THE DEVELOPMENT OF LIABILITY IN RELATION TO TECHNOLOGICAL CHANGE

Technological developments posed a challenge to the established law, especially tort law, at approximately the same time across Europe. This book focuses on the similarity and diversity of responses to such developments in different jurisdictions. Three examples have been studied in depth: the escape of sparks from steam engines in the middle of the nineteenth century; exploding boilers in the latter part of the nineteenth century; and asbestos-related industrial disease in the middle and late twentieth century. The book shows how the rules of tort law were used and adapted and demonstrates how other systems of regulation and compensation were introduced to prevent injuries or to provide compensation to victims outside tort law. The relatively marginal role of tort law in these areas reveals much about legal development in general.

MIQUEL MARTÍN-CASALS is Professor of Civil Law at the University of Girona.
COMPARATIVE STUDIES IN THE DEVELOPMENT OF THE LAW OF TORTS IN EUROPE

Series editors
John Bell and David Ibbetson
THE DEVELOPMENT OF LIABILITY IN RELATION TO TECHNOLOGICAL CHANGE

Volume 4

Edited by
MIQUEL MARTÍN-CASALS
CONTENTS

Series Editors’ Preface page vii
List of Abbreviations x

1 Technological Change and the Development of Liability for Fault: A General Introduction 1
MIQUEL MARTÍN-CASALS

2 Technological Change and the Development of Liability for Fault in England and Wales 40
JONATHAN MORGAN

3 Technological Change and the Development of Liability for Fault in France 89
YVONNE SALMON

4 Technological Change and the Development of Liability for Fault in Germany 134
JENS M. SCHERPE

5 Technological Change and the Development of Liability for Fault in Italy 185
CHIARA FAVILLI

6 Technological Change and the Development of Liability for Fault in Spain 227
MIQUEL MARTÍN-CASALS AND JORDI RIBOT

Appendix: Main Code Provisions Cited 264
Index 271
SERIES EDITORS’ PREFACE

The European Legal Development series has arisen from a project funded by the AHRC from January 2005 until February 2008.

The aim of the project as a whole is to examine the nature of legal development in Western Europe since 1850, focusing sharply on liability for fault. Behind this there is a more abstract purpose, to attempt to cast some light on the factors which have influenced the way in which the law has changed over this period. Legal historians have looked at the general question, usually focusing on the rather facile distinction between the English common law and continental European legal systems. Though rooted in the sources, these works have been marred by a somewhat unsophisticated methodology and an inevitably selective use of evidence. Comparative lawyers have developed far more sophisticated methodologies, but their theoretical perspectives have too often borne little relation to empirical data. Over the last twenty years, tort lawyers have looked at the same types of question; but their analysis has invariably been at a high level of generality and has rarely looked at the historical components. By bringing together experts with different disciplinary backgrounds – comparative lawyers and legal historians, all with an understanding of modern tort law in their own systems – and getting them to work collaboratively, we have aimed to produce a more nuanced comparative legal history, and one which is theoretically better informed.

The topic of legal development is broad and, to make it manageable, we have undertaken a programme of work which has built up from a number of case studies and has moved towards a more general analysis and conclusions. Although we have been concerned with the development of the law, and although many of those involved in the project have been lawyers, we have also been concerned to include and benefit from the insights of historians and scholars in other disciplines.

Liability for fault between 1850 to 2000 has been our major area of study. Around 1850, there were many similarities in approaches to liability for fault across the legal systems of Western Europe. But since then, there
has been significant divergence. Our method has been first to chart the changes and then to seek the explanations for what happened. Although there have been many changes in tort and delict laws over the period, the idea of liability for fault remains central to private law approaches to the compensation of victims of harms caused by the actions of others.

As a first stage, the project worked on six case studies which illustrate the general theme of liability for fault and its development within the period:

- product liability;
- legal doctrine;
- medical liability;
- relations between neighbours;
- technological change;
- traffic and railways.

This research involved scholars from a range of countries, in particular, England and Scotland, Spain, the Netherlands, Germany, France, Sweden, Austria and Italy. Each working group drew on the expertise of both senior and more junior scholars familiar with different European legal systems, and contained a mixture of comparative lawyers and legal historians.

A second stage has involved further groups examining a number of salient factors in legal development. The topics covered in this stage are:

- institutions and professions;
- social and political ideas;
- the economy (including the impact of insurance).

A final strand to the work is an overview book.

This book, edited by Miquel Martín-Casals, provides us with a good example of the benefits of this approach. We gain a clear insight into the way in which established principles of tort engaged with the problems thrown up by new technologies. We see the way in which regulatory law, private insurance and state-run compensation schemes developed to deal with the issues the law now confronted. Regulatory law and inspections by officials and private insurers and associations dealt with many of the issues of preventing accidents. Compensation systems outside tort offered remedies to many of the victims of accidents. In this matrix of legal interventions, we can see that the place of tort law and of fault in particular changes. We become aware of its limitations. The factors for legal
Series Editors' Preface

ix

development identified in this book are ones which will be developed in later volumes.

Particularly in relation to this book, the editors are grateful to the contribution of Matthew Dyson McGrath, Ph.D student on the AHRC project, who made a significant contribution to the formulation, discussion and execution of this part of the project. His own work on the relationship of criminal and civil fault will be published separately and will complement significantly the understanding of this area presented in this book.

John Bell
David Ibbetson
ABBREVIATIONS

AcP
AiB
AJDA
App.
Arch. Circolaz.
ARP
AS
BGB
BGBL
BGHZ
BOCG
BOE
Bull. Civ.
BVerfG
Cass. (Fr.)
Cass. (It.)
Cass. civ
Cass. Unica
CC
c.c.
c civ.
C.E. (Ass.)
chr.
Cons. Stato
Corte cost.
CP
c.p.
CPA
C séc. soc.
D.

Archiv für die civilistische Praxis
Arbeitsrecht im Betrieb
Actualité Juridique Droit Administratif
Corte di appello (Italy)
Archivio giuridico della circolazione e dei sinistri stradali
Aranzadi Penal
Aranzadi Social
Bürgerliches Gesetzbuch
Bundesgesetzblatt
Entscheidungen des Bundesgerichtshofes in Zivilsachen
Boletín Oficial de las Cortes Generales
Boletín Oficial del Estado
Bulletin de la Cour de cassation, civil
Bundesverfassungsgericht
Cour de cassation
Corte di cassazione
Cour de cassation, chambre civile
Cour de cassation, chambre commerciale
Corte di cassazione, sezione penale
Corte di cassazione, sezione unica
Código Civil
Codice civile
Code civil
Conseil d’Etat (Assemblé plénière)
Chronique
Consiglio dello Stato
Corte costituzionale
Código Penal
Codice penale
Comité permanent amiante
Code de la sécurité sociale
Receuil Dalloz
LIST OF ABBREVIATIONS

Danno e resp.  Danno e responsabilità
D.A.  Receuil Dalloz Analytique
D.C.  Receuil Dalloz Critique
D.H.  Receuil Dalloz Hebdomadaire
Dig. It.  Novissimo Digesto Italiano
D. Lgs.  Decreto legislativo
D. M.  Decreto Ministeriale
D. P.  Receuil Dalloz Périodique
D. P. R.  Decreto Presidente della Repubblica
EGBGB  Einführungsgesetz zum BGB
Enc. Dir.  Enciclopedia del Diritto
Enc. Giur.  Enciclopedia Giuridica Trecciani
ERPL  European Review of Private Law
EVBL  Evidenzblatt der Rechtsmittelentscheidung
Ferr. It.  Ferrovie Italiane
FIVA  Fonds d’indemnisation des victimes de l’amiante
Foro it.  Foro italiano
Foro sic.  Foro siciliano
FS  Azienda Autonoma delle Ferrovie dello Stato
Gaz. Pal.  Gazette du Palais
Gaz. Trib.  Gazette des Tribunaux
GewO  Gewerbeordnung
Giur. Cost.  Giurisprudenza costituzionale
Giur. It.  Giurisprudenza italiana
Giur. Sic.  Giurisprudenza siciliana
Giust. Civ.  Giustizia civile
Harv. LR  Harvard Law Review
HVBG  Hauptverband der gewerblichen Berufsgenossenschaften
INAIL  National Institute of Insurance for Occupational Accidents and Disease
INSERM  Institut national de la santé et de la recherche médicale
JCP  Juris-Classeur Périodique, la Semaine Juridique
J Econ. Hist.  Journal of Economic History
J.O.  Journal Officiel
J.O. (Doc.)  Journal Officiel (Documents)
JUR  Jurisprudencia
Lav. giuri.  Lavoro giurisprudenziale
Leb.  Receuil Lebon
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>MDR</td>
<td>Monatschrift für Deutsches Recht</td>
</tr>
<tr>
<td>Monit. Trib.</td>
<td>Monitore dei Tribunali</td>
</tr>
<tr>
<td>MSUA</td>
<td>Manchester Steam Users’ Association</td>
</tr>
<tr>
<td>NJW</td>
<td>Neue Juristische Wochenschrift</td>
</tr>
<tr>
<td>NJWE-MietR</td>
<td>Neue Juristische Wochenschrift – Entscheidungen Mietrecht</td>
</tr>
<tr>
<td>OAG</td>
<td>oberappellationsgericht</td>
</tr>
<tr>
<td>OHofG</td>
<td>Oberhofgericht</td>
</tr>
<tr>
<td>O.J.</td>
<td>Official Journal of the European Communities</td>
</tr>
<tr>
<td>OLG</td>
<td>Oberlandesgericht</td>
</tr>
<tr>
<td>Or. Giur. Lav.</td>
<td>Orientamenti della giurisprudenza del lavoro</td>
</tr>
<tr>
<td>Parl. Deb.</td>
<td>Hansard, Parliamentary Debates</td>
</tr>
<tr>
<td>PGE</td>
<td>Preußisches Gesetz über die Eisenbahnunternehmungen</td>
</tr>
<tr>
<td>Pret.</td>
<td>Pretore (tribunale del)</td>
</tr>
<tr>
<td>Rass. dir. civ.,</td>
<td>Rassegna di diritto civile</td>
</tr>
<tr>
<td>R.D.</td>
<td>Reale Decreto</td>
</tr>
<tr>
<td>Rec. pér. assur.</td>
<td>Recueil périodique des assurances</td>
</tr>
<tr>
<td>RENFE</td>
<td>Red nacional de ferrocarriles españoles</td>
</tr>
<tr>
<td>Req.</td>
<td>Cour de cassation, chambre des requêtes</td>
</tr>
<tr>
<td>Resp. civ. et assur.</td>
<td>Responsabilité civile et assurances</td>
</tr>
<tr>
<td>Resp. Civ. Prev.</td>
<td>Responsabilità civile e previdenza</td>
</tr>
<tr>
<td>Rev. trim.</td>
<td>Revue trimestrielle de droit civil</td>
</tr>
<tr>
<td>RGBl</td>
<td>Reichsgesetzblatt</td>
</tr>
<tr>
<td>RG EE</td>
<td>Reichsgericht, Eisenbahn- und Verkehrsrechtliche Entscheidungen und Abhandlungen</td>
</tr>
<tr>
<td>RGZ</td>
<td>Entscheidungen des Reichsgerichts in Zivilsachen</td>
</tr>
<tr>
<td>RHPfG</td>
<td>Reichhaftpflichtgesetz</td>
</tr>
<tr>
<td>Riv. Crit. Dir. lav.</td>
<td>Rivistà critica</td>
</tr>
<tr>
<td>Riv. Dir. Lav.</td>
<td>Rivistà del diritto del lavoro</td>
</tr>
<tr>
<td>Riv. Dir. Pubb.</td>
<td>Rivistà del diritto pubblico</td>
</tr>
<tr>
<td>Riv. Inf. Mal. Prof.</td>
<td>Rivistà degli infortuni e delle malattie professionali</td>
</tr>
<tr>
<td>RJ</td>
<td>Repertorio de Jurisprudencia</td>
</tr>
<tr>
<td>ROGE</td>
<td>Reichs-Oberhandelsgericht, Entscheidungen des Reichs-Oberhandelsgerichts</td>
</tr>
<tr>
<td>S.</td>
<td>Recueil Sirey</td>
</tr>
<tr>
<td>SAP</td>
<td>Sentencias Audiencias Provinciales</td>
</tr>
<tr>
<td>sez.</td>
<td>Sezione</td>
</tr>
<tr>
<td>somm.</td>
<td>sommaire</td>
</tr>
<tr>
<td>STS</td>
<td>Sentencias Tribunal Supremo</td>
</tr>
<tr>
<td>STSJ</td>
<td>Sentencias Tribunales Superiores de Justicia</td>
</tr>
<tr>
<td>SU</td>
<td>Sezioni uniti (of the Corte di cassazione)</td>
</tr>
</tbody>
</table>
# List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>TA</td>
<td>Tribunal administratif</td>
</tr>
<tr>
<td>Temi rom.</td>
<td>Temi romani</td>
</tr>
<tr>
<td>Trib.</td>
<td>Tribunale</td>
</tr>
<tr>
<td>Trib. civ.</td>
<td>Tribunal civil</td>
</tr>
<tr>
<td>Trib. com.</td>
<td>Tribunal commercial</td>
</tr>
<tr>
<td>UVG</td>
<td>Unfallversicherungsgesetz</td>
</tr>
<tr>
<td>VersR</td>
<td>Versicherungsrecht</td>
</tr>
<tr>
<td>WuM</td>
<td>Wohnungswirtschaft und Mietrecht</td>
</tr>
<tr>
<td>ZMR</td>
<td>Zeitschrift Mietrecht</td>
</tr>
</tbody>
</table>