including a claim for being a convicted criminal and loss of amenities for being imprisoned. In addition, his two victims wish also to sue Dave, for personal injury and post-traumatic stress.

## CASE 17

Pete is badly injured in a car accident, for which Dave is solely liable. As a result, he loses his appetite for sex and his wife divorces him. Can he recover damages for the divorce?

## CASE 18

Pete is badly injured in a car accident, for which Dave is solely liable, while on holiday. As a result he spends twenty eight of his thirty-day holiday in hospital. Can he recover for loss of holiday?

#### CASE 19

Pete is seriously injured in a car accident, for which Dave is solely liable . Can the following persons recover damages in relation to their losses:

Leo, aged nine, sees Pete being removed from the wreckage and suffers recurrent nightmares; his progress at school also suffers.

Mike, Pete's homosexual lover, arrives at the hospital one hour later and sees X washed and anaesthetised but critically ill. He is present when Pete dies a further hour later. He subsequently suffers from severe depression.

Nicole, Pete's mother, fails to reach the hospital before his death, but speaks to Mike by mobile phone as she travels. Mike carefully describes Pete's condition to her, and she hears his anguish when Pete expires. She arrives at the hospital shortly afterwards and sees Pete to pay her last respects. She too suffers subsequently from severe depression.

What difference, if any, would it make if Pete had been partly responsible for the accident?

#### CASE 20

Oliver collects vintage cars. While eating at a restaurant, he is admiring his latest acquisition, a magnificent traction Citroen, parked in front of the restaurant. A crane worker near by working on a building site lets his load fall on the car, destroying it completely. Oliver is greatly distressed by the loss of the jewel in his collection. Can he recover any damages from the tortfeasor?

#### CASE 21

Pete is born mentally handicapped. The handicap was caused:

- (1) By a congenital defect, which the gynaecologist failed negligently to diagnose;
- (2) By his mother's rubella during pregnancy, which the gynaecologist failed negligently to diagnose;
- (3) By his mother's rubella during pregnancy, which the laboratory negligently failed to detect.

What damages, if any, and from whom, can (a) Pete, and (b) his mother, recover?

#### CASE 22

Dave, a surgeon, performs negligently a sterilisation on Pauline, who does not want to have any more children. As a result Pauline gets pregnant and gives birth

- (1) To a perfectly healthy child;
- (2) To a severely handicapped child

What damages, if any, can (a) Pauline, and (b) the child, recover from Dave?