

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

MODERNISING CIVIL LIABILITY LAW IN EUROPE, CHINA, BRAZIL AND RUSSIA

Non-contractual liability, stemming from damage accountably caused to another, has been the subject of the PETL and DCFR-VI European reform initiatives. Gert Brüggemeier, however, proposes alternative reforms which, instead of trying to overcome the differences between civil law (delict) and common law (torts), are restricted to civil liability. The focus is on the grounds of accountability, and stricter forms of liability are at the fore. Quasi-strict enterprise liability is introduced to fill the lacuna between personal fault and forms of strict liability. A commentary is included on recent legislation on civil liability in China, Brazil and Russia to demonstrate how these large countries try to come to grips with the challenges of 'risk society'.

Gert Brüggemeier is Professor of Private Law, European Economic Law and Comparative Law at the Faculty of Law, University of Bremen.

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:

Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

MODERNISING CIVIL
LIABILITY LAW IN EUROPE,
CHINA, BRAZIL AND RUSSIA

Texts and Commentaries

GERT BRÜGGEMEIER

Foreword by

WALTER VAN GERVEN



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
 Texts and Commentaries
 Gert Brüggemeier
 Frontmatter
[More information](#)

CAMBRIDGE
 UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Published in the United States of America by Cambridge University Press, New York

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107682061

© Gert Brüggemeier 2011

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2011

First paperback edition 2014

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Brüggemeier, Gert, 1944–

Modernising civil liability law in Europe, China, Brazil and Russia : texts and commentaries / Gert Brüggemeier.

p. cm.

ISBN 978-1-107-00779-6 (hardback)

1. Liability (Law) – Europe 2. Liability (Law) – China. 3. Liability (Law) – Brazil. 4. Liability (Law) – Russia (Federation) I. Title.

K579.L5B78 2011

346.03–dc22

2011011255

ISBN 978-1-107-00779-6 Hardback

ISBN 978-1-107-68206-1 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:

Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

CONTENTS

<i>Foreword</i>	<i>page</i> xi
<i>Preface</i>	xv
<i>Acknowledgements</i>	xvii
<i>Table of cases</i>	xviii
<i>List of abbreviations</i>	xxiii
PART 1 Draft Bill on Civil Liability Law	1
A Draft Bill on Civil Liability Law– text	3
Title I Basic rules	3
Title II Personal liability for wrongful conduct	5
Chapter 1 Injurious human behaviour	5
Chapter 2 Wrongfulness	5
Chapter 3 Delictual capacity and liability for persons without delictual capacity	6
Title III Enterprise, professional and state liability	7
Chapter 1 General enterprise liability	7
Chapter 2 Special cases of enterprise liability	8
Subchapter (a) Product liability	8
Subchapter (b) Environmental liability	9
Subchapter (c) Pure economic loss in the course of business	9
Chapter 3 State liability	10
Title IV General and special rules of strict liability	10
Chapter 1 General norm	10
Chapter 2 Special rule: transport vehicles	11
Chapter 3 Special rules: animals and buildings	11
Title V Plurality of responsible actors	12
Chapter 1 Plurality of actors	12
Chapter 2 Joint liability and contribution	13

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

vi

CONTENTS

Title VI	Consequences of liability: damages, restitution and injunction	13
Chapter 1	Damages and restitution	13
Chapter 2	Compensation for death	15
Chapter 3	Claims for forbearance	16
Title VII	Liability and insurance	16
Title VIII	Complementary rules	17
Chapter 1	Limitation and exclusion of liability	17
Chapter 2	Disclaimer of liability, limitation periods and concurring claims	18
B	Commentary to the Draft Bill on Civil Liability Law	19
I	Introduction	19
1	Four basic assumptions	19
2	Points of reference	24
II	Commentary	27
Title I	Basic rules	27
Title II	Personal liability for wrongful conduct	50
Chapter 1	Injurious human behaviour	50
Chapter 2	Wrongfulness	55
Chapter 3	Delictual capacity and liability for persons without delictual capacity	66
Title III	Enterprise, professional and State liability	70
Chapter 1	General enterprise liability	70
Chapter 2	Special cases of enterprise liability	81
Subchapter (a)	Product liability	81
Subchapter (b)	Environmental liability	88
Subchapter (c)	Pure economic loss in the course of business	89
Chapter 3	State liability	93
Title IV	General and special rules of strict liability	96
Chapter 1	General norm	101
Chapter 2	Special rule: transport vehicles	102
Chapter 3	Special rules: animals and buildings	104
Title V	Plurality of responsible actors	107
Chapter 1	Plurality of actors	107
Chapter 2	Joint liability and contribution	112

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

CONTENTS

vii

Title VI	Consequences of liability: damages, restitution and injunction	113
Chapter 1	Damages and restitution	113
Chapter 2	Compensation for wrongful death	126
Chapter 3	Claims for forbearance	129
Title VII	Liability and insurance	129
Title VIII	Complementary rules	132
Chapter 1	Limitation and exclusion of liability	132
Chapter 2	Disclaimer of liability, limitation periods and concurring claims	134
PART 2	Two European reform proposals on liability law	137
A	Principles of European Tort Law (PETL) 2005	139
Title I	Basic norm	139
Chapter 1	Basic norm	139
Title II	General conditions of liability	139
Chapter 2	Damage	139
Chapter 3	Causation	140
Title III	Bases of liability	142
Chapter 4	Liability based on fault	142
Chapter 5	Strict liability	143
Chapter 6	Liability for others	143
Title IV	Defences	144
Chapter 7	Defences in general	144
Chapter 8	Contributory conduct or activity	144
Title V	Multiple tortfeasors	145
Chapter 9	Multiple tortfeasors	145
Title VI	Remedies	146
Chapter 10	Damages	146
B	Draft Common Frame of Reference (DCFR) Book VI: Non-contractual liability arising out of damage caused to another (2009)	149
Chapter 1	Fundamental provisions	149

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

viii

CONTENTS

Chapter 2	Legally relevant damage	150
Chapter 3	Accountability	153
Chapter 4	Causation	158
Chapter 5	Defences	159
Chapter 6	Remedies	161
Chapter 7	Ancillary rules	163
PART 3	Recent legislation on liability law	165
A	Civil Code of the People's Republic of China, Book VIII: Law of Delict/Act on Liability Law (2009)	167
I	Text of the Act	167
Chapter I	General provisions	167
Chapter II	Bases of liability and remedies	168
Chapter III	Circumstances to exclude or mitigate liability	171
Chapter IV	Special provisions on subjects of liability	172
Chapter V	Product liability	174
Chapter VI	Liability for motor vehicle traffic accident	175
Chapter VII	Liability for damage due to medical malpractice	176
Chapter VIII	Liability for environmental pollution	178
Chapter IX	Liability for highly dangerous activities	178
Chapter X	Liability for harm caused by domestic animals	180
Chapter XI	Liability for harm caused by objects	180
Chapter XII	Supplementary provision	181
II	Commentary	181
1	Historical background	182
2	General part	183
3	Special part	188
(a)	Product liability	188
(b)	Medical liability	191
(c)	Liability for environmental pollution	193
(d)	Other grounds for liability	194
4	Summary	195
B	Civil Code of the Federative Republic of Brazil (2002)	197
I	Text	197
	General Part, Book I, Title I, Chapter II – Personality rights	197

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

CONTENTS

ix

Book III, Title III – Illicit acts	198
Special Part, Book I, Title IX – Civil liability	199
Chapter I Obligation to indemnify	199
Chapter II Indemnification	201
II Commentary	203
1 Historical background	203
2 Law of non-contractual liability (Arts. 927–954)	206
(a) Grounds of liability	206
(1) Fault liability (Art. 927)	206
(2) Strict liability (Art. 927 § único)	208
(3) Enterprise liability and liability for others	211
(b) Consequences of liability	212
3 Summary	213
C Civil Code of the Russian Federation (Part I 1994/ Part II 1996)	214
I Text	214
Part I: Chapter 8 Non-material values and their protection	214
Part II: Chapter 59 Liabilities for damage	216
1 General provisions for the redress of injury	216
2 Redress of injury inflicted on the life or health of an individual	224
3 Redress of injury inflicted by defects in goods, works or services	230
4 Compensation for moral damage	231
II Commentary	232
1 Historical background	232
2 Liability law (Arts. 1064–1101): General part	235
(a) Liability for presumed fault (Art. 1064)	235
(b) Strict liability for sources of increased danger (Art. 1079)	237
(c) Enterprise and state liability	238
(d) Liability of multiple actors	238
(e) Delictual capacity	239
(f) Varia	240
3 Special part	241
(a) Personal injury (Arts. 1084–94)	241

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

x

CONTENTS

(b) Personal non-property rights (Arts. 150–2)	242
(c) Liability for products and services (Arts. 1095–8)	243
(d) Compensation for non-pecuniary loss (Arts. 1099–101)	246
4 Summary	247
<i>Select bibliography</i>	248
<i>Index</i>	257

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

FOREWORD

It is characteristic of the author of this book, Gert Brüggemeier, to design and present comprehensive reviews of legal subjects, mainly in the law of liability, and this has been at the centre of his academic work. In his research, he combines the past with the present and the future, and discusses national, European and global law in conjunction with each other. He had an early interest in the Europeanisation and transnationalisation of laws, exploring the divergences and convergences of legal cultures and mentalities, linking liability, insurance and social security and, beyond that, law and economics.

For a description of the author's research activities, see the preface to the *Liber Amicorum Gert Brüggemeier* (A. Colombi-Ciacchi, C. Godt, P. Rott and L. J. Smith, eds. (Berlin: Nomos, 2009), 7–8).

The present work displays the same comprehensive approach. After presenting a Draft Bill of his own on civil liability laws, the author combines this with two European reform proposals and links them to three recent legislative codes from outside the EU (China, Brazil, and Russia). In the Draft Bill, he combines basic assumptions of the past (fault liability for wrongful conduct) with basic developments in the present (enterprise, professional and States, stricter and strict liability) and develops a middle ground between the (French) general clause approach and the (German) enumerated-interest approach. He stresses the importance of the method of judicial application and development, supplementing the instrument of legislative norm making.

It is only in one area that the author does not take such a comprehensive approach. That is where he chooses to focus on the civil law of delict and does not try to develop all-embracing principles that would be valid for both the civil law of delict and the common law of torts. Such a general approach, mainly between the French, German and English legal systems, is applied, for example, in the casebook *National, Supranational and International Tort Law* (W. van Gerven, J. Lever and P. Larouche, eds. (Oxford: Hart Publishing, 2000)), *but* in a totally different context. The purpose of a case or sourcebook is indeed to assemble materials from

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

different legal systems, both civil and common law, to demonstrate to readers, especially law students and law teachers, the similarities and dissimilarities between the main legal orders, and to familiarise them with these differences. This is particularly important in EU Member States, where transborder relations are manifold and the mutual understanding of different legal mentalities is the essence of education. However, such an all-embracing effort is not, or not entirely, appropriate when it comes to designing a common draft of legislation that requires homogeneity of sources and uniformity in outcome. In such a situation, like the one dealt with in this book, it would have been precocious, and practically impossible, to depart from a large variety of European sources in constructing an entirely coherent and consistent Draft Bill, and, moreover, to place it in a remarkable transcontinental perspective, as the author intended to do and has done.

A preface is not destined to give an overview, but to emphasise what, in the prefacer's view, is essential in the book. Taking account of what is mentioned above, such an essential point is, in my view, how the author – by comparing and describing various components from national and transnational, European and transcontinental laws – recognises the most striking feature of contemporary legal systems: their pluri-national origin and, even more importantly, their multi-level composition within the European and international structure. Allow me to develop this point a little more. The plurality of laws in a multi-layered context leads to the increased necessity of finding and applying principles – such as precedence and the ‘*Solange*’ exception,* conformity of interpretation, subsidiarity and efficiency – enabling multi-level legislators, certainly within a structured entity such as the EU (but also China, Brazil and Russia), to distribute the normative function between levels of regulation, that is, to devise, so to speak, a new kind of conflict of law, now containing not only reference rules for (horizontal) multi-*lateral* but also (vertical) multi-*level* situations. The work recorded in this book will be of great help in the devising of such principles of inter-normativity. Indeed, although the author, as he indicates in the foreword, is ‘notoriously sceptical of European initiatives to unify private law’ – and rightly so – he has undertaken the difficult task of working out a model bill of liability

* BVerfG, 29 May 1974, BVerfGE 37, 271 – *Solange* I; BVerfG, 22 October 1986, BVerfGE 73, 339 – *Solange* II.

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

FOREWORD

xiii

law, not just with elements drawn from a purely European context, but also from ‘abroad’, in order ‘to contribute to the ongoing transformation process of the modern law of delicts/torts and to participate in the designing of a modern civil liability law for the twenty-first century’. It is a major merit of this book that it allows the reader to make acquaintance with the law of delict in the Chinese, Brazilian and Russian civil codes, and to place the European proposals in a much broader perspective. Another advantage is that it is the work of one person – not a team effort – who has a coherent view of what the law of delict should be, and has, during his academic life, acquired a vast and coherent knowledge of civil liability laws around the world.

Walter van Gerven, Leuven

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

PREFACE

Although notoriously sceptical of European initiatives to unify private law, the idea to create a model bill on civil liability law arose when I served as a legal consultant to the Standing Committee of the Eleventh National People's Congress in China from 2006–9. The Committee was engaged in drafting an Act on civil liability law as book VIII of the new Chinese Civil Code. In the meantime, Dr Zhu Yan from Renmin University, Beijing, spent one year under my mentorship as German chancellor fellow of the Alexander von Humboldt Foundation in Germany. His research project involved modelling a Draft Bill of a Chinese law of delict: so, I was dragged into it! We organised a one-year international seminar at the law faculty of Bremen University. I drafted a continental European law-based model bill on liability law, which drew extensively on the legal experiences of Western industrial societies during the last century. Zhu Yan added the Chinese aspects. We published this Draft Bill, together with a commentary and translations of the Bill's text in other languages, in Germany (*Entwurf für ein chinesisches Haftungsgesetz* (Tübingen: Mohr Siebeck, 2009) and in China (中国侵权责任法——学者建议稿及其立法理由, 北京大学出版社, 北京 2009). In December 2009, the Standing Committee passed the Act on the Law of Delict of the People's Republic of China; and it came into force on 1 July 2010.

With the Chinese legislative process finished, this English publication aims to address a broader international audience. This goes back to the original intention of the 2009 book: to contribute to the ongoing transformation process of the modern law of delict/torts and to participate in the designing of a modern civil liability law for the twenty-first century. Therefore, the Chinese particularities have been removed from the book. The text of the Draft Bill has been slightly revised; and the commentary has been thoroughly rewritten. Part 2 now contains the two European proposals for a modernised civil liability law: Principles of European Tort Law (PETL) and Book VI of the Draft Common Frame of Reference (DCFR). These serve as the main sources of reference and critique

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

xvi

PREFACE

throughout the commentary of the Draft Bill. Part 3 contains sections of additional materials on the non-contractual liability of the recent codifications of three important non-European states – China (2009), Brazil (2002) and Russia (1996), with short commentaries. Their law of delict is generally neglected in the current EU-centred legal discussion in Europe and its accessibility is sometimes difficult. But all three private law regimes have two things in common. On the one hand, they are modelled on the Romano-Germanic civil law of delict, i.e. they are embedded in the legacy of nineteenth-century civil law and are still open to further European influence. On the other hand, in the final analysis, they are non-European, i.e. they are quintessentially Chinese, Brazilian and Russian. That makes them unique, but also provides a ground for mutual learning.

The subject-matter of this book is non-contractual liability stemming from damage accountably caused to another. This slightly modified definition is taken from the heading of Book VI of the academic Draft Common Frame of Reference. Unlike the two European endeavours (PETL and DCFR-VI), which intend to harmonise and modernise non-contractual liability law by combining the civil law of delict *and* the common law of torts, this reform proposal remains rooted in civil law. It does not aim to overcome the differences between civil law and common law by creating a ‘new’ (hybrid) body of law, for which even an appropriate name is missing. Here, we deal with the civil law of delict and not with law of torts. That is why recent Brazilian, Chinese and Russian legislation is under additional consideration here. Nevertheless, the principles and concepts developed in this book may also serve as a source of inspiration for common law tort discourse, especially for reconceiving the innominate tort of negligence. Finally, notwithstanding this, the term *civil liability law* has been coined instead of law of *delict* because ‘delict’ is historically bound to individual fault liability. Today, fault is just *one* ground of accountability, alongside others, in the field of non-contractual liability law; and its relevance is still shrinking. Multiple forms of no-fault liability have come to the fore, next to functional equivalents to liability law, such as social security. To this extent, this civil law reform initiative operates under the heading of liability law.

Gert Brüggemeier, Bremen

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

ACKNOWLEDGEMENTS

I thank Ms Leslie Rose for the permission to reprint parts of her English translation of the Brazilian Civil Code, published by Renovar, Rio de Janeiro. Mr A. Pittrich from Sellier European Publisher, Munich, sent me the electronic version of book VI of the DCFR, and from Mr T. Thiede, European Group on Tort Law in Vienna, I received the electronic version of the PETL; thanks to both individuals and institutions. The parts of the Chinese and Russian civil code have been taken from the official government websites.

I am very grateful to the persons who, at different times during the long process of the making of this book, helped to bring different parts of the text into readable English: Eric Engle, Carol Forrest, Monika Hobbie and Rory Brown. The very final linguistic check was made by Patrick O'Callaghan, Newcastle. To his loyalty I owe a lot. Finally, I thank Walter van Gerven, Leuven, for writing a flattering preface. Antje Kautz, once again, made an excellent job of producing the final manuscript for the publisher. I thank her for being so skilful and reliable.

I dedicate the book to Zhu Yan, Beijing, who initiated the whole project.

Gert Brüggemeier, Bremen, September 2010

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

TABLE OF CASES

Decisions of the European Court of Human Rights

ECtHR, 24 June 2004, <i>Caroline Hannover v. Germany</i> (2005) 40 EHRR 1	34
ECtHR, 8 July 2004, <i>Vo v. France</i> (2005) 40 EHRR 12	30, 127
ECtHR, 15 February 2005, <i>Steel and Morris v. UK</i> (2005) 41 EHRR 22	37
ECtHR, 17 March 2005, <i>Bubbins v. UK</i> (2005) 41 EHRR 24	127
ECtHR, 26 September 2006, <i>Wainwright v. UK</i> (2007) 44 EHRR 40	33
ECtHR, 10 April 2007, <i>Evans v. UK</i> (2007) 43 EHRR 21	36

Decisions of the European Court of Justice

ECJ, 19 November 1991, joint cases C-6/90 C-9/90, <i>Francovich et al. v. Italy</i> [1991] ECR I-5357	93
ECJ, 5 March 1996, joint cases C-46/93 and C-48/93, <i>Brasserie du Pêcheur/Factortame</i> [1996] ECR I-1029	63, 93
ECJ, 29 May 1997, case C-300/95, <i>EU Commission v. UK</i> [1997] ECR I-2649	87
ECJ, 10 May 2001, case C-203/99, <i>Veedfald v. Arhus Amtskommune</i> [2001] ECR I-3569	31
ECJ, 30 September 2003, case C-224/01, <i>Köbler v. Austria</i> [2003] ECR I-10239	93
ECJ, 13 July 2006, joined cases C-295/04 to C-298/04, <i>Manfredi</i> [2006] ECR I-6619	126
ECJ, 24 June 2008, case C-188/07, <i>Commune de Mesquer v. Total France</i> [2008] ECR I-4501	103

French cases

Cass. civ., 18 June 1896, <i>Teffaine</i> , S. 1897, 1, 17	71
Cass. réun., 13 February 1930, <i>Jand'heur</i> II, S. 1930, 1, 121	71
Cass. mixte, 27 February 1970, D. 1970 jur. 201	24
Cass. civ., 19 May 1976, JCP 1978, II, 18773	110
Cass. civ., 5 November 1996, JCP 1997, II, 22805	186
Cass. civ., 19 February 1997, <i>Bertrand</i> , D. 1997, 265	69, 212
Cass. ass. plén., 25 February 2000, <i>Costedoat</i> , JCP 2000, II, 10295	80

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

TABLE OF CASES

xix

Cass. civ., 24 April 2003, JCP 2004, II, 10049	101
CA Paris, 16 March 1955, DS jur. 1955, 295	35

German cases*Bundesverfassungsgericht (Federal Constitutional Court)*

BVerfG, 24 February 1971, BVerfGE 30, 173 – <i>G. Gründgens/Mephisto</i>	35
BVerfG, 14 February 1973, BVerfGE 34, 269 – <i>Soraya</i>	35
BVerfG, 29 May 1974, BVerfGE 37, 271 – <i>Solange I</i>	xii
BVerfG, 11 October 1978, BVerfGE 49, 304 – <i>Weigand</i>	31
BVerfG, 3 June 1980, BVerfGE 54, 208 – <i>Böll/Walden</i>	35
BVerfG, 3 June 1980, BVerfGE 54, 148 – <i>Eppler</i>	35
BVerfG, 19 October 1982, BVerfGE 61, – <i>State Liability Act</i>	23, 93
BVerfG, 22 October 1986, BVerfGE 73, 339 – <i>Solange II</i>	xii
BVerfG, 13 August 1998, NJW 1998, 3557	67
BVerfG, 27 December 2005, NJW 2006, 1580	33
BVerfG, 19 February 2008, NJW 2008, 1060	33
BVerfG, 26 February 2008, NJW 2008, 1793	34
BVerfG, 27 February 2008, NJW 2008, 822 – <i>confidentiality of electronic information systems</i>	33

Reichsgericht (Imperial Court 1879–1945)

RG, 11 May 1904, RGZ 58, 130 – <i>flying sparks</i>	46
RG, 30 June 1904, RGZ 58, 357	110
RG, 11 January 1912, RGZ 78, 171	97
RG, 25 February 1915, RGZ 87, 1	71
RG, 19 January 1920, RGZ 98, 58	110
RG, 1 July 1920, RGZ 100, 69 – <i>aeroplane crash</i>	46
RG, 19 December 1929, RGZ 127, 29	46

Bundesgerichtshof (Federal Court of Justice 1950–)

BGH, 25 May 1954, BGHZ 13, 334 – <i>Schacht-Leserbrief</i>	33
BGH, 6 July 1955, BGHZ 18, 149	120
BGH, 4 March 1957, BGHZ 24, 21	60
BGH, 14 February 1958, BGHZ 26 349 – <i>Herrenreiter</i>	32, 185
BGH, 9 December 1958, BGHZ 29, 65	92
BGH, 13 February 1962, VersR 1962, 450	111
BGH, 30 September 1963, BGHZ 40, 346	117
BGH, 8 December 1964, NJW 1965, 685 – <i>Soraya</i>	34

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

XX

TABLE OF CASES

BGH, 20 March 1968, BGHZ 50, 133 – <i>Mephisto</i>	35
BGH, 26 November 1968, BGHZ 51, 91 – <i>Hühnerpest</i>	71
BGH, 21 December 1970, BGHZ 55, 153	92
BGH, 11 May 1971, BGHZ 56, 163 – <i>nervous shock</i>	118
BGH, 18 December 1973, BGHZ 62, 54 – <i>Weigand</i>	31
BGH, 16 December 1975, NJW 1976, 1147	120
BGH, 6 July 1976, BGHZ 67, 129 – <i>chow-chow dog</i>	133
BGH, 16 June 1977, BGHZ 69, 128	92
BGH, 30 May 1978, NJW 1978, 1797 – <i>Böll/Walden</i>	35
BGH, 27 June 1978, BGHZ 72, 132	43
BGH, 22 March 1979, MDR 1980, 126	92
BGH, 27 January 1981, BGHZ 79, 259	58, 116
BGH, 1 December 1981, VersR 1982, 243	103
BGH, 22 June 1982, NJW 1982, 2123	120
BGH, 15 November 1982, BGHZ 86, 152	92
BGH, 23 November 1982, BGHZ 85, 327	43
BGH, 27 September 1983, BGHZ 88, 248	193
BGH, 7 February 1984, BGHZ 90, 103	51, 55
BGH, 18 September 1984, BGHZ 92, 143	72
BGH, 23 October 1984, NJW 1985, 620 – <i>T-bar lift</i>	65
BGH, 5 February 1985, BGHZ 93, 351	47
BGH, 27 November 1985, NJW 1986, 1162	65
BGH, 9 July 1986, BGHZ 98, 212	118
BGH, 7 June 1988, BGHZ 104, 323 – <i>lemonade bottle</i>	65
BGH, 14 February 1989, BGHZ 106, 391	47
BGH, 13 July 1989, BGHZ 108, 273 – <i>protective fence for wildlife</i>	64
BGH, 12 November 1991, BGHZ 116, 60 – <i>Milupa</i>	85
BGH, 19 November 1991, BGHZ 116, 104 – <i>wedding dinner</i>	71
BGH, 13 October 1992, BGHZ 120, 1	121, 127
BGH, 15 November 1994, BGHZ 128, 1 – <i>Caroline von Monaco</i>	35, 122, 185
BGH, 14 March 1995, NJW 1995, 2631	65
BGH, 9 May 1995, BGHZ 129, 353	65, 86
BGH, 1 December 1999, BGHZ 143, 214	35
BGH, 4 November 2004, BGHZ 161, 33	33
BGH, 6 March 2007, BGHZ 171, 275	34
BGH, 15 July 2008, NJW 2008, 2775	120
BGH, 17 February 2009, NJW 2009, 1502 – <i>Christiansen</i>	34

Oberlandesgerichte (Courts of Appeal)

OLG Hamm, 11 February 2004, NJW 2004, 2246	105, 133
--	----------

TABLE OF CASES

xxi

Other courts*Reichsarbeitsgericht (Imperial Labour Court 1927–1945)*

RAG, 18 December 1940, ARS 41, 55 80

Arbeitsgerichte (Labour Courts)

ArbG Plauen, 4 November 1936, ARS II 29 (1937) 79

Bundesarbeitsgericht (Federal Labour Court)

BAG, 25 September. 1957, BAGE 5, 1 79

BAG, 12 October 1989, NJW 1990, 468 79

BAG, 16 March 1995, NZV 1995, 396 79

United Kingdom cases

Alcock v. Chief Constable of the South Yorkshire Police [1992] 1 AC 310 118

Allen v. Flood [1898] AC 1 90

Barker v. Corus UK Ltd [2006] UKHL 20 112

Cambridge Water Co. Ltd v. Eastern Countries Leather plc [1994] 2 AC 264 89

Campbell v. MGN Ltd [2004] UKHL 22 32

Caparo Industries plc v. Dickman [1990] 2 AC 605 48

Chadwick v. British Railways Commission [1967] 2 All ER 945 103

Chester v. Afshar [2004] UKHL 41 51, 55

Donoghue v. Stevenson [1932] AC 562 71

Fairchild v. Glenhaven Funeral Services Ltd [2002] UKHL 22 111

Gregg v. Scott [2005] UKHL 2 44

Hedley Byrne & Co. Ltd v. Heller & Partners Ltd [1964] AC 465 39, 90

Hotson v. East Berkshire Area Health Authority [1987] AC 750 44

Mc Donald's Corp. v. Steel [1995] 3 All ER 615 37

Mullin v. Richards [1998] 1 WLR 1304 67

OBG Ltd v. Allan [2007] UKHL 21 90

Overseas Tankship (UK) Ltd v. Marts Dock & Engineering Co. Ltd (The Wagon Mound No 1) [1961] AC 388 48

Overseas Tankship (UK) Ltd v. The Miller Steamship Co. (The Wagon Mound No 2) [1967] 1 AC 61 7 48, 76

Quinn v. Leathem [1901] AC 495 58

R v. Secretary of State for Transport, ex parte Factortame Ltd (No 4) [1998] 1 CMLR 1353 (QBD) 125

Read v. J Lyons & Co. Ltd [1947] AC 156 (HL) 97

Rylands v. Fletcher [1868] LR 3 HL 330	97
Spartan Steel and Alloys Ltd v. Martin & Co. [1972] 3 All ER 557	92
Wainwright v. Home Office [2004] 2 AC 406	33
Wise v. Kaye [1962] 1 QB 638	120

United States cases

Conway v. O'Brien, 111 F.2d 611 (2d Cir. 1940)	75
Dillon v. Legg, 441 P.2d 912 (Cal. 1968)	118
Greenman v. Yuba Power Products Inc., 377 P.2d 897 (Cal. 1963)	72, 97
Huset v. J.I. Case Threshing Mach. Co., 120 Fed. 865 (8th Cir. 1903)	97
In re Oil Spill of the Amoco Cadiz, 954 F2d 1279 (7th Cir. 1992)	78, 103
MacPherson v. Buick Motor Co., 111 NE 1050 (NY 1916)	72
New York Times v. Sullivan, 376 US 254 (1964)	36
Palsgraf v. Long Island R. Co., 162 NE 99 (NY 1928)	28, 47, 48, 60
Pavesich v. New England Life Insurance Co., 50 SE 68 (Ga. 1905)	32, 34
Roberson v. Rochester Folding Box Co., 64 NE 442 (NY 1902)	32, 34
Sindell v. Abott Laboratories, 607 P2d 924 (Cal. 1980)	42
Summers v. Tice, 199 P2d 1 (Cal. 1948)	110
Time, Inc. v. Hill, 385 US 374 (1967)	36
Thomas v. Winchester, 6 NY 397 (1852)	97
United States v. Carroll Towing Co. Inc., 159 F2d 169 (1947)	75
Ybarra v. Spangard, 154 P2d 687 (Cal. 1944)	44

Other cases

Canada

Cook v. Lewis [1951] SCR 830	110
------------------------------	-----

Italy

Cass. civ., 11 November 2008, no. 26972	122, 185
---	----------

Netherlands

HR, 22 February 2002, NJ 2002, no. 240	118
HR, 31 March 2006, RvdW 2006, 328	111

Switzerland

BG, 9 October 1984, BGE 110 II 456 – <i>Schachtrahnen</i>	71
---	----

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

ABBREVIATIONS*

ADHGB	Allgemeines Deutsches Handelsgesetzbuch
ABGB	Allgemeines Bürgerliches Gesetzbuch (General Civil Code of Austria) of 1811
AC	Law Reports, Appeal Cases
<i>AcP</i>	<i>Archiv für die civilistische Praxis</i>
All ER	All England Law Reports
ALI	American Law Institute
ALR	Allgemeines Landrecht für die Preußischen Staaten (General Law of the Prussian States) of 1794
ArbG	Arbeitsgericht (Labour Court of First Instance)
ARS	Arbeitsrechtliche Sammlung (Labour Law Reports)
Art./Arts.	Article(s)
BAG	Bundesarbeitsgericht (Federal Labour Court)
BAGE	Sammlung der Entscheidungen des Bundesarbeitsgerichts (Reports of the Decisions of the Federal Labour Court)
<i>BB</i>	<i>Der Betriebs-Berater</i>
BG	Bundesgericht (Federal Court of Switzerland)
BCC	Brazilian Civil Code
BGB	Bürgerliches Gesetzbuch von 1896/1900 (German Civil Code)
BGBL	Bundesgesetzblatt (Austrian/German Federal Gazette)
BGE	Sammlung der Entscheidungen des schweiz. Bundesgerichts (Reports of the Decisions of the Swiss Federal Court)
BGH	Bundesgerichtshof (German Federal Court of Justice)
BGHZ	Sammlung der Entscheidungen des Bundesgerichtshofs in Zivilsachen (Reports of the Decisions of the Federal Court in Civil Cases)
BVerfG	Bundesverfassungsgericht (German Federal Constitutional Court)
BVerfGE	Sammlung der Entscheidungen des Bundesverfassungsgerichts (Reports of the Decisions of the Federal Constitutional Court)
BW	Burgerlijk Wetboek (Civil Code of the Netherlands)
Cal.	California/California Reports
<i>Cal. L Rev.</i>	<i>California Law Review</i>

* Law journals are in italics.

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

xxiv

LIST OF ABBREVIATIONS

Cass.	Cour de Cassation (French Supreme Court)
Cass. ass. plén.	Decision of the Plenary Division of the Cour de Cassation
Cass. civ.	Decision of a Civil Division of the Cour de Cassation
C. civ.	Code Civil (French Civil Code)
CCRF	Civil Code of the Russian Federation
CDC	(Brazil) Consumer Defence Code
CEO	Chief Executive Officer
Ch.	Law Reports, Chancery Division
ch.	chapter
ChinALL	Chinese Act on Liability Law
Cir.	Circuit Court (US Federal Court of Appeals)
<i>CLP</i>	<i>Current Legal Problems</i>
CMLR	Common Market Law Reports
<i>CML Rev.</i>	<i>Common Market Law Review</i>
<i>Colum. L Rev.</i>	<i>Columbia Law Review</i>
COM	Document of the European Commission
Const. RF	Constitution of the Russian Federation
CPA	(Russian) Consumer Protection Act 1992
DCFR	Draft Common Frame of Reference
<i>De Paul L Rev.</i>	<i>De Paul Law Review</i>
DES	Diethylstilbestrol
Diss.	Dissertation
DJT	Deutscher Juristentag (German Lawyers' Convention)
<i>EBLR</i>	<i>European Business Law Review</i>
EC	European Community
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
ECR	Reports of the Decisions of the European Court of Justice and of the European Court of First Instance
ed./eds.	editor(s)
<i>Edin. LR</i>	<i>Edinburgh Law Review</i>
edn	Edition
EEA	European Economic Area
EHRR	European Human Rights Reports
<i>ERPL</i>	<i>European Review of Private Law</i>
EU	European Union
Exch	Law Reports, Court of Exchequer (1865–75)
F.	Federal Reporter
FAS	<i>Frankfurter Allgemeine Sonntagszeitung</i>
FAZ	<i>Frankfurter Allgemeine Zeitung</i>
fin.	final version

Cambridge University Press

978-1-107-68206-1 - Modernising Civil Liability Law in Europe, China, Brazil and Russia:
Texts and Commentaries

Gert Brüggemeier

Frontmatter

[More information](#)

LIST OF ABBREVIATIONS

XXV

Ga.	Georgia/ Georgia Reports
gen.ed./eds.	general editor(s)
GG	Grundgesetz für die Bundesrepublik Deutschland von 1949 (German Federal Constitution)
GPCL	(Chinese) General Principles of Civil Law
GS	Großer Senat (Plenary Division of a German Federal Court)
HAVE/REAS	<i>Haftung und Versicherung/Responsabilité et Assurance</i>
HL	House of Lords
HR	Hoge Raad (Dutch Supreme Court)
ICLQ	<i>International and Comparative Law Quarterly</i>
IECL	International Encyclopedia of Comparative Law
<i>J Environmental L</i>	<i>Journal of Environmental Law</i>
<i>JBl</i>	<i>Juristische Blätter</i> (Austria)
<i>J Comp. L</i>	<i>Journal of Comparative Law</i>
<i>J Consumer Policy</i>	<i>Journal of Consumer Policy</i>
JCP	<i>JurisClasseur Périodique</i>
JETL	<i>Journal of European Tort Law</i>
<i>J Legal Stud.</i>	<i>Journal of Legal Studies</i>
<i>JPI</i>	<i>Journal of Personal Injury Law</i>
jur.	<i>Jurisprudence</i>
JuS	<i>Juristische Schulung</i>
JZ	<i>Juristenzeitung</i>
KJ	<i>Kritische Justiz</i>
KritV	<i>Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft</i>
LGDJ	Librairie Générale de Droit et de Jurisprudence
LQR	<i>Law Quarterly Review</i>
LR	Law Reports
MJ	<i>Maastricht Journal of European and Comparative Law</i>
MDR	<i>Monatsschrift für Deutsches Recht</i>
MLR	<i>The Modern Law Review</i>
Motive	Motive zum Entwurf eines Bürgerlichen Gesetzbuches für das Deutsche Reich
n.	footnote
NE	North Eastern Reporter
NGO	non-governmental organisation
NJB	<i>Nederlands Juristenblad</i>
NJW	<i>Neue Juristische Wochenschrift</i> (1947–)
NuR	<i>Natur und Recht</i>
NY	New York/New York Reports
NYUL Rev.	<i>New York University Law Review</i>
NZV	<i>Neue Zeitschrift für Verkehrsrecht</i>

xxvi

LIST OF ABBREVIATIONS

No/no	numero
OJ L/C	Official Journal of the European Union (Legal Acts series/ Communication series)
OLG	Oberlandesgericht (Austrian and German Court of Appeal)
OR	Obligationenrecht (Swiss Code of Obligations)
P	Pacific Reporter
p.	Page
<i>PEL Liab. Dam.</i>	Principles of European Law: Non-Contractual Liability Arising out of Damage Caused to Another
PETL	Principles of European Tort Law
pp.	Pages
PQA	(Chinese) Product Quality Act
PRC	People's Republic of China
QB	Law Reports, Queen's Bench
RG	Reichsgericht (German Imperial Court –1945)
RGZ	Sammlung der Entscheidungen des Reichsgerichts in Zivilsachen (Reports of the Decisions of the Imperial Court in Civil Cases)
RSRSR	Russian Socialist Soviet Federated Republics
RvdW	Rechtspraak van de Week (Dutch Weekly Law Reports)
s.	section
SCR	Supreme Court Reports (Canada)
SE	South Eastern Reporter
StGB	Strafgesetzbuch (German Penal Code)
trans.	translator(s)
UKHL	Reports of the Judgments of the House of Lords (for the United Kingdom)
v.	versus
<i>Va. L Rev.</i>	<i>Virginia Law Review</i>
<i>VersR</i>	<i>Versicherungsrecht</i>
vol./vols.	volume(s)
<i>Washburn LJ</i>	<i>Washburn Law Journal</i>
WLR	Weekly Law Reports
WPNR	<i>Weekblad voor Privaatrecht, Notariat en Registratie</i>
<i>ZEuP</i>	<i>Zeitschrift für Europäisches Privatrecht</i>
<i>ZSR</i>	<i>Zeitschrift für Schweizerisches Recht</i>