THE SCANDINAVIAN LAW

Course: Legal systems very different

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**INTRODUCTION**

The modern-day legal systems all over the world are usually based on at least one of the four basic systems: statutory law, civil law, common law and, religious law or accumulation of these. However, the different legal systems of various countries are configured by their historical uniqueness thus the variation. Of the four systems, civil and common law systems are considered the most far-flung in the world. Civil law is the most circulated regarding geographical cover and common law by population.

The Scandinavian law is considered as a distinct and often subordinate group within civil law. The Scandinavian law applies to the five Nordic countries, Finland, Norway, Denmark and, Sweden. In these countries, there has never been an application of any foreign legal system. The civil codes of the French, Austrian, German or Italian model have never existed, and there are no plans to introduce them in the Scandinavian countries(Beritz, 2014). For a long time, there has existed a legislative engagement between the various Nordic countries in the law of torts, intellectual property law, contract laws, private law and, many others. In the study of nature of law and academic juristic writing, someone can pick out Scandinavian school. This shows the extent of engagement tradition that has existed between these countries regarding linguistic, cultural and, historical heritage. Considering this, the Scandinavian law is thus open for discussion.

**CLASSIFICATION OF THE SCANDINAVIAN LAW**

**The Scandinavian law of torts.**

**The historical development.**

Despite Scandinavian legal systems being distinct, they have been influenced to some extent by the leading legal systems. However, these influences have never been strong enough to justify classification in the Scandinavian law. It was enacted by a legislative body in an early stage. Various provincial codes including King Valdemar`s Jutlandish Code of 1241 had been established during the middle stone ages(Infantino, 2015). These provincial codes were formed under the divine inspiration of common and customary laws and a few ingredients of canon law. The customary law was accorded a special consideration and given a systemic descriptor in some districts. These provincial codes had several differences. It is possible to have a clear difference between the Danish-Norwegian-Icelandic laws and the Swedish-Finnish laws. The difference was as a result of historical heritage. Between 1380 and 1814, Norway, Denmark and, Iceland coexisted in one United Kingdom and had a common legislative system. On the other hand, Finland and Sweden also formed their union within the same period. In 1683, a new code for the Danish-Norwegian was established by King Christian V. This code had a considerable variation from the initial Danish and Norwegian codes.

A law of compensation was developed by the Scandinavian system for unlawful acts regarding fines which provided that a specific amount was to apply to cases of violation people or property. With time and extension of the king`s authority, a penal system was introduced. However, the law of compensation was maintained. This system was the same for both the Danish and Norwegian codes of 1680 and the Swedish-Finnish codes of 1734. However, during the late 18th and early 19th century, the fines system was abolished.

The happenings of the 19th century were not fortunate to the five Scandinavian countries both politically and economically. During this period, Denmark, Norway and, Iceland entered the Napoleonic war against England. Their navy was stamped down by the English causing serious commercial damages especially concerning trade with other countries. This resulted in one of the countries, Denmark being bankrupt. Finland was delinked from Sweden and subjected to the rule of Tsar until the end of First World War. Between 1814 and 1905 Norway was still in union with Sweden. However, Norway had its parliament and thus not influenced by the Swedish law. During 1848 and 1864, Denmark was engaged in a war with Prussia and Austria and unfortunately lost the Schleswig and Holstein. The Scandinavian countries then considered migrating to the United States towards the end of the century(Kaiser, 2014).

The state of affairs in the Scandinavian law of torts at the end of the century tallied with the economic and development situation in those countries. The major rule was the culpa rule. However, some other rules of compensation still existed. The culpa rule was mainly based on ethical principles. The rules of compensation were set as means of ensuring justice and rights of citizens. The foundation for liability and justice was formed on the emergence of undue violation of human rights.

Towards the end of the 19th century, juristic writers began an assumption of view of penal law and tort law. These change in tort law was a reflection of struggles within the Nordic study of the nature of law. This system was introduced from Germany and got embraced by the Nordic jurisprudence due to its positivism. This method had tremendous results. However, it had its share of criticism.

During this same period, a strong desire had emerged for the establishment of a closer engagement on legal matters among the Scandinavian countries with the sole aim of unifying the Nordic laws. The foundation for this engagement was the establishment of Scandinavian jurist`s meeting in 1872 which still holds meetings after every three years. It was from such meetings that the initiative for legislative cooperation came up. The unity of the Nordic tort laws was not so successful; the demand was very low since the culpa rule was at its helm and the judicial variations in Scandinavian countries were visible.

**Rules of strict and semi-strict liability.**

a) Vicarious liability.

It is the responsibility of any master to take responsibility for any wrongs committed by his subjects during the employment. However, vicarious liability is among the very rigorous liability in the modern society. It strangely established itself in the Scandinavian countries. In the Danish and Norwegian codes had a provision which the master had to take responsibility for any damage caused by his servants. The understanding and implementation of this rule were however not very clear to most legal experts at the time it became applicable only in situations of contracts. Some people suggested that the rule only is applied in dangerous circumstances. However, others were of the opinion that the rule is applied in all situations of damages for both goods and property by the servants. This received strong support from Professor Julius Lassen who cited in his famous book on the law of obligation that all the arguments that were being advanced in supporting the rule, and also advocated for the establishment of Anglo-American and French law. Eventually, the Danish courts accepted the use of this law in cases outside the initial contractual relationship, which was advocated for by Professor Julius. The same changes were experienced in Norwegian system court too, same to Iceland. The three countries of Danish, Iceland and, Norway have thus established the rule of vicarious liability which has been practiced in a similar manner as in America, France and, England. The major question which still exists is to what extent someone should take responsibility concerning this law.

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However, the case is different in Finland and Sweden. A rule of a similar manner in non-existent. There just exist a rule which holds the master responsible to some extent. The application of this kind of rule has however covered an extensive area and time. In its application, the assumption is that not every damage by any worker or servant is a liability for the master. On the contrary, the law of liability in other Nordic countries has been applied to contractual relations. Because the Scandinavian contractual relations is majorly a culpa liability, it, therefore, follows that whoever causes the damage has to pay for the damage.

Recently, there has been a reasonable degree of discontent being expressed on these limitations. But in 1959, the commission of Nordic was assigned the responsibility of formulating a proposal that would ensure a uniform liability rule. In the proposal, the commission added the public liability. These proposals were seen to be largely similar to the ones that had been put in place by the different courts across the Nordic community in Iceland, Norway, and Denmark. This means that both the master and his or her servant were responsible for the damage caused and if the master has to pay for the damages, then he has the authority to punish the servant. However, a proposal was made which suggested the removal of shared responsibility.

b) Liability for dangerous activities.

The Scandinavian law has provided a platform for engagement with the lawmaking arm, the judiciary, and the scholars in the quest of establishing a strict liability policy. During the middle ages, there existed strict liability for damage caused by cattle which has been carried forward. In 1874, a Norwegian supreme court made a decision that has strongly influenced the current rule of strict liability where a steamship company was made to pay for the damages caused at the shores as a result of the waves that had resulted from the movement of the ship. Consequently, the Norwegian courts have applied the law of strict liability in several circumstances. This did not end with the emergence of motor vehicles.

There were some achievements and progress in both Sweden and Denmark in different sectors. Their courts had vehemently opposed the idea of strict liability. They adopted the culpa rule when they had been faced with the motor vehicle liability problem. In this case, there was a reversed burden of proof, and the owner of the vehicle would not be liable if he could prove that the driver at the time of the damage had no guilt of negligence. This was the basis for the establishment of the Danish motor vehicle of 1903 similar to that of the Swedish of 1916. In Denmark too established a similar system regarding railways liability in 1898 and for electricity in 1907. Eventually, all the Nordic countries established a compulsory liability insurance for motor vehicles. Professor Henry Ussing in his dissertation analyzed deeply the problem of strict liability based on comparative law, practical and theoretical problems where he vehemently opposes the rule of strict liability for dangerous activities(Oberlin, 2016). In his analysis, Henry gives the following conditions:

• That the activity has to be extraordinary. It should not be a common responsibility within the society. It has to be unique in one way or the other.

• There must be a specific danger entailed by the activity. The danger had to be special in some form and should not be an ordinary danger which could easily be associated with everyday human activities.

• The person undertaking such an activity must have prior knowledge of the danger that would arise out of such activity.

The strict liability also applied to damages caused during the utilization of real property. In his further suggestions, Henry proposed that strict liability should be established in situations where the use of real estate resulted in lasting damages to the nearby property so long as the damage surpassed the natural order of events with consideration to present conditions. Surprisingly, of the four countries, only Norway has adopted Ussing`s idea. In recent days, there has been noticed a strong desire to establish the idea in different fields.

While applying the culpa rule, the courts have also imposed liability. In fact, one of the Danish judges once said that the culpa rule imposes various aspects of life. To justify strict liability, Ussing majorly relied on considering the risks. Otherwise, it would be undoubted fact that the activity results in no profit at all. The failure by Denmark and Sweden to formulate an all-inclusive law on strict liability is probably due to the vagueness of such a rule. The culpa rule must have provided a better platform to address the necessary questions on the same.

Meanwhile, the debate on the new models has been going on. In interpreting the new model, it suggests that strict liability should apply for all the damages arising from the imperfections and wear and tear. The Scandinavian Jurist of 1960 and 1961 debated this effect which the Swedish Supreme Court strongly advocated for. The ideology entailed a more inclusive and advanced liability whose consequences were difficult to comprehend. The imperfections were not very definitive and had several lacunae which resulted to unpredictability. However, this idea was better compared to that of extraordinary activities.

In such debates, concerning strict liability, the concept of doing away with both liability and accident insurances have been areas of concern. But then, this appears to be just the tip of the iceberg. The problems concerning the broadening insurance and social welfare on the law of tort are so immense.

**IMPACT OF INSURANCE AND SOCIAL SECURITY ON THE LAW OF TORT IN SCANDINAVIA.**

**Introduction.**

Various damages on both property and human health can be taken care of by the insurance cover or social welfare systems. The main concern here is how the law of torts is formulated and defined to draw valid conclusions on the subject. This has been at the center of major discussions in the Scandinavian countries concerning the law of tort, resulting into several suggestions some of which have been incorporated into the system. It is however not possible to foretell the influence in the future. This mainly concerns the relationship between the private insurance and tort law despite a trend concerning social welfare being noticed. It is thus normal that these two be treated separately.

**Private insurance and the law of tort.**

If by chance it is noted that the law of tort has some vagueness and unpredictability, it is likely as a result of the fact that insurance, from this perspective, may draw two different conclusions. Taking loss as the point of argument, it is more likely that one would propose a total suppression of tort liability. Similarly, taking stress as the point of argument, one would strongly advocate for the proper establishment of tort liability. Considering both arguments, each has had an influence on the establishment of tort liability in Scandinavian countries. However, it is so important to state that it is impossible to draw unequivocal noetic choice between these two answers. It is recommended that the social and legislative arguments be registered in preference of either of the solutions. Despite this being done, it would not solve the political disagreements. It is thus evident that no system between the two has been chosen and therefore they have been both practiced.

Finding an answer along the two lines of thought would mean that an inclusive compulsory property and individual insurance would be put in place. In such a situation, the negative effects of the tort law would be a concern. Some may say that the idea of preventing loss has been ignored in dealing with liability insurance. However, it must be known that insurance companies which are concerned with liability insurance can avoid losses in different ways.

In covering the losses, several problems emerge. The Scandinavian debates on this idea of preempting tort law with compulsory personal and property insurance have tapped. But there exists unified agreement that the concept is solely utopian in the future. It was, therefore, prudent to include the sectors which may not be covered the insurance. Consequently, it is appropriate to hold over the idea of replacing the law of torts with an insurance system.

In 1929, a publication was made by a Norwegian author AstrupHoel. In this publication, the author recommended the broadening of the law of tort, considering the probability of doing away with liability insurance. He based his argument on the idea that the extent of liability can be measured by the degree to which it would remove liability insurance. This idea, despite being intensively debated, did not attract a wide following. The procedure on which its suggestions were based were not properly expressed and impractical. The idea of imposing a duty on industrial activity to do away with accident insurance seemed to be the only effective means of furnishing a related function of the law of torts by insurance companies. These legislative procedures started towards the end of the century and eventually attained full development. However, various Nordic countries possess many differences.

It is impressive to note that Nordic countries have fully embraced private liability insurance which has further tightened the application of the rule of culpa. Nevertheless, this idea has not found its roots in the judicial documents and application despite being mention rarely in some cases. About Danish laws, children are responsible for their childish behavior in line with the rule of culpa. However, the level of compensation depended on the child`s thinking capacity and the circumstances surrounding such actions. It also considered the ability of the child to carry the responsibility or rather be liable compared to the victim`s capacity to handle the damage and loss caused. Similarly, the Danish legal system has suggested that the child`s parents be held liable for the damages caused by the child and establish compulsory insurance to cover such liabilities. It has however experienced strong resistance which facilitated the Nordic Commission to come up with proposals for general liability of children and maintaining the culpa rule. It is, however, the judicial responsibility of the courts to each case distinctively. In their act of 19169, it is evident that Norway is in support of this proposal. As such, Norway gives parents a liability of not more than $ 70 for the damages caused by their children who have not attained the age of 18 years old.

In the early part of the century, an intensified debate on whether there existed an independent claim for compensation against a third party on an insurance company. The courts experienced some hesitations in making decisions, but it was latter established that insurance companies had the right to make a claim by way of ablactation. However, considering life insurance, it was not very clear whether it could be possible for insurance companies to make such claims. But in early 1901, Zahlmann a Danish judge gave a ruling to the question as to whether insurance companies should be denied any claim. In his conclusion, he stated that no insurance company should have a right of refuting against any party which has committed a tort unless it is clear that the tortfeasor did cause the damage intentionally. In the Nordic legislative process of formulating insurance rules, Professor Ussing`s idea was highly influential. Disappointingly, these efforts never bore the desired fruits. The rules were never successful. Professor Ussing made the following proposals: The insurers would have no resort against the tortfeasor in situations of life insurance. The person liable would otherwise be allowed to pile up his or her claims for compensation to the insurer for cover against any damage or loss, but then, the insurer`s claim for refuge could be decreased or even be ignored until when the person who has committed the tort acts deliberately. Additionally, Ussing further proposed that the claim of the affected person too can be reduced to the same level. All the proposals of Ussing were accepted by the Danish. However, it was the intention of other Scandinavian countries to maintain tortfeasor`s liability against the one suffering the damage, but there were restrictions on the redress of the insurer against the one responsible for the tort. All the other Nordic countries espoused the proposals.

All the law-making organs of the four Scandinavian countries approved and put into practice the drafts. The content of the 1930 Danish insurance act section 25 stated that tortfeasor`s liability is not in any way influenced by normal insurances of life, health, and accident. Legally, the person suffering the damage has the right to sue the person responsible for the tort despite receiving compensation from an insurance company over the same. However, there could be restrictions on the tortfeasor in cases of fire or other damages. In case an insurance company has already made the compensation, the courts are therefore able to free the person who caused the damage or even decides on a much lighter liability if it was due to negligence.

In 1959, the Nordic committees gave a response on the inclusion of section 25 of the Scandinavian insurance act. Such rules of mitigation relied mostly on the availability of insurance. But there was a suggestion in early 1897 that there be a rule to reduce the liability according to the extent of negligence of the person causing the tort and other prevailing circumstances. Such a rule would be similar to the Swiss legislation. This one too has received resistance from various bodies due to lack of a clear expression. As a result, the committees responsible in the Nordic countries made a report on vicarious liability in 1964 proposing that the rule is put into practice in all the employees disregarding their categories. In 1969, the Norwegian legislative body passed legislation to this effect.

**EFFECTS OF SOCIAL INSURANCE AND OTHER KINDS OF SOCIAL SECURITY ON THE DAMAGES FOR PERSONAL INJURY.**

The Scandinavian countries possess serious differences amongst themselves concerning the extent of damage and degree of injury, their compensation and form of such payments. Both Denmark and Norway has a system of compensation for future damages as an effect of disability which is paid once. In Denmark, the compensation for severe disability does not usually exceed $14,000. However, this is not the case in Norway where the compensation could go as much as $35,000. Nevertheless, the situation is similar for children and widows in both countries. In Finland and Sweden, the system is completely different. Here the form of compensation entails that the person liable for the damage has the responsibility of paying money from his investment which must later be paid so long as the affected person remains alive. According to Professor Ussing, the Danish courts did not intend to hold the tortfeasor liable in situations of extremely high compensation superseding the per capita income of the society. In situations where a person seeks substantial compensation in case of loss of life, he is responsible for taking out insurance cover which in this case shall not be taken off from the claim of payment against the person responsible for the tort. This explanation too has generated debate with some opposing while other supporting it. Surprisingly not even a single court decision in the Danish legal system has ever handled a case in which the affected person did have incomes which were above the per capita income.

The appraisal of the indemnities for irreversible disability is mainly established on the medical criterion. Meanwhile, considerations are being made regarding the fortunes under which the affected person is living. The issue of bringing onto equity the damages caused and the amount of compensation was the center of discussion in the twenty-third Scandinavian Jurist`s meeting of 1963. The conclusion of this meeting was that it was much severe and uneconomical to have a permanent disability as legislation. It is important also to note that the majority of those who are injured are mainly the average income earners. Thus it would be proper to say that the injured person never received too little but rather a lot.

In 1964, a committee was appointed by the Ministers for Justice in Scandinavia with the main goal of setting up a cooperation for the Nordic countries about the legislation on tort laws and indemnities. Various individual reports were submitted by the member of the committee with several recommendations on the issue of cooperation. However, the committee unanimously supported the recommendations of Professor Ivar Strahl who was in support of social insurance. They argued that it was only wise and fair that everyone is allowed to enjoy the fruits being that it as a result of individual contributions of every member of the society in ensuring the existence of social security including the person initiating the tort. This would reduce legal battles over claims of compensation. The committee proposed an immediate implementation of this law.

The connection between the law of tort and insurance law have been put on the schedule by the Nordic Council indicating an expression of understanding and agreement with Professor Strahl. To handle the various issues regarding this, a commission was established to deal with the problems of uncertainty. The commission did recommend that the governments of Scandinavian countries desist from putting in place extremist solutions concerning private liabilities for personal damages.

**STRUCTURE OF THE SCANDINAVIAN LAW.**

**The Ting**

The very early writings on the Scandinavian laws gives an idea of the environment in which these people lived in. The two fundamental basis of the early Scandinavian government were the villages and the ting. These two existed even during the Viking period. There already existed a good platform for cooperation in the villages when recording of events began. During this period, the ting of each village was responsible for regulating work and life in agreement with the law. Of the greatest powers of the ting was the administration of justice. In the assembly (ting), every man with full freedom had a right to speak during their meetings. A group of tings formed an advanced administrative unit called landsting. The landsting had the power to elect and sanction the King in Denmark(Warner, 2016).

The case was not so different in Sweden, though it entailed the election by suiones at the Mora. It was the role of the suiones to choose their King. Here the Provincial assemblies were known as landskapstinen. However, in Norway were sons of former kings of various tings with qualifications and thus were elected concerning merit. The tings had functions provided for by the law. This functions had to be performed in line with the unique system of proof similar to the old Germanic laws.

**The King and the Nobility**

There were different developments in the various Scandinavian countries regarding the powers of the yeoman community in the dispensation of justice in the kingdom. Those who possessed large tracks of land were more advantaged regarding utilizing the resources and political power. The ensured freedom in the society by keeping an eye on the monarch. It was St. Olav who organized the monarchial system of governance in Norway. Two alliances eventually came into existence during Magnus Erlingson`s reign, the monarchy, and the nobility. As a result, the small farmers got affected as nobody could listen to their cries and the role of electing the King was taken over by an electoral assembly of aristocrats. Eventually, the landowners were transformed into a royal class of officials and thus were no longer responsible for the preservation of constitutional liberty. The nobles had the representative mandate in different conferences and Council of Realm although the King`s powers remained superior(Warner, 2016).

Between 1200 and 1350, the King and an organized aristocracy acting on the King`s behalf jointly ruled the country. This Norwegian system was inherited by the Swedish and the Danish in the fourteenth century. In this system, not even the ting had could uphold constitutional liberties without the King`s consent. Powerful kings from the line of Valdemar successively ruled Denmark in the late twelfth and early thirteenth centuries having full control over the civilians and military. The lasting`s role in the election of the King was reduced. These developments were different in Norway.

The Swedish Kinds of the line of Folkung attempted to centralize administrative, legislative, and judicial powers in the late thirteenth century a similar situation enjoyed by Valdemars in Denmark. They also attempted to establish a hereditary monarchial system. Later in the fourteenth century, the nobility in a civil war seized power. This facilitated the drafting of the definition of the rights of the people and how they related with the King. During the same period, the Swedish constitution was codified and put into practice. In this constitution, the role of the King was well defined. This provided a proper foundation for the establishment of the Swedish constitutional freedom. As a result, the people were successful in securing these liberties:

• The constitution protected the citizens` economic and personal freedom from abuse by those in authority.

• The people were to be consulted before taxes were increase, and in the case of increment, they had to be represented by the bishops, six noblemen, six common people, and the lagmenn.

• There was no interference on the homage ceremonies for the new kings in the various parts of Sweden.

It is thus true that the process of constitutionalism in Sweden was different from other countries composing Scandinavia.

**YEOMAN FREEDOM**

The need to preserve both the economic and personal liberties of the people emerged as a prerequisite for maintaining tradition. These liberties traced their roots in the very initial stages of self-governance. It is further notable that there exists quite difference among the three Scandinavian counties on this platform with a single elision of democratic direction being made in the three countries during the abolition of vassalage. However, it could as well be attributed to a general tendency whereby the Roman Catholic Church was playing an outstanding role.

Additionally, it may be as a result of the Viking raids coming to an end which made it more difficult to acquire other serfs. Another important consideration would, however, be the establishment of a new cultivation practice which resulted in a high turnover to higher tenants and laborers. The effect was a simultaneous decline in serfdom within a century. Ironically, another tendency cropped in which subsequently lowered the population of freeholders. Meanwhile, the landowners acquired significant privileges(Warner, 2016).

The church had acquired a large share of the land in Norway towards the end of the thirteenth century. The nobility took control of one-sixth while the freeholders had in their control one-third. During this time, the farmers had established themselves as significant members of the society. However, in Denmark, the population of the freeholders was drastically decreasing.

CONCLUSION

The Scandinavian law has a rich historical background. Its history portrays an establishment based on the happenings in the medieval period. Its, however, important to notice that the four Nordic countries had formulated such regulations in such an early period. It is also evident that the struggle for democracy begun a long time ago, in prehistoric times. The establishment of both judicial and governance structures is a process that has undergone a lot of transformation throughout the lifetime of humanity. Roles and responsibilities of people in authority have been under supervision as evident from the prehistoric legal framework that existed in the Scandinavian countries.

Lastly, it is clear that the current legal systems have been strongly influenced by the old systems and they provide the framework for the formulation of modern governance and legal structures. The Scandinavian legal system in the prehistoric times has also influenced the current legal system in the current Scandinavian countries of Denmark, Norway, Iceland and Finland. It provided the basis for the establishment of the most progressive constitutions the world over.

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