

Gerloch, Aleš, Beran, Karel et al. Funkce a místo právní odpovědnosti v recentním právním řádu. Praha: Leges, 2014, 272 s. [Function and Position of Legal Liability in Recent Legal Order. Praha: Leges, 2014, 272 pp.]

At the end of year 2014, in the “Teoretik” edition of the publisher Leges, a book with a title enticing little attention came out. In the following paragraphs I would like to explain why the publication with an unamusing name – Function and Position of Legal Liability in Recent Legal Order – warrants a good read for representatives of both legal theory and practice.

A team, from the department of legal theory at the Faculty of Law of the Charles University in Prague, led by Aleš Gerloch and Karel Beran and comprising not only lecturers, but also students of both master and doctoral programs, presents the reader with a unique perspective of legal liability. In the monograph, on 272 pages and in nine chapters, systematically divided in a general and a special section, the authors analyze different forms of legal liability and present conclusions that provoke thought and may surprise even experts. The text clearly shows that it has been subjected to the critical eye of reviewers Jan Tryzna and Katarzyna Żák Krzyżanková. The book is written in Czech and includes an English résumé and a glossary, thus fulfilling all the requirements of a scientific monograph.

The first submission by Pavel Pražák focuses on legal liability concepts in the new civil code (“NCC”). The author summarizes recent concepts of legal liability and challenges the NCC’s explanatory memorandum’s proud proclamation of a radical conceptual change, i.e. a shift away from the view of legal liability as a threat of retribution. Conversely, he claims that the NCC lacks a clear concept and uses examples to show problems brought by this inconsistency. Even though it uses a rather complicated language that made me reread a paragraph here and there, don’t skip this article. It will reward you with a deeper understanding of legal liability as a whole.

Václav Janeček and his paper Function of Damages presents the institute of punitive damages under Czech law in a readable way. Using local court decisions as well as foreign, he brings forth potent arguments for its application. If you reckon that the purpose of damages is solely to return matters into the original state, this article will convince you otherwise. And if not, it will deepen your knowledge and present resources that will allow you to perfect your next scientific publication or client representation. Attorney practice is where I see the paper as most beneficial. The Constitutional Court’s decision it is based on may have slipped the attention of many attorneys, especially those focusing on corporate agenda. Admission of punitive damages in Czech law opens new possibilities for aggrieved persons to defend themselves not only against slander, but also against unfair competition. That’s why I’d like to award Václav Janeček with a hypothetical golden medal for practical application of the paper.

Theoretical Concept of Criminal Liability of Legal Persons in the Czech Republic is a chapter by Karel Beran. The most critical submission of the monograph discusses the language of Sec. 8 para. 1 of the Act on Criminal Liability of Legal Persons. Using precise argumentation based on comparison of two leading legal person theories – organic theory and theory of fiction – he comes to a conclusion that the current wording, conceptually based on the 1964 Civil Code (organic theory), is dysfunctional in the light of NCC (theory of fiction) and that such dysfunctionality cannot be overcome by interpretation. The fundamental points of the presented critique are the question of capacity, acting for the legal person, its will and interest and also the question of subsidiarity in criminal law. Consequently, he suggests an alternative wording, based on sound theoretical grounds and not settling for undesirable *praeter legem* interpretation.

René Ciencala’s text on Theoretical Aspects of Pre-contractual Liability and Obligations in the Contractual Process might easily make for a textbook chapter. It is well arranged into subchapters focusing firstly on the scope of pre-contractual liability, in other words the obligations included in *culpa in contrahendo*, and further on its essence and character, based, above all, on the *bonos mores* principle. If you know little of *culpa in contrahendo*, this paper will effortlessly guide you through both the theoretical base and practical application of this legal concept.

The second contribution by Pavel Pražák – A Look at Current Theoretical Concepts of Legal Liability – reads far better than the first one. The last complex paper dealing with legal liability was written well before the fall of communism. Pavel Pražák therefore aims to reinstate discussion on this important topic. To accomplish this, he summarizes all currently accepted concepts, presents them in light of recent law and subjects them to unprejudiced critique, aspiring to refresh scientific discourse. You will be able to enjoy a very thorough analysis and comparison of especially the so-called active liability and retributive concept. The author also doesn't leave out other theories, such as German *Schuld und Haftung* or reparatory theories.

The special section of this diverse publication is opened by Barbora Smetánková with a rather surprising piece on loss incurred by childbirth. She explains liability for wrongful birth, wrongful conception, wrongful abortion and the most controversial of them all, wrongful life (a child claims damages for being born). The author later touches on ethical issues and using foreign literature she explains difficulties and reluctance of courts to clearly decide in such a sensitive matter. Application of current Czech law is not left out either.

Lucie Krtoušová, in her comparative paper – What Does Due Managerial Care Have in Common with the British Concept of Duty of Care, Skill and Diligence? – sees the recodified Czech regulation as too benevolent. Looking at British case law, she suggests adjustment *de lege ferenda*. The most prevalent shortfalls are, in her opinion, the absence of requirement of elementary specialization of representatives, insufficient imposition of a combined objective-subjective standard of care and missing reflection of individual business needs and specifics, namely their size and purpose. The author diligently summarizes the problem and thus may help in ascertaining whether or not a specific conduct complies with regulation. I'd recommend its use in legal practice.

Legal and Disciplinary Liabilities of Football Referees are analyzed by Petr Caletka. After a fun introduction, truthfully depicting the well-known Czech scandal known as “carps”, comes a drawn-out description of its outcomes. A three page summary of all the criminal sentences is something I found redundant. However, the following analysis, combining criminal and disciplinary regulation, is a high quality one and the author easily tackles even the question of the regulations' concurrence.

Liability of the Roman-Catholic Church for Acts in Breach of its Internal Regulations is the last contribution to the monograph. Ronald Němec opens a discussion on the enforceability of contracts with church, where a person unauthorized by the church's internal regulations acted for it. To my – religiously uneducated – surprise, the matter is not as easily resolved as I'd thought. Through analysis of the church's regulations the author comes to a conclusion that even though the church's liability is governed by the NCC and enforced by civil courts, the validity of the described acts may only be assessed by ecclesiastical courts.

If there is one thing that I need to reprehend, it's textual errors. Not enough to bother the reader, but present nevertheless. Legal liability as a unifying element is described in very different forms. The monograph therefore doesn't feel well-knit. However, I feel that these differences drive the reader to read “just one more article” at the end of every paper. The book will most probably not cure any current problem of yours. It may just make you a better lawyer in the process.

Ondřej Urban*

* Ondřej Urban, student, Faculty of Law, Charles University, Prague, Czech Republic