

**September 2002**  
*[last versione: June 2006]*

**Common Core of European Private Law: Torts**  
**Questionnaire on**  
**PERSONALITY RIGHTS IN EUROPEAN TORT LAW**

1. A newspaper published an article accusing a well-known politician (called by name) of being corrupt. Does the politician have any claim against the journalist, the publisher or the chief editor of the newspaper? If the politician was informed beforehand about the forthcoming article, is he entitled by law to stop the publication? Please distinguish the following situations:
  - a) The journalist's statement is not supported by any facts.
  - b) The journalist alleged some facts related by a third person, which then turned out to be false.
  
2. A law professor was convicted by a court of having committed a crime. The day after the judgement, the case was published in a newspaper mentioning the professor's name. Does the professor have any claim against the newspaper? Distinguish the two following situations:
  - a) The crime consists of causing the death of a person in a car accident due to drunken driving.
  - b) The crime consists of promising female students grades in exchange for sex.
  
3. A detailed report containing names and photos of several paedophiles convicted by criminal courts is published in a high-circulation magazine. One of the paedophiles, Larry, was convicted three years ago. He was released from prison a week later. Can Larry sue for damages?
  
4. A well known author published a successful novel. Its protagonist was a man, depicted as opportunistic, cynical and corrupt, with wicked sexual habits. The detailed description of his life, career etc. corresponded perfectly with a real person -the famous actor X. However, the essential negative features and actions attributed to the character in the novel did not tally with X, they were invented by the author. The novelist himself stressed at various occasions that he just wanted to create the perfect, typical figure of a deceitful intellectual. Moreover, on the last page of the novel he wrote: "All persons in this book represent types, not portraits".

Does the actor X have any claim against the author of the book?
  
5. After a famous statesman's retreat from politics, his former secretary published a biography revealing many details of his family life. Can the statesman sue the author and the publisher for damages and injunction?

6. In a satirical magazine the Prime Minister of a nation is caricatured in a cartoon as a pig copulating with another pig depicted as a judge. Does the Prime Minister have any claim against the magazine?
7. Sally took a snapshot of a person X on a market place without asking this person's permission. Does X have a claim against Sally? Does it make a difference, if
  - a) X is famous / is not;
  - b) X is at work / is attending to his private affairs;
  - c) the picture is published / is not.
8. With a strong telephoto lens, a paparazzo took a photo of a famous princess, sitting in the garden of her private villa together with her new lover and her little son. The picture was published on the cover of a tabloid, under the heading: "The Princess' New Family".
  - a) Can the princess skim off the profits the magazine earned due to the publication of her photo? If yes, is the magazine under a duty to disclose the necessary information?
  - b) Would it make a difference if the princess was not sitting at home, but in the back garden of a countryside restaurant?
9. Susan and Robert sold a photo of their four-year-old daughter Lily, running naked on the beach, to a sun cream manufacturer. The photo appeared in several magazines as an advertisement for the products of that firm. Kevin scanned the photo and put it on the Internet, on a site called "naked.little.girl.com". Can Lily claim damages from Kevin? Is the Internet provider liable?
10. An electronics company used, for advertising, a photo of a famous tennis player, depicted in action during a tournament's match. This photo was well-known, as it had appeared in the press some years earlier. In the advert, just three words ("Energy", "Power", "Speed") and the name of the company were written underneath the photo.
  - a) Can the tennis player, who had not authorised this advert, sue the company for injunction and compensation?
  - b) Do the damages comprise skimming off the profits earned by the company through using the photo?
  - c) What would be the result if the famous tennis player was dead prior to the publication but has a surviving spouse and child?
11. A popular TV presenter with a very distinctive voice once spoke on some adverts for a coffee company. After he had made it clear that he did not want to do any more of these adverts, the company produced a radio commercial, in which his voice had been imitated by that of another person. Can the TV presenter sue the company for injunction and compensation?
12. The politicians Smith and Jones exchanged e-mails in which they discussed a planned tax increase and agreed that this plan should be kept secret until after the election. An unknown person at the internet company which "delivered" the e-mails copied them and sent the copies to a newspaper. The newspaper informs Smith that it plans to publish the e-mails.

- a) Is Smith entitled to an injunction against the imminent publication of the e-mails? Would it make a difference if the conduct of the unknown person constitutes a criminal offence?
- 13.** The house owner Jonathan found in his attic some diaries of Brigitte, who had been living there twenty years ago. Jonathan became the owner of the books and published the diaries. Does Brigitte have any claim against Jonathan? Would it make a difference if Jonathan made some effort to contact Brigitte before the publication?
- 14.** During a municipal authority committee meeting which was open to the public and concerned the widening of a public road, Maria, a member of the public, secretly recorded the discussion. Maria was the tenant of a house on the road in question and was, like most of her neighbours, opposed to the widening project. At the end of the sitting, committee members noticed that Maria had recorded the discussion and they wanted her to hand over the tape. Maria refused. Do the committee members have any claim against Maria?
- 15.** In an advertisement for "light" cigarettes, the opinion of Dr. Smith was quoted: "Light cigarettes reduce cancer risk by up to 50%". The doctor's sentence was authentic, it had been uttered at a scientific conference. But Dr. Smith had always been a fierce opponent of smoking in general. Is there any claim of the doctor against the tobacco company?
- 16.** Agnes was employed as a secretary in a firm. Soon after she was hired, her female colleagues started to envy her, as she was a very good-looking woman. In particular one of the colleagues, Tina, did her best to make Agnes' work life more and more unpleasant, hoping she would finally leave the firm. Tina succeeded: Agnes reached the point where she could not stand being harassed any longer and left the job. Does Agnes have a claim against Tina?

Suppose that Agnes decided to quit the job not because of Tina's behaviour, but because she could not stand the continuous sex-related remarks and provocations of a male colleague, Harald. Does Agnes have a claim against Harald or against the employer?

- 17.** Bridget was pregnant. She was under the treatment of a doctor who did not inform her about a genetic anomaly of the foetus, which was likely to cause brain damage. A handicapped child was born. If Bridget had known about the anomaly, she would have preferred to undergo a (legal) abortion. Can Bridget sue the doctor for damages for non-economic loss, because he deprived her of the chance to decide to whether or not to have the child?
- 18.** Abraham belongs to the religious sect "Jehovah's Witnesses", which does not allow blood transfusions. He was seriously injured in a car accident. In Abraham's personal documents the doctor found a declaration that in case of emergency he did not wish to have a blood transfusion for religious reasons. Nevertheless the doctor performed a transfusion. Does Abraham have any claim against the doctor? Please distinguish the following situations:
- a) Abraham had no chance of surviving without the transfusion.  
b) Abraham had a 70% chance of survival even without the transfusion.

19. In an interview about environmental protection, Howard, president of a chemical company, accused the association "World Wildlife Fund" (WWF) of being a 'gang of incompetents who were taking advantage of people's credulity and using member contributions for mysterious purposes'. Can the "WWF" sue Howard for damages?