

## THE LAW OF MEDICAL NEGLIGENCE IN ENGLAND AND GERMANY

This new work adds to the theoretical understanding and discussion of possible solutions to various conceptual and practical problems that arise within the field of medical negligence—an area whose legal treatment is perceived, both in England and Germany, as containing a number of special difficulties and shortcomings. In addition it seeks to make a contribution to the developing field of comparative law, by employing a detailed and closely focused analytical approach in a tightly defined subject area. These twin aims serve to reveal the similarities and differences between two legal cultures in a particularly clear and striking way.

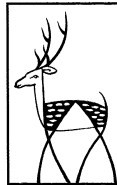
The book offers an analysis which is neutral as between the English and German approaches. The issues are dealt with thematically so far as possible, so that the respective treatments in each country of a given matter, eg the standard of care owed by medical practitioners, are discussed side-by-side. The book thus avoids the 'country-report' style, whereby the systems are presented largely separately from each other. What is of particular interest is how, notwithstanding their common starting point in terms of the application of the fault-principle under private law, the detailed rules in the two countries differ markedly. This is true both in the divergent way that claims are structured and argued, and also quite often as regards their substantive outcome. It will be of interest to comparative lawyers, tort and medical lawyers, and practising lawyers working in these areas.



# The Law of Medical Negligence in England and Germany

A Comparative Analysis

MARC STAUCH



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## PREFACE

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This book is a slightly revised version of my thesis of the same title, which I submitted in December 2007 towards a doctorate from the University of Göttingen. At the same time it represents the principal harvest of some five years that I have spent in German academia, during which time I had the chance to assimilate German legal materials on medical negligence and reflect upon how the treatment of such claims differs from the English approach with which I was previously familiar. Though the difficulties for a mature legal scholar in moving to a foreign academic and legal environment should not be underestimated—the absence of secure bearings within a new and strange system; one’s own lack of academic status; not least the need to master another legal language—nor can the ultimate benefit for one’s legal understanding be denied. At least my hope is that this work may be found to bear out such a claim.

I should like to record my gratitude to my doctoral supervisor, Professor Christiane Wendehorst, for her patient and flexible support during the years that I was writing my thesis, and for correcting a number of infelicities in the material. I am also grateful to the Law Faculty at the University of Göttingen for allowing the publication of the work to proceed in parallel with the formal process leading to the award of a doctorate.

While writing this thesis, I held a teaching and research position at the Centre for British Studies, an interdisciplinary institute at the Humboldt University, Berlin. I should like to thank my colleagues at the Centre for their help and encouragement while I was there, especially Professor Gerhard Dannemann and Christian W. Handke (now of the Erasmus University in Rotterdam).

Finally, special thanks are due to my parents, Günther and Jane Stauch, and to my wife, Dr Christiane Trüe, for their love and support over the years; Christiane also provided me with valuable help in proofing the work and correcting its German summary.



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