Government Liability: South Africa and the Commonwealth

About this publication:

*Government Liability: South Africa and the Commonwealth* is the first attempt to analyse in comparative terms the law of government liability and bureaucratic negligence in South Africa, England, Australia, Canada, and New Zealand. The book is structured around the three basic sources of action – constitutional, statutory and common law – through which an aggrieved person may obtain damages in South African courts for wrongful government conduct. In analysing the legal position in South Africa, the book draws extensively upon case law from the English, Australian, Canadian and New Zealand courts.

The authors examine the impact of the Constitution on developments in the common law of public authority liability and government vicarious liability in South Africa, and link these developments to the changes that have taken place in Canada and England. The study also provides a comparative analysis of the correlation between fraud, bad faith and misfeasance in public office as grounds upon which damages can be awarded when constitutional and administrative justice rights are breached by public functionaries.

*Government Liability: South Africa and the Commonwealth* also investigates the century-old question of holding the employer, in this instance, the public employer, vicariously liable for the illegal acts of its servants.

The book tackles the problematic issue of quantum of damages in public law in a thorough and comparative manner, not hitherto attempted in the Commonwealth.

Contents:

- The Development of the Modern Law of Government Liability

Part One: Constitutional Dimensions of Government Liability
- The Constitutional and Juridical Basis for the Revolutionary Trend
- The Constitutional Cause of Action
- The Statutory Cause of Action

Part Two: Liability at Common Law
- Bureaucratic Negligence
- Negligent Performance of Statutory Duties
- Deliberate and Misconduct
- Causation, Damage and Contributory Fault
Part Three: Limits of Public Authority Liability
• Police Investigative Duties and Public Interest Immunity
• Police Investigative Duties: The Canadian Approach
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• Statutory Limitations

Part Four: Government Vicarious Liability
• The Common Law of Vicarious Liability
• Scope And Course of Employment
• Contemporary Comparative Developments

Part Five: The Problem of Quantum
• Contemporary Perspectives on Public Law Damages
• Constitutional Damages
• Aggravated and Exemplary Damages: England, Australia and New Zealand
• Punitive Damages and Other Awards: Canada
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Key benefits:
• The first attempt to analyse in comparative terms the law of bureaucratic negligence in England, Australia, Canada, New Zealand & South Africa.
• Commonwealth sources extensively drawn upon (Canada, United Kingdom, Australia and New Zealand)
• An exposition of the impact of the Constitution on the development of the common law of public authority liability and governmental vicarious liability in South Africa.
• A comparative analysis of the correlation between fraud, bad faith and misfeasance in public office as grounds upon which damages could be awarded in breaches of constitutional and administrative justice rights.
• A systematic investigation into the century-old question of holding the employer, in this instance, the public employer, vicariously liable for the illegal acts of its servants.
• The first attempt to tackle the problematic issue of quantum of damages in public law.

Of interest to:
• Masters students in Law Faculties or Schools whose coursework modules include courses such as Advanced Delict; Advanced Constitutional Law; Comparative Constitutional & Administrative Law, etc.
• Practising lawyers, especially those working for government and quasi-government entities, NGOs, public interest law firms, etc whose work requires them to frequently provide legal opinion on non-contractual claims against government and quasi-government entities.
• Students and legal academics across the Commonwealth with an interest in understanding the nature and extent of the liability of government and quasi-government entities from a comparative perspective.

About the authors:

Professor Chuks Okpaluba is Professor of Law at the National University of Lesotho and Adjunct Professor of Law at the University of Fort Hare.

Professor Patrick Osode is Professor of Mercantile Law and Executive Dean of Law at the University of Fort Hare.

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