

Book Review

Geoffrey Samuel, *Cases and Materials on Torts*, Lawmatters Publishing, Exeter, 2006

In his new book, *Cases and Materials on Torts*, Professor Geoffrey Samuel aspires to “provide a relatively solid introduction to the main areas of undergraduate tort law” that serves as a “bridge between classroom and library source material”.¹ For those who adopt the book in UK undergraduate programs, Professor Samuel undoubtedly meets these goals. This review, however, comes from an American professor, considering the book’s potential in US law schools. In this context, Professor Samuel’s book would serve well as a supplemental source, allowing a professor to introduce comparative law principles to new law students.

Professor Samuel’s book is a hybrid between a textbook and a casebook. It is organized in a traditional fashion, introducing the basics of tort law through expository text along with short excerpts from caselaw, statutes, and external sources. The source material is heavily edited, which would prevent a professor from using it to teach students how to thoroughly read cases or analyze statutes. The book, however, still could serve an important role in a US classroom.

Foremost, Professor Samuel’s book would be an excellent supplement for US professors who want to incorporate comparative material into an introductory torts course. The role of comparative law in first-year law courses has been the subject of recent debate and discussion in the US.² Tort law, in particular, is an area where some scholars believe that students would benefit from a comparative approach.³ Professor Samuel’s book might provide a potential “jumping off” point in this regard.

Most obviously, a professor could compare the doctrine presented in Professor Samuel’s book with US material, and follow up with discussion of the important differences between the US and UK legal systems (i.e., the role of juries, fee shifting, etc.).⁴ Professor Samuel, however, provides further opportunities by incorporating continental European law throughout the book. For example, in the first chapter, Professor Samuel discusses how UK courts must consider European Union law and explains that “failure to implement a [European] Directive may

¹ Geoffrey Samuel, *Cases and Materials on Torts*, Preface.

² See F. A. Gevurtz, et al., *Report Regarding the Pacific McGeorge Workshop on Globalizing the Law School Curriculum*, 19 Pac. McGeorge Global Bus. & Dev. J. 1 (2005).

³ See A. J. Sebok, *Using Comparative Materials to Teach First Year Torts* (forthcoming J. Legal Ed. 2006). Professor Sebok’s paper stems from a session at the 2006 annual meeting of the Association of American Law Schools on the use of comparative material in the first year classroom.

⁴ See Sebok, *supra* note 3 at 16 (draft)

Students should learn about the differences in the European approach to civil litigation that moderate ... sources of variability. Lay juries are not used in continental Europe and have almost completely disappeared from English civil cases.

give an individual the right to sue in tort.”⁵ Quite clearly, this concept would be foreign to most US students, providing an excellent opportunity to discuss attempts in continental Europe to essentially codify tort law through projects like the European Group on Tort Law’s Principles of European Tort Law.⁶ Indeed, Professor Samuel provides excerpts from the Principles project at a number of points in his book to help illustrate black letter principles. The use of this work would be an excellent opportunity for a US law professor to compare the work of the European Group with that of the American Law Institute, and to note the increasing level of collaboration between scholars in these two organizations.⁷

In terms of doctrine, the book provides several opportunities for demonstrating the development of law on an international level, particularly in those areas where US principles clearly developed from UK law. Perhaps the best example is strict liability for the conduct of abnormally dangerous activities. Like most US casebooks, Professor Samuel begins his coverage with an excerpt from the famous case of *Rylands v. Fletcher*.⁸ The section goes on to explain how UK law has introduced the concept of foreseeability into the area, a development reflected in the European Group’s Principles project, but not US caselaw.⁹ A US professor would do well by using this material to explore the possible reasons for the divergence, including the distinctions in environmental regulatory structure between the US and its European counterparts.

Another doctrinal area where Professor Samuel’s book provides a useful point of comparison concerns damages. The book’s final chapter contains a detailed review of remedies in the UK, ranging from personal injury and property damages to injunctive relief to the concept of “self help”.¹⁰ In truth, the basic doctrine does not differ tremendously with US law. But Professor Samuel again provides material that can introduce students to a broader perspective – both in terms of historical development¹¹ and comparison to continental European law.¹² Professor

⁵ Samuel, *supra* note 1 at 40. Professor Samuel illustrates this by providing an excerpt from *R v Transport Sec, Ex p Factortame Ltd* (No 7) 1 WLR 942, QBD, in which a group of Spanish fishermen sought tort damages against the United Kingdom for “injury to feelings and distress” based on breach of European Community law.

⁶ *Id.* “[T]hese codes are unlikely to replace English law in the foreseeable future, [though] they ought not to be ignored by today’s UK law student.”

⁷ Two prominent US tort law scholars currently serve as members of the European Group on Tort Law – Professor Dan B. Dobbs and Professor Michael D. Green, who served as a reporter for the American Law Institute’s Restatement (Third) of Torts projects on General Principles and Apportionment. See www.egtl.org/members.htm. Similarly, a number of European tort law scholars are members of the ALI. See www.ali.org (Membership/Foreign and Other Members Outside the United States).

⁸ (1866) LR 1 Ex 265, Ex Ch, (1868) LR 3 HL 330, HL.

⁹ See *Cambridge Water Co. v. Eastern Counties Leather PLC*, 2 AC 264 (HL 1994); European Group on Tort Law, Principles of European Tort Law Art. 5:101 (2003); Samuel, *supra* note 1, at 216-223; Weaver, *et al.*, Torts: Cases, Problems, Exercises 669-88 (2005).

¹⁰ Samuel, *supra* note 1 at 369-419.

¹¹ *Id.* at 383 (excerpting from G. Samuel, *The Notion of an Interest as a Formal Concept in English and Comparative Law*, in G. Canivet, M. Andenas & D. Fairgrieve (Eds.), *Comparative Law Before the Courts*, 263, 289 (2003)).

¹² *Id.* at 387 (citing European Group on Tort Law, Principles of European Tort Law Art. 10:202

Anthony Sebok of the Brooklyn Law School recently authored an article that makes a forceful case for why this broader perspective is of particular value to US law students in the area of damages. After discussing the German and Italian approaches to non-pecuniary damages, Professor Sebok states:

Given the emphasis cases on damages in American casebooks place on the challenge of proving damages in the context of an individual's own losses ... the various European approaches to pain and suffering provide a useful contrast. European explanations do not obviously undercut or criticize American doctrine [because] non-pecuniary damages are expanding just as they have in the United States, and are often available in many of the same circumstances as the United States. Instead, the European approaches offer competing rationales for similar doctrinal outcomes, and these approaches can help deepen America students' critical understanding of the rationales behind our own damages law.¹³

Professor Sebok's point about deepening American students' understanding of rationales for similar (or dissimilar) doctrinal outcomes leads to one other context in which Professor Samuel's book might be useful for US academics. Many US law schools run summer overseas programs,¹⁴ which naturally include opportunities for the study of comparative law. However, few texts are available for a course or unit on comparative tort law.¹⁵ Professor Samuel's book would serve this niche nicely, particularly if combined with supplemental materials on US and continental European law.

In sum, Professor Samuel's book is a concise and clear summary of UK tort law. Law students throughout Great Britain surely will find it useful. In all likelihood, the book also will find a role in US law schools.

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(Personal injury and death) and Art. 10:301 (Non-pecuniary damage).

¹³ Sebok, *supra* note 3, at 15 (draft).

¹⁴ See <http://www.abanet.org/legaled/studyabroad/foreign.html>.

¹⁵ One notable exception is W. Van Gerven, J. Lever, & P. Larouch, *Tort Law* (2001), which contains excellent material for comparison of the English, French, and German tort law systems.