

The Liability of Private Certification Bodies for Pure Economic Loss: Comparing English and Italian Law

by

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Abstract: This article addresses the liability that private certification bodies may incur to third parties for pure economic loss in cases of negligent certification, and uses it as a case study to illustrate the ways in which English and Italian law deal with liability for negligent misrepresentation in general. The analysis identifies points of convergence and difference between the two systems, and compares tortious and 'hybrid' approaches, highlighting operational problems that may arise (eg indeterminate liability) and broader implications for theoretical accounts of tort law and the law of obligations. The notion of certification is construed in a broad sense to encompass all statements certifying that a product or process complies with specified standards.

(2010) 1 JETL 266

The increasing diffusion of private certification schemes in different economic areas, ranging from the production of goods to the provision of services, poses some interesting questions concerning the foundation and the limits of the liability of the bodies performing certification activities.

The goal of this article is twofold. The first is to explore the liability of private certification bodies to third parties for pure economic loss in cases of negligent certification with specific regard to the type of liability which comes into play. As I will better explain in the following pages, I conceive it as part of the wider category of liability for negligent misrepresentation. In addition, I refer to the notion of certification in a broad sense, encompassing all the cases in which a private subject releases a statement certifying that a product or a process abides by given standards. Except for the sub-area of accountants' liability, the responsibility of certification bodies has received scant attention so far, even though recourse to certification is steadily increasing in many business areas.

In doing so, I will compare the solutions that both courts and legal scholars have advanced in England¹ and Italy for dealing with what appears to be a

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1 Even though the main point of reference will be English law I will also consider cases decided by Canadian, Australian and New Zealand courts.