Tort and negligence: Comparison with Switzerland

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Limitation

An action in tort must be brought within six years of the accrual of the cause of action, which for negligence is the date of damage.[1] For latent damage, such as a vulnerability introduced years before it is exploited, the period is extended to three years from the date on which the claimant had the knowledge required to bring the action, subject to a fifteen-year long-stop.[2] Claims for breach of trust against a trustee who was party to the fraud are not subject to any limitation period, which is a further advantage of framing the claim in equity where the facts allow.[3]

Swiss tort law under Art. 41 CO requires an unlawful act, which for pure economic loss means breach of a norm intended to protect the claimant's assets. That requirement is stricter than *Spandeck* and makes negligence claims for pure economic loss harder in Switzerland than in Singapore. On the other hand Swiss law offers the simple-partnership route against DAO participants and the strict liability of Art. 55 CO for employers, which does not depend on the employee's course of employment in the same way. A claimant choosing between the two forums for a

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tort claim against a custodian will usually prefer Singapore if the custodian is there. A claimant pursuing DAO participants may find Switzerland more promising. Part D, Chapter VII gives the Swiss detail.

Claim	Singapore	Switzerland
Negligent custody causing loss	*Spandeck* duty; pure economic loss recoverable; UCTA controls exclusions	Contractual liability (Art. 97 CO); Art. 100 CO limits exclusions; tort only if protective norm breached
Developer liability for protocol bug	Open; proximity unlikely for decentralised protocols	Art. 41 CO; requires unlawfulness; open
DAO participants	No automatic partnership; look for controlling individuals and entity	Simple partnership (Art. 530 ff. CO); joint and several liability
Auditor's negligent report	*Hedley Byrne* via *Spandeck*; disclaimers usually effective	Liability based on trust (Vertrauenshaftung) in narrow cases
Employee fraud	Vicarious liability on close-connection test	Art. 55 CO employer liability; Art. 101 CO for auxiliaries in contract
Limitation	6 years; latent damage extension; none for fraudulent breach of trust	3 years from knowledge, 10 years absolute (Art. 60 CO as revised 2020)

Practice note

A custodian that wants its liability regime to survive a Singapore court should do four things. Draft the exclusion and limitation clauses to cover claims in tort as well as contract, in express words. Set the cap at a level that bears a rational relationship to the assets under custody, since a cap equal to fees alone invites a reasonableness challenge. Document compliance with the MAS Technology Risk Management Guidelines, because that documentation is the evidence that the standard of care was

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met. And buy insurance that actually responds to hot-wallet theft, which means reading the exclusions for "voluntary parting" and "unauthorised access" before signing.

Notes

1. Limitation Act 1959, s 6(1)(a). ↩
2. Limitation Act 1959, s 24A (latent damage). ↩
3. Limitation Act 1959, s 22(1) (no limitation period for fraudulent breach of trust or recovery of trust property from the trustee). ↩

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