

1. Record Nr.	UNINA9910785573103321
Autore	Harder Sirko
Titolo	Measuring damages in the law of obligations : the search for harmonised principles / Sirko Harder
Pubbl/distr/stampa	Oxford ; Portland, Oregon, : Hart Publishing, 2010
ISBN	1-4725-6078-7 1-282-98447-0 9786612984471 1-84731-590-9
Edizione	[1st ed.]
Descrizione fisica	1 online resource (364 p.)
Disciplina	346.03
Soggetti	Damages Liability (Law)
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Description based upon print version of record.
Nota di bibliografia	Includes bibliographical references (pages 307-317) and index
Nota di contenuto	1: Introduction -- I The Law of Obligations -- II The Law of Damages -- III Desirability of a Harmonised Measure of Damages -- IV Possibility of a Harmonised Measure of Damages -- V The Methodology Adopted in this Book -- Part 1: Remoteness of Damage -- 2: The Present Remoteness Test in Tort -- I Terminology -- II The Foreseeability Criterion in Negligence -- III Damage Versus Risk -- IV Degree of Foresight Required -- V The 'Thin Skull' Rule -- VI The 'Scope of the Duty' Concept -- VII Torts other than Negligence -- 3: The Present Remoteness Test in Contract -- I Hadley v Baxendale -- II Victoria Laundry -- III The Heron II -- IV Parsons -- V SAAMCO -- VI Brown v KMR Services Ltd -- VII Jackson v Royal Bank of Scotland plc -- VIII The Achilleas -- IX Conclusion -- 4: A Uniform Remoteness Test throughout the Common Law -- I Contract and Tort Compared -- II Reforming both Contract and Tort -- III Reforming Tort Only -- IV Aligning Contract with Tort -- A The Fairness Argument -- B The Efficiency Argument -- C Objections to the Efficiency Argument -- i Prohibitive Costs -- ii Monopoly Situations -- iii Strategic Dilemma for Reliable Carriers -- iv Possibility of Menu -- D Preventing Unreasonable Reliance upon Performance -- E Contractual Liability is Generally Strict

-- F Conclusion -- 5: Remoteness of Damage in Equity -- I Misapplication of Trust Property -- II Breach of an Equitable Duty of Care and Skill -- III Breach of Fiduciary Duty -- Part 2: Non-Pecuniary Loss -- 6: Non-Pecuniary Loss in Tort -- I Loss Resulting from Personal Injury -- II Physical Inconvenience or Discomfort -- III Loss of Reputation -- IV Mental Distress -- V Bereavement -- 7: Non-Pecuniary Loss in Contract -- I Overview of the Present Law -- II The General Bar to Compensation -- III The Exception for Personal Injury -- IV The Exception for Physical Inconvenience -- V The 'Object of the Contract' Exception -- VI Loss of Reputation -- VII Need for Reform -- VIII Defensibility of the General Bar to Compensation -- A Avoiding Punishment -- B Avoiding Excessive Awards -- C General Remoteness of Non-Pecuniary Loss -- D Assumption of Risk -- E Difficult Assessment -- F Lower Cost of Contracting -- G Avoiding a Flood of Claims -- H Avoiding Bogus Claims -- IX Way of Reform -- 8: Non-Pecuniary Loss in Equity -- I Breach of Confidence in Its Core Meaning -- II Breach of Confidence in Its Extended Meaning ('Breach of Privacy') -- III Other Equitable Wrongs -- Part 3: Contributory Negligence -- 9: Contributory Negligence in Tort -- I The Position Apart From the 1945 Act -- II The Ambit of the 1945 Act -- III Causation -- IV The Claimant's Fault -- V Damage -- VI Apportionment -- 10: Contributory Negligence in Contract -- I The Position apart from the 1945 Act -- II The Impact of the 1945 Act-Overview -- III Breach of a Duty of Care Co-Extensive in Contract and Tort -- IV Breach of a Purely Contractual Duty of Care -- V Strict Contractual Liability-The Present Law -- VI Need for Apportionment in Cases of Strict Liability -- A Resorting to Causation Doctrine -- B Resorting to Remoteness Doctrine -- C Resorting to Mitigation Doctrine -- VII Defensibility of Denying Apportionment in Cases of Strict Liability -- A No Duty to Supervise the Defendant -- B Distribution of Blame is Difficult -- C Uncertainty -- D Inequalities of Bargaining Power -- VIII Way of Reform -- 11: Contributory Negligence in Equity -- Part 4: Gain-Based Relief -- 12: The Present Law of 'Restitution for Wrongs' -- I Terminology -- II The Inclusion of Hypothetical-Fee Awards -- III Equity -- A Breach of Fiduciary Duty -- B Breach of Confidence Including Breach of Privacy -- IV Tort -- A Historical Development -- B Wrongful Interference with Goods -- C Trespass to Land -- D Intellectual Property Wrongs -- E Nuisance -- F Deceit and Fraud -- V Contract -- A Hypothetical-Fee Award ('Wrotham Park Damages') -- B Account of Profits ('Blake Damages') -- 13: The Proper Scope of 'Restitution for Wrongs' -- I Existing Theories -- A Birks -- B Edelman -- C Friedmann -- D Jackman -- E Jaffey -- F Tettenborn -- G Weinrib -- H Worthington -- II The Significance of Exclusive Entitlements -- III Exclusive Entitlements Erga Omnes -- A Tangible and Intangible Property -- B Bodily Integrity -- C Reputation -- D Informational Rights -- IV Exclusive Entitlements Inter Partes -- A Contractual Right to Have Property Transferred -- i Land and Intangible Property -- ii Specific Chattel -- iii Generic Goods -- B Contractual Right to Be Treated As the Owner of Certain Property -- C Contractual Right to Someone Else's 'Labour Power'? -- D Right to the Loyalty of One's Fiduciary -- V Situations in Which 'Restitution for Wrongs' is Inappropriate -- A Deceit -- B Skimped Contractual Performance -- VI Exclusive-Entitlement Theory and Present Law Compared -- Part 5: Exemplary Damages -- 14: The Present Law of Exemplary Damages -- I Terminology -- II Rookes v Barnard -- III Abuse of Power by Civil Servants -- A Conduct Required -- B Status of the Defendant -- C Criticism -- IV Profit-Seeking Behaviour -- A Fields of Application -- B Criticism -- V Statutory Authorisation -- VI The 'Cause of Action' Test -- VII Exemplary Damages in Contract -- VIII

Exemplary Damages in Equity -- IX Need for Reform -- 15: Objective of Exemplary Damages -- I Penalising Reprehensible Behaviour -- II Fostering Efficient Deterrence -- A Correction for Undercompensation -- B Correction for Underenforcement -- C Correction for Court Errors -- D Offsetting Illicit Benefits and Exceptional Costs -- E Encouraging Negotiations about the Use of Rights -- F Conclusion -- 16: Defensibility of Confining Exemplary Damages to Tort -- I Defensibility of Banning Exemplary Damages from Contract -- A Theory of Efficient Breach -- B Objections to the Theory of Efficient Breach -- C Relevance of the Theory of Efficient Breach -- D Inducement of Breach -- E Cost of Contracting -- F Crucial Differences between Contract and Tort -- G Conclusion -- II Defensibility of Banning Exemplary Damages from Equity -- A Is Punishment a Traditional Objective of Equity? -- B Should Exemplary Damages be Available in Equity? -- 17: The Abolition or Retention of Exemplary Damages -- I The Division between Civil Law and Criminal Law -- A Attack on Exemplary Damages -- B Defence of Exemplary Damages -- C Conclusion -- II Policy Arguments against Exemplary Damages -- A Uncertainty as to Availability and Amount -- B Ineffectiveness of Predictable Awards -- C Incentive for Bogus Claims -- III Policy Arguments in Favour of Exemplary Damages -- A Appeasing the Victim -- B Possibility of Vicarious Liability -- IV Need for Exemplary Damages -- A The Long-Standing Practice of Exemplary Awards -- B The Law Commission's Ten Examples -- C Comparative View -- V Conclusion -- 18: Conclusion -- Bibliography -- Index

Sommario/riassunto

This book challenges certain differences between contract, tort and equity in relation to the measure (in a broad sense) of damages. Damages are defined as the monetary award made by a court in consequence of a breach of contract, a tort or an equitable wrong. In all these causes of action, damages usually aim to put the claimant into the position the claimant would be in without the wrong. Even though the main objective of damages is thus the same for each cause of action, their measure is not. While some aspects of the measure of damages are more or less harmonised between contract, tort and equity (e.g. causation in fact and mitigation), significant differences exist in relation to (1) remoteness of damage, which is the question of whether, when and to which degree damage needs to be foreseeable to be recoverable; (2) the compensability of non-pecuniary loss such as pain and suffering, distress and loss of reputation; (3) the effect of contributory negligence, which is the victim's contribution to the occurrence of the wrong or the ensuing loss through unreasonable conduct prior to the wrong; (4) the circumstances under which victims of wrongs can claim the gain the wrongdoer has made from the wrong; and (5) the availability and scope of exemplary (or punitive) damages. For each of the five topics, this book examines the present position in contract, tort and equity and establishes the differences between the three areas. It goes on to scrutinise the arguments in defence of existing differences. The conclusion on each topic is that the present differences between contract, tort and equity cannot be justified on merits and should be removed through a harmonisation of the relevant principles
