abortion and wrongful life/wrongful birth, 147, 154, 155
Ackner, Lord, 154
Action for Victims of Medical Accidents (AVMA), UK, 56
Acute Care Trusts in Scotland, 55
ADEPA (Association for the Defence of the Patient), Spain, 169
administrative law
in France, 72, 80–2, 89–92
in Spain, 160, 164, 169, 181
aléa thérapeutique cases in France, 90–1, 95, 99
Alonso Pérez, Mariano, 167
alternative dispute resolution
arbitration, in the Netherlands, 149
conciliation
in Austria, 115, 131
in France, 73, 76, 88, 95, 97, 98
grievance committees in the Netherlands, 140
mediation
in England and Wales, 51
in Scotland, 57
ombudsman arrangements in Austria, 115, 131
America. See United States
arbitration, in the Netherlands, 149
Association for the Defence of the Patient (ADEPA), Spain, 169
Ataz López, Joaquin, 167
Australia
Cottanach v. Melchior, 39
informed consent in, 48
legislative proposals to manage medical liability in, 9
Austria, 108–9
causation in, 123–6
Civil Code
on damages, 128
on fault, 121–3
on tortious and contractual liability, 113
on vicarious liability, 127, 128
codes of conduct and disciplinary bodies, 110, 114
compensation funds, 116–17
conciliation panels, 115, 131
contract law in, 112, 113
criminal liability in, 118
damages in, 126, 128
documentation, importance of, 124
exemption clauses in, 129
fault liability in, 121–3, 128
German influence on, 108
historical background to medical liability in, 8, 108–9
hospitals and clinics in, 109, 112, 116–17
increased number of claims in, 111, 129
informed consent in, 118–21, 125
medical liability insurance in, 111
Nordic patient insurance scheme, interest in, 21
ombudsman arrangements, 115, 131
ordinary courts, public and private
health care dealt with by, 5
patients’ rights in, 114–16, 129
personal liability in, 126–7
predisposition or precondition in patient, 126
private health insurance in, 111
Austria (cont.)
proof of medical liability in, 123–6
public and private health systems in, 4, 109–13
reasons for development of medical liability in, 109, 130–1
responsible parties in, 126–8
splitting liability in, 125–6
tort law in, 113
vicarious liability in, 113, 126–8
wrongfulness in, 117–18
Austrian Medical Chamber, 110, 111–12
Austrian statute law
1806 decree excluding tort law actions against civil servants performing duties of their office, 112
Ärztegesetz (ÄrzteG), 114, 124, 128
Krankenanstaltengesetz (KAG), 114
Reichssanitätsgesetz, 110
Versicherungsvertragsgesetz (VersVG), 111
autonomy, 40, 50, 104, 183
AVMA (Action for Victims of Medical Accidents), UK, 56
Belgian interest in Nordic patient insurance scheme, 21
Benzo Cano, Eduardo, 165
Bingham, Lord, 48
Bolam principle, 12, 42–6, 61, 64, 102, 143
Bolkestein directive on services, 22, 185
breach of contract. See contract law
breach of duty. See duty of care/breach of duty; standard of care
Bridge of Harwich, Lord, 11, 14, 44, 49
Britain. See England and Wales; Scotland
Brooke LJ, 40
Brougham, Lord, 59
Browne-Wilkinson, Lord, 44
burden of proof. See proof of medical liability
‘but for’ test (conditio sine qua non), 15, 47, 179
Bydlinski, Franz, 125
Care Trusts in UK, 30–1, 55
causation, 15
in Austria, 123–6
‘but for’ test (conditio sine qua non), 15, 47, 179
in England and Wales, 47–50, 53
in France, 83, 84, 104
in the Netherlands, 154
in Scotland, 65
in Spain, 164, 178–80, 186
Clyde, Lord President, 60
codes of conduct and disciplinary bodies, 7
in Austria, 110, 114
in England and Wales, 31–4
in France, 7, 75–6
licensing of physicians, 33
in the Netherlands, 136, 140
in Scotland, 56–7
in Spain, 171
compensatory law
on damages for wrongful life/wrongful birth, 16–18
on standard of care, 13, 144
compensation funds. See no-fault compensation schemes
conciliation
in Austria, 115, 131
in France, 73, 76, 88, 95, 97, 98
conditio sine qua non (‘but for’ test), 15, 47, 179
court codes. See codes of conduct and disciplinary bodies
confidentiality, patient right of
in the Netherlands, 140
in Spain, 173
costitutional law, role of, 5, 87–8
contract law, 6–7
in Austria, 112, 113
in England and Wales, 6, 7, 35
in France, 6, 71, 73, 80
in the Netherlands, 6, 25, 134–6, 137–8, 146–56
in Scotland, 6, 58
in Spain, 162, 170, 173–4, 176, 181, 187
tort law versus, 6–7, 51
in United States, 51
corrective justice, 50
Council of Europe, 21, 158
criminal liability, 5
in Austria, 117–18
England and Wales, negligent manslaughter in, 36
in France, 5, 11, 73–5, 79
in the Netherlands, 149
in Spain, 5, 11, 161, 163, 167, 170
standard of care, 11

damages, 16–18
in Austria, 126, 128
in England and Wales, 18, 66–9
in France, 17
legislative proposals to manage, 9
in the Netherlands, 16–17, 146
in Scotland, 17, 66–9
in Spain, 181–4
wrongful life/wrongful birth, 16–18, 146–56

Denmark
Act on Patient Safety, 10
claim rate, 3
patient insurance in (See Nordic patient insurance scheme)
reporting requirements, 10
Denning, Lord, 15, 27, 38, 46, 47
DES (diethylstilbestrol) cases, 148–53
Dickson, Robert, 66
diethylstilbestrol (DES) cases, 148–53
dignity, human, 154–6
disabled persons, wrongful life/birth cases involving. See wrongful life/wrongful birth
disciplinary bodies. See codes of conduct and disciplinary bodies
discovery in United States, 14
disproportionate harm, doctrine of, in Spain, 177, 179, 186
distributive justice, 40
documentation, importance of
in Austria, 124
in the Netherlands, 140
in Spain, 173
Dutch Association of Surgeons, 143
Dutch law. See Netherlands
duty of care/breach of duty. See also standard of care
in England and Wales, 12, 37–47
in Scotland, 63
duty to warn. See informed consent
dynamic distribution of the proof,
Spanish doctrine of, 178, 186
ECHR (European Convention on Human Rights), 21
economic change and medical liability, 24
ELD (European Legal Development) Project, 1, 2, 23, 146
Ellenborough, Lord, 36
England and Wales, 27–9
Bolam principle, 12, 42–6, 61, 64, 102, 143
causation, 47–50, 53
claim rate, 3
codes of conduct and disciplinary bodies, 31–4
contract law in, 6, 7, 35
costs/number of claims compared to Scotland, 66–9
criminal manslaughter charges, 36
damages, measure of, 18, 66–9
duty of care/breach of duty in, 12, 37–47
expert witnesses in, 11, 37, 43, 45–6, 47
fault liability in, 37, 38
France compared, 101–2
future of medical liability in, 50–3
historical background to medical liability in, 8
informed consent in, 44, 48–9, 50, 138
legislative proposals to manage medical liability in, 9
Making Amends (Chief Medical Officer report, UK), 51–3
negligence, 6, 36–7
NHSLO (National Health Service Litigation Office), 3

© in this web service Cambridge University Press

www.cambridge.org
England and Wales (cont.)
no-fault compensation scheme
proposals, 51–3
Nordic patient insurance scheme,
interest in, 21
patients' rights in, 10, 11, 31–4
private health care in, 31
proof of medical liability in, 14
public health system (NHS or
National Health Service) in, 4,
30–1
public policy issues in, 39, 50
reporting requirements, 10
res ipsa loquitur (prima facie
negligence), 14, 47
responsible parties in, 16
rise in medical liability claims in,
27–9
Scotland and, cross-border
assimilation between, 61–2,
63–4
standard of care in, 11, 34–47
tort law in, 6, 7, 37
vicarious liability in, 37–8
wrongful life/wrongful birth, 18,
38–42
English and Welsh case law
Allan v. Bloomsbury Health
Authority, 39
Allied Marples Group Ltd v.
Simmons & Simmons, 49
Anns v. Merton LBC, 50
Arthur JS Hall & Co. v. Simons, 29
Barnett v. Chelsea and Kensington
Hospital Management
Committee, 47
Benarr v. Kettering Health Authority,
39
Blyth v. Birmingham Waterworks, 42
Bolam v. Friern Hospital
Management Committee, 12,
42–6, 61, 64, 102, 143
Bolitho v. City and Hackney Health
Authority, 42, 43, 44–5, 61, 63,
102
Bonham's Case, 33
Bull v. Devon Area Health Authority,
38
Caparo Industries Plc v. Dickman, 50
Cassidy v. Ministry of Health, 38, 47,
64, 65
Chappel v. Hart, 48
Chester v. Afshar, 2, 48–9, 50
Collins v. Hertfordshire County
Council, 38
D v. South Tyneside Health Care
NHS Trust, 45
Donoghue v. Stevenson, 137
Doughty v. General Dental Council,
34
Edward Wong Finance Co. Ltd v.
Johnson, Stokes and Masters, 43
Emeh v. Kensington and Chelsea
and Westminster Area Health
Authority, 39
Evans v. Liverpool Corporation, 38
Eyre v. Measday, 35
Fairchild v. Glenhaven Funeral
Services Ltd, 47, 48, 49, 65
Fish v. Wilcox, 39
Freitas v. O'Brien, 44
Goellert v. Burnell, 33
Gold v. Essex County Council, 38
Gold v. Haringey Health Authority,
39, 43
Goodwill v. British Pregnancy
Advisory Service, 39
Greaves & Co. (Contractors) Ltd v.
Bayham Meikle & Partners, 35
Greenfield v. Irwin, 35, 40
Gregg v. Scott, 37, 50, 64
Grenville v. College of Physicians, 33
Hardman v. Amin, 41
Harnett v. Fisher, 8
Hatcher v. Black, 27
Heath v. West Berkshire Health
Authority, 143
Hills v. Potter, 44
Hillyer v. The Governors of St
Bartholomew's Hospital, 38, 64
Hotson v. East Berkshire Health
Authority, 35, 49
Hucks v. Cole, 43
Hunt v. NHS Litigation Authority, 45
Jones v. Berkshire Area Health
Authority, 39
Jones v. Randall, 39
Knight v. West Kent Health Authority, 45
Lanphier v. Phipos, 37
Lee v. Taunton and Somerset NHS Trust, 41
Lloyds Bank v. Savory & Co, 43
Luxmoore-May v. Messenger May Baverstock, 43
M v. Blackpool Victoria Hospital NHS Trust, 45
MacDonald v. Glasgow Western Hospital Board of Management and Another, 38
Marriott v. West Midlands Health Authority, 45
Marshall v. Lindsey County Council, 38, 43
Maynard v. West Midlands Regional Health Authority, 44, 62
McFarlane v. Tayside Health Board (Scottish case applied in English law), 17, 35, 39–41, 64
McKay v. Essex Area Health Authority, 18, 154
Morris v. West Hartlepool Steam Navigation Co., 62
Nettleship v. Weston, 42
Newell and Newell v. Goldberg, 43
Parkinson v. St James and Seacroft Hospital NHS Trust, 40, 41
Pearce v. United Bristol Healthcare NHS Trust, 45
Pepper v. Hart, 150
Pittman Estate v. Bain, 35
R v. Adomako, 36
Rand v. East Dorset Health Authority, 41
Ratcliffe v. Plymouth and Torbay Health Authority, 47
Rees v. Darlington Memorial NHS Trust, 35, 40, 41
Reynolds v. Health First Medical Group, 35
Reynolds v. North Tyneside Health Authority, 45
Rich v. Pierpont, 37
Richardson v. Mellish, 39
Riebl v. Hughes, 63
Robertson v. Nottingham Health Authority, 38
Robinson v. Salford Health Authority, 39
Roe v. Minister of Health, 16, 38, 64
Rogers v. Whittaker, 63
Rondel v. Worsley, 29
Roylance v. GMC, 34
Ruscillo v. Council for Regulation of Health Care Professionals, 34
Salih v. Enfield Health Authority, 39
Searle v. Prentice, 36
Shakoor v. Siti, 45
Sidaway v. Board of Governors of the Royal Bethlem Hospital, 11, 44, 63
Skyrne v. Butolf, 36
Smith v. Martin and the Corporation of Kingston-upon-Hull, 38
Strangeways-Lesmere v. Clayton, 38
Stratton v. Swanlord, 36
Thake v. Maurice, 35, 36, 39
Townsend v. Worcester District Health Authority, 46
Udale v. Bloomsbury Area Health Authority, 39
Walkin v. South Manchester Health Authority, 39
Watson v. British Boxing Board of Control, 37
White v. Chief Constable of South Yorkshire, 40
Whitehouse v. Jordan, 34–47
Wilsher v. Essex Health Authority, 14, 42, 47, 49, 65
X v. Bedfordshire County Council, 38

English and Welsh statute law
Chiropractors Act 1994, 33
Congenital Disabilities (Civil Liability) Act 1976, 18
Dentists Act 1984, 33
Human Rights Act 1998, 33
Medical Act 1858 and 1983, 33
Nurses, Midwives and Health Visitors Act 1997, 33
Nursing and Midwifery Order 2001, 33
in Spain, 162, 164, 170, 176–8, 186
standard of care, 11
Faure, Michael, 2
Ferguson, Quintana, 165
Fernández Costales, Javier, 167
Fernández Hierro, José Manuel, 167
Finland, 1
claim rate, 3
(See also Nordic patient
insurance scheme)
patients’ rights in, 158
France, 70
administrative law in, 72, 80–2,
89–92
aléa thérapeutique cases, 90–1, 95,
99
American litigation culture, critique
of, 92
bacterial infections contracted
on medical premises, strict
liability for, 93–4, 99
causation, 83, 84, 104
Civil Code
on contract law, 71
on informed consent, 103
on liability limitations, 71
on negligence, 78
on product liability, 100
strict liability for damage by
objects or things in, 84
on tort law, 71, 78, 79
claim rate, 3
codes of conduct and disciplinary
bodies in, 7, 75–6
conciliation service, 73, 76, 88, 95,
97, 98
contract law in, 6, 71, 73, 80
criminal versus civil liability in, 5,
11, 73–5, 79
damages, measure of, 17
England and Wales compared, 101–2
error versus fault, 101
expert witnesses in, 102
fault liability in, 70
administrative law, 80–2
criminal cases, 74
current role of, 98–101

English and Welsh statute law (cont.)
Opticians Act 1989, 33
Osteopaths Act 1993, 33
Pharmacy Act 1954, 33
Unfair Contract Terms Act 1977, 35
Erle CJ, 37, 42
error versus fault, in France, 101
ethical codes. See codes of conduct and
disciplinary bodies
European Convention on Human
Rights (ECHR), 21
European Court of Justice, 23
European Legal Development (ELD)
Project, 1, 2, 23, 146
European Social Agenda, 2005 to 2010,
23
European Union (EU)
harmonisation of medical liability
law across, 21–3, 25–6, 158, 185
informed consent in, 11
Nordic patient insurance scheme,
EU interest in, 21, 157
proof of medical liability in, 14
services liability in, 14, 22
euthanasia in the Netherlands, 139
evidence of medical liability. See proof
of medical liability
exemption/exclusion clauses, 18–19
in Austria, 18–19
in Germany, 132, 134, 138, 157
in the Netherlands, 18, 156–7
in Spain, 184
expert witnesses, 7, 24
in England and Wales, 11, 37, 43,
45–6, 47
in France, 102
in Scotland, 62–3
Farwell LJ, 38
fault liability
in Austria, 121–3, 128
in England and Wales, 37, 38
error versus fault, in France, 101
in France (See under France)
gross fault (faute lourde) versus
ordinary fault, 5, 11, 24
proof of fault generally required for
finding of liability, 14

© in this web service Cambridge University Press
www.cambridge.org
error versus fault, 101
historical development of, 78, 106–7
public versus private health systems, 71
reasons for evolution of, 84–9
shift towards strict liability, 82
significant developments in 1990s, 89–92
statutory compensation scheme and, 73, 93, 95, 98–101
wrongful life/wrongful birth, 106
historical background to medical liability in, 8, 77–98
immunity claims in, 77
increase in number of claims in, 86, 92
industrial accident liability compared to medical liability in, 84
informed consent in, 79, 100, 102
limitations periods, 71, 96
loss of chance doctrine, 83, 103–4
medical liability insurance availability of, 85
bacterial infections, strict liability for, 94
private practitioners required to have, 94, 95
public hospitals required to obtain, 81
statutory insurance scheme, responsibilities under, 95, 96
negligence, 77–80, 83, 101–2
Netherlands influenced by, 132, 134
ONIAM (Office National d’indemnisation des accidents médicaux, des affections iathrogènes et des infections nosocomiaux), 3
patients’ rights in, 5, 87–8, 158
personal liability in, 72–3
product liability in, 94, 99–100
public versus private health systems in, 4, 70–2
res ipsa loquitur (prima facie negligence), 101

responsible parties in, 16, 72–3
Spain, influence on, 174
standard of care in, 11, 13
statutory compensation scheme, 73, 93–101
availability of insurance and development of, 85
claims made under, 96–7
effect on compensation of victims, 97–8
fault liability and, 73, 93, 95, 98–101
insurers’ responsibilities under, 95, 96
legislation establishing, 93
procedure for obtaining compensation under, 95–6
serious medical accidents, guarantee of compensation for, 93–5
strict liability bacterial infections contracted on medical premises, 93–4, 99
reasons for evolution towards, 84–9
shift towards, 82
significant developments in 1990s, 89–92
statutory compensation scheme, effect of, 99
tort law in, 6, 71, 73, 78, 79
vicarious liability in, 72–3
wrongful life/wrongful birth, 17, 21, 104
Fraser, Lord, 35
French case law
Bailly case, 90
Bianchi case, 91
Cohen case, 90
Mercier case, 6, 8, 71, 80
Perruche case, 17, 25, 92, 105–6, 148, 154
French statute law
Law of 9 April 1898, 84
Law of 5 April 1928, 86
Law of 13 July 1930, 85
Law of 21 December 1941, 86
Law of 31 December 1970, 88
<table>
<thead>
<tr>
<th>French statute law (cont.)</th>
<th>harmonisation of medical liability law across Europe, 21–3, 25–6, 158, 185</th>
</tr>
</thead>
<tbody>
<tr>
<td>French Product Liability Act 1988, 94</td>
<td>Hartkamp, Dutch Advocate-General, 149</td>
</tr>
<tr>
<td>Law of 10 July 2000, 74</td>
<td>Haute Autorité de Santé, France, 76</td>
</tr>
<tr>
<td>Law of 4 March 2002, 2, 25, 70, 71, 73, 75, 88, 93, 103, 104, 105</td>
<td>historical background to medical liability, 8–10</td>
</tr>
<tr>
<td>Law of 30 December 2002, 73, 94</td>
<td>Hoffmann, Lord, 48</td>
</tr>
<tr>
<td>Law of 13 August 2004, 76</td>
<td>Holland. See Netherlands</td>
</tr>
</tbody>
</table>

- Gaius, 58
- García Rubio, María Paz, 160
- General Medical Council (GMC), UK, 33, 57
- General Medical Service (GMS) agreements in UK, 31
- German
  - claim rate, 3
  - criminal versus civil liability, 5, 11
  - damages for wrongful life/wrongful birth, 17
  - exemption/exclusion clauses, 19, 132, 134, 138, 157
  - informed consent in, 138
- Netherlands influenced by, 132, 134, 138, 157
- Nordic patient insurance scheme, interest in, 21
- personality rights in constitutional law, 5
- standard of care in, 11, 13
- Glegg, A. T., 59
- global harmonisation of medical liability, 23
- GMC (General Medical Council), UK, 33, 57
- GMS (General Medical Service) agreements in UK, 31
- González Morán, Luis, 167, 168
- Great Britain. See England and Wales; Scotland
- grievance committees in the Netherlands, 140
- gross negligence. See negligence
- Guthrie, Lord, 60
- Hale, Baroness, 49
- Hale LJ, 40
- ICAS (Independent Complaints and Advocacy Service), UK, 32, 56
- immunity claims, in France, 77
- Independent Complaints and Advocacy Service (ICAS), UK, 32, 56
- Independent Healthcare Association, UK, 57
- informed consent, 11–12
  - in Austria, 118–21, 125
  - in England and Wales, 44, 48–9, 50, 138
  - in France, 79, 100, 102
  - in the Netherlands, 138–9, 143, 147
  - in Spain, 163, 166, 167, 175, 177, 179–80, 182–3, 186
- insurance
  - institutional standard of care for, 144
  - medical liability insurance
    - in Austria, 111
    - in France (See under France)
    - in Spain, 184–5
Nordic scheme (See Nordic patient insurance scheme)
private health insurance
in Austria, 111
in England and Wales, 31
in the Netherlands, compulsory private insurance in, 4, 133
in Scotland, 55, 57
Izquierdo Tolsada, Mariano, 167
Japan's interest in Nordic patient insurance scheme, 157
joint liability
in the Netherlands, 146
in Spain, 181
jurisdictional conflicts, See administrative law; criminal liability; public versus private health systems and legal coverage
Justinian, Institutes, 58
Koch, Bernhard A., 2, 108
Koninklijke Nederlandse Maatschappij voor de Geneeskunst, 141, 142
Koziol, Helmut, 2

Landelijke Patiënten/Consumenten Platform, Netherlands, 142
Leenen, Hank, 11, 25, 137
lex artis ad hoc, 174, 175, 177
licensing of physicians, 33
limitations periods, in France, 71, 96
living wills in the Netherlands, 139
Llamas Pombo, Eugenio, 167
loss of chance doctrine
in France, 83, 103–4
in the Netherlands, 158
in Spain, 182
Luxembourg Declaration on Patient Safety, 22

Making Amends (Chief Medical Officer report, UK), 51–3
manslaughter in England and Wales, 36
Marañón, Gregorio, 165
market share liability, concept of, 149
Mas Oliver, Dr, 162
McCall Smith, A., 46
McNair J, 42–4, 61
MDDUS (Medical and Dental Defence Union of Scotland), 55, 66
measure of damages. See damages mediation
in England and Wales, 51
in Scotland, 57
Medical and Dental Defence Union of Scotland (MDDUS), 55, 66
medical devices left in patients' bodies after surgery, 15, 82, 145
medical liability, 1–3
causation (See causation)
claims data and rates, 3
codes of conduct and disciplinary bodies, 7
constitutional law, role of, 5
contract law on (See contract law)
countries selected for study of, 1
See also (Austria; England and Wales; France; Netherlands; Scotland; Spain)
criminal versus civil liability, 5
damages for (See damages)
EU, across (See European Union)
evidence of (See proof of medical liability)
exclusion of/exemption from (See exemption/exclusion clauses)
global harmonisation of, 23
historical background, 8–10
insurance against (See under insurance)
legislative proposals to manage, 9
patient insurance for (See Nordic patient insurance scheme)
patients’ rights (See patients’ rights)
proof of (See proof of medical liability)
public versus private (See public versus private health systems and legal coverage)
purpose or aim of, controversy regarding, 10
reasons for changes and developments in, 23–5
reporting requirements, 10
INDEX

medical liability (cont.)
responsible parties, 15–16
scope of present study, 2
standard of care (See standard of care)
tort law on (See tort law)

medical recordkeeping, importance of
in Austria, 124
in Netherlands, 140
in Spain, 173
Merry, A., 46
Millett, Lord, 39, 41
misconduct, sanctioning. See codes of conduct and disciplinary bodies
Montaner, Dr, 162
Montel, A., 166

Nathan, Lord, 28
National Health Service (NHS), England and Wales, 4, 30–1
National Health Service in Scotland (NHSiS), 4, 54–6
National Health Service Litigation Office (NHSLO), England, 3
National Institute for Health and Clinical Excellence (NICE), UK, 32, 56

negligence
Austria, concept of wrongfulness in, 117–18
in England and Wales, 6, 36–7
in France, 77–80, 83, 101–2
prima facie (See res ipsa loquitur)
in Scotland, 6, 57–62
in Spain, 161, 164
Netherlands, 132–3
arbitration in, 149
causation in, 154
Civil Code
of 1838, 132, 134
of 1992, 132, 135–6
exclusion clauses, invalidity of, 18
on exemption/exclusion clauses, 156
French influence on, 132, 134
German influence on, 132, 134, 157
informed consent in, 143
joint liability in, 146
patients’ rights in, 158
responsible parties under, 16
standard of care in, 12, 143
wrongful life/wrongful birth, 148, 149, 152, 155
codes of conduct and disciplinary bodies in, 136, 140
contract law in, 6, 25, 134–6, 137–8, 146–56
criminal liability in, 149
damages, measure of, 16–17, 146
documentation, importance of, 140
euthanasia in, 139
exemption/exclusion clauses, 18, 156–7
French influence on, 132, 134
German influence on, 132, 134, 138, 157
grievance committees, 140
historical background to medical liability in, 8, 136
hospitals in, 138, 144, 146
informed consent in, 138–9, 143, 147
joint liability in, 146
living wills in, 139
loss of chance doctrine, 158
Nordic patient insurance scheme, interest in, 21
ordinary courts, public and private health care dealt with by, 5
patients’ rights in, 11, 25, 133, 137–41
personality rights in constitutional law, 5
privacy/confidentiality, patient right of, 140
private health insurance in, 4, 133
product liability in, 152
proof of medical liability in, 15, 145
public policy issues in, 152
responsible parties in, 16, 145, 151
standard of care in, 12, 13, 141–5
tort law in, 6, 25, 134–6, 137
wrongful life/wrongful birth, 16–17, 22, 146–56
Netherlands case law

© in this web service Cambridge University Press
www.cambridge.org
INDEX

DES case, 148–53

Flierman v. Stichting Katholieke Universiteit, 147

Kelly case (Leids Universitair Medisch Centrum v. Kelly Molenaar), 17, 22, 133, 147–8, 153–6

Lindenbaum v. Cohen, 132, 137

Missing IUD case, 148

Nuboer case (Aarts v. Nuboer), 145

Schepers v. De Bruijn, 145

Speeckaert v. Gradener, 141

Timmer v. Deutman, 145

Netherlands statute law

Act on Medical Services, 137–41, 146

NHS (National Health Service), England and Wales, 4, 30–1

NHS Quality Improvement Scotland (NHS QIS), 56

NHSiS (National Health Service in Scotland), 4, 54–6

NHSLO (National Health Service Litigation Office), England, 3

NICE (National Institute for Health and Clinical Excellence), UK, 32, 56

Nichols, Lord, 49

no-fault compensation schemes

Austria

compensation funds, 116–17

splitting liability in, 125–6

England and Wales, proposals in, 51–3

France, statutory compensation scheme in (See under France)

Scotland, proposals in, 69

Spanish compensation fund, 184–5, 187

Nordic patient insurance scheme, 19–21

claim rate, 3

European interest in, 21, 157

as major shift in practice, 2, 24

use of references to, 1

Norway

damages in wrongful life/wrongful birth, 17

patient insurance in (See Nordic patient insurance scheme)

Office National d’indemnisation des accidents médicaux, des affections iathrogènes et des infections nosocomiaux (ONIAM), France, 3, 96, 97, 98

ombudsman arrangements in Austria, 115, 131

ONIAM (Office National d’indemnisation des accidents médicaux, des affections iathrogènes et des infections nosocomiaux), France, 3, 96, 97, 98

Ordre des médecins, France, 7, 75

Oviedo Convention on Human Rights and Biomedicine, 21, 154–6, 158, 172

Patient Advocacy Liaison Services (PALS), UK, 32

patient insurance. See Nordic patient insurance scheme

patient ombudsman arrangements in Austria, 115, 131

Patients’ Association, UK, 10, 32, 56

patients’ rights, 10–1

in Austria, 114–16, 129

in England and Wales, 10, 11, 31–4

in France, 5, 87–8, 158

in the Netherlands, 11, 25, 133, 137–41

personality rights in constitutional law, 5, 87–8

in Scotland, 10

in Spain, 172–3

PCTs (Primary Care Trusts) in UK, 30–1, 32, 55

Pearson Committee, 51

Penneau, J., 82, 84, 85

Pennsylvania Project on Medical Liability, 2

personal liability

in Austria, 126–7

in France, 72–3

in Spain, 181
Personal Medical Services (PMS) agreements in UK, 31
personality rights, 5, 87–8
PMS (Personal Medical Services) agreements in UK, 31
predisposition or precondition in patient, in Austria, 126
prima facie negligence. See res ipsa loquitur
Primary Care Trusts (PCTs) in UK, 30–1, 32, 55
privacy, patient right of
in the Netherlands, 140
in Spain, 173
private systems. See public versus private health systems and legal coverage, and under insurance
Proculus, 58
product liability
in France, 94, 99–100
in the Netherlands, 152
professional bodies. See codes of conduct and disciplinary bodies
Project on Medical Liability, Pennsylvania, 2
proof of medical liability, 14
in Austria, 123–6
in England and Wales, 14
fault (See fault liability)
negligence (See negligence)
in the Netherlands, 15, 145
res ipsa loquitur (prima facie negligence) (See res ipsa loquitur)
reversal of burden of, 14–15, 64–5, 145, 176–8, 186
in Scotland, 64–5
in Spain, 14, 176–8, 186
public policy issues
in England and Wales, 39, 50
in the Netherlands, 152
wrongful life/wrongful birth, 39
public versus private health systems and legal coverage, 1–3. See also subhead 'private health insurance', under insurance
in Austria, 4, 109–13
in England and Wales, 4, 30–1
in France, 4, 70–2
Netherlands, compulsory private insurance in, 4, 133
in Scotland, 4, 54–6
in Spain, 4, 5, 160, 164, 168, 169–70
Rang, Jaap, 11, 25, 137
record-keeping, importance of
in Austria, 124
in the Netherlands, 140
in Spain, 173
Regional Conciliation and Compensation Commissions, France, 95–6
regulation of medical profession. See codes of conduct and disciplinary bodies
Reid, Lord, 47
reporting requirements, 10
res ipsa loquitur (prima facie negligence), 14, 15
in England and Wales, 14, 47
in France, 101
in Scotland, 65
Spain influenced by, 186
responsible parties, 15–16. See also joint liability; personal liability; vicarious liability
in Austria, 126–8
in England and Wales, 16
in France, 16, 72–3
in the Netherlands, 16, 145, 151
in Spain, 180–1
reversal of burden of proof, 14–15, 64–5, 145, 176–8, 186
risks, duty to inform patient of. See informed consent
Roca Juan, J., 166
Roman law, 58
Ross Report, Scotland, 66, 67, 68, 69
Saleilles, R., 84
Savatier, R., 87
Scarman, Lord, 12, 44
Scotland, 54–6
causation in, 65
codes of conduct and disciplinary bodies in, 56–7
contract law in, 6, 58
costs/number of claims compared to England and Wales, 66–9
damages, measure of, 17, 66–9
duty of care/breach of duty, 63
England and Wales, cross-border assimilation with, 61–2, 63–4
expert witnesses in, 62–3
future of medical liability in, 69
historical background to medical liability in, 57–61
increase in number of claims, 66–7
mediation in, 57
negligence, 6, 57–62
no-fault compensation scheme proposals, 69
Nordic patient insurance scheme, interest in, 21
patients’ rights in, 10
private health care in, 55, 57
proof of medical liability, 64–5
public health system (NHSiS or National Health Service in Scotland) in, 4, 54–6
res ipsa loquitur (prima facie negligence), 65
Ross Report, 66, 67, 68, 69
standard of care in, 12, 61–3
tort law in, 57–62
vicarious liability of hospitals, 64
wrongful life/wrongful birth, 17, 64
Scottish case law
Aird v. Ramsay, 65
Beasley v. Fife Health Board, 63
Castell v. De Greef, 63
Clark v. McLennan, 65
Craig v. Glasgow Victoria and Leverndale Hospitals Board of Management, 65
Crawford v. Campbell, 59
Devaney v. Glasgow Health Board, 65
Devlin v. Ghosh, 64
Dickson v. Hygienic Institute, 59, 63
Dougan v. Lanarkshire Acute Hospitals NHS Trust, 61, 63
Duffy v. Lanarkshire Health Board, 63
Edgar v. Lamont, 59
Fallone v. Lanarkshire Acute Hospitals NHS Trust, 64
Farquhar v. Murray, 59
Foote v. Greenock Hospital, 64
Fox v. Glasgow South Western Hospitals Board, 64
Gardner v. Ferguson, 58
Gerrard v. Royal Infirmary of Edinburgh NHS Trust, 60, 62, 63
Gillespie v. Grampian Health Board, 65
Goorkani v. Tayside Health Board, 62
Gordon v. Wilson, 63
Hayward v. Edinburgh Royal Infirmary Board of Management, 64
Honisz v. Lothian Health Board, 62, 63
Hunter v. Hanley, 12, 42, 60–2, 64, 66, 143
Kay’s Tutor v. Ayrshire and Arran Health Board, 64
Kelly v. Sir Frank Mears and Partners, 65
Kenyon v. Bell, 60, 64
Lavelle v. Glasgow Royal Infirmary, 38, 64
Littlejohn v. Ayrshire and Arran Health Board, 65
Macdonald v. Glasgow Western Hospitals Board of Management, 64
McFarlane v. Tayside Health Board (Scottish case applied in English law), 17, 35, 39–41, 64
McGhee v. National Coal Board, 47, 48, 64, 65
Morris v. Caithness Hospitals, 64
Moyses v. Lothian Health Board, 61, 62
Muir v. Grampian Health Board, 61, 62
Murray v. Lanarkshire Acute Hospitals NHS Trust, 64

© in this web service Cambridge University Press www.cambridge.org
Scottish case law (cont.)

Phillips v. Grampian Health Board, 62
Purves v. Landell, 59
Reidford v. Magistrates of Aberdeen, 38
Simpson v. Allan, 59
Toner v. McLeod, 64
Urquhart v. Grigor, 59
Wardlaw v. Bonnington Castings Ltd, 64

Scottish statute law
National Health Service (Scotland) Act 1947, 54
National Health Service (Scotland) Act 1978, 54
Scotland Act 1998, 54

self-regulation of medical profession. See codes of conduct and disciplinary bodies

services liability in EU, 14, 22
Shifts in Compensation project, 2–3
Sieburgh, C. H., 154–6
social security regimes in Austria, 110–11
England and Wales, NHS (National Health Service) in, 4, 30–1
Scotland, NHS(S) (National Health Service in Scotland) in, 4, 54–6
Sorn, Lord, 59
Spain, 160–1
administrative law in, 160, 164, 169, 181
causation in, 164, 178–80, 186
Civil Code private health system cases governed by contract law of, 170
res ipsa loquuitur (prima facie negligence), influence of, 186

responsible parties in, 181
vicarious liability in, 164
codes of conduct and disciplinary bodies in, 171
contract law in, 162, 170, 173–4, 176, 181, 187
criminal liability in, 5, 11, 161, 163, 167, 170
damages in, 181–4

disproportionate harm, doctrine of, 177, 179, 186
documentation, importance of, 173
dynamic distribution of the proof, doctrine of, 178, 186
exemption/exclusion clauses in, 184
fault liability in, 162, 164, 170, 176–8, 186
French influence in, 174
historical background to medical liability in, 8, 161–8
case law, 161–5, 185
legal literature, 165–8, 185
hospitals in, 4, 164, 168, 181
increase in medical liability claims in, 160, 164, 169, 186
informed consent in, 163, 166, 167, 175, 177, 179–80, 182–3, 186
joint liability in, 181
loss of chance doctrine in, 182
medical liability insurance in, 184–5
negligence in, 161, 164
no-fault compensation fund in, 184–5, 187
patients’ rights in, 172–3
personal liability in, 181
privacy/confidentiality, patient right of, 173
proof of medical liability in, 14, 176–8, 186
public versus private health systems and legal coverage in, 4, 5, 160, 164, 168, 169–70
strict liability in, 170, 176, 178, 181, 186
tort law in, 161, 170, 173–4, 176, 178, 181, 187
vicarious liability in, 164, 169, 181
wrongful life/wrongful birth, 169, 179, 183
Spanish statute law

Ley 50/1980 (Insurance Contract Act), 184
Ley 14/1986 (General Law of Health), 171, 172
Ley 30/1992 (Administrative Law), 165, 169, 181
Ley 9/1993, 184
Ley 29/1998, 170
Ley 4/1999, 169
Ley 41/2002, 172–3
Ley 44/2003 (Regulation of Health Professionals), 171, 184
Civil Procedure Law, 174, 178
General Consumers Protection Act, 170, 178

Spier, Jaap, 9
Splitting liability in Austria, 125–6
Standard of care, 11–14
Comparative law on, 13, 144
In England and Wales, 11, 34–47
Evolution of, 25
In France, 11, 13
Institutional, 13, 37–8
In Netherlands, 12, 13, 141–5
In Scotland, 12, 61–3
Small jurisdictions and, 12–13, 143–4
In Spain, 11, 174–5, 186

Starck, B., 85
Steyn, Lord, 40, 41
Strategic Health Authorities in UK, 30–1, 32
Strict liability
In France (See under France)
In Spain, 170, 176, 178, 181, 186
Swain, Warren, 27

Sweden
Claim rate, 3
Patient insurance in (See Nordic patient insurance scheme)

Switzerland, institutional standard of care in, 14, 145

Taylor, Simon, 70
Technological change and medical liability, 23

Tindal CJ, 37

Tort law, 6–7
In Austria, 113
In England and Wales, 6, 7, 37
In France, 6, 71, 73, 78, 79
In Netherlands, 6, 25, 134–6, 137
In Scotland, 57–62
In Spain, 161, 170, 173–4, 176, 178, 181, 187

Trigo García, Belén, 160

Ulpian, 58

United Kingdom. See England and Wales; Scotland

United States
Contract versus tort law, 51
discovery in, 14
eyear development of medical negligence law in, 1, 8
English rise in medical liability claims compared to, 28
French critique of litigation culture of, 92
Informed consent, American origins of, 138
Legislative proposals to manage medical liability in, 9
Licensing of physicians in, 33
Market share liability, concept of, 149
Netherlands not influenced by, 136
Patient Safety and Quality Improvement Act of 2004, 10
Reporting requirements in, 10
Sindell v. Abbott Laboratories, 149
Universal Declaration of Human Rights 1948, 87

Van Gerven, Walter, 17, 148
Vicarious liability
In Austria, 113, 126–8
In England and Wales, 37–8
In France, 72–3
In Scotland, 64
In Spain, 164, 169, 181

Vinay, Geneviève, 6, 85
Virtual fault, 82
Whitty, Niall R., 54
WHO (World Health Organization), 23
Willcock, John, 37
Winiger, B., 2
Wissink, M. H., 154
Woolf, Lord, 28, 29, 45
World Health Organization (WHO), 23
Wrongful life/wrongful birth
abortion and, 147, 154, 155
changes wrought to medical liability
concepts by, 25
damages in, 16–18, 146–56
DES (diethylstilbestrol) cases, 148–53

in England and Wales, 18, 38–42
EU harmonisation, feasibility of, 21–2
in France, 17, 21, 104
in the Netherlands, 16–17, 22, 146–56
Oviedo Convention on Human
Rights and Biomedicine, 154–6
public policy issues, 39
in Scotland, 64
in Spain, 169, 179, 183
Wrongfulness as medical liability
concept in Austria, 117–18

Zimmermann, R., 2