

Cambridge University Press

978-1-107-47556-4 - The Development of Product Liability: Volume 1

Edited by Simon Whittaker

Frontmatter

[More information](#)

---

## THE DEVELOPMENT OF PRODUCT LIABILITY

Mass production and changes in distribution chains have severely restricted the power of the seller and the buyer to use their own skill and judgement. As a result, 'product liability' has developed into a distinct area of legal regulation. Traditional legal techniques, such as the warranty against latent defects in contract and fault in tort, proved inadequate safeguards. This examination of Western European legal systems combines legal history and comparative law to demonstrate how the law has adapted to meet these new conditions.

SIMON WHITTAKER is Professor of European Comparative Law at the Faculty of Law, University of Oxford, and Fellow of St John's College, Oxford.

Cambridge University Press

978-1-107-47556-4 - The Development of Product Liability: Volume 1

Edited by Simon Whittaker

Frontmatter

[More information](#)

---

COMPARATIVE STUDIES IN THE DEVELOPMENT  
OF THE LAW OF TORTS IN EUROPE

*Series editors*

John Bell and David Ibbetson

Cambridge University Press

978-1-107-47556-4 - The Development of Product Liability: Volume 1

Edited by Simon Whittaker

Frontmatter

[More information](#)

# THE DEVELOPMENT OF PRODUCT LIABILITY

Volume 1

Edited by

SIMON WHITTAKER



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press  
978-1-107-47556-4 - The Development of Product Liability: Volume 1  
Edited by Simon Whittaker  
Frontmatter  
[More information](#)

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

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](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521199537](http://www.cambridge.org/9780521199537)

© Cambridge University Press 2010

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 2010

First paperback edition 2014

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

*Library of Congress Cataloguing in Publication data*  
Whittaker, Simon.

The development of product liability / Simon Whittaker.

p. cm. – (The European legal development series)

Includes index.

ISBN 978-0-521-49429-8 (hardback)

1. Products liability—Europe. I. Title. II. Series.

KJC1688.W45 2009

346.403 '8—dc22

2009009023

ISBN 978-0-521-49429-8 Hardback

ISBN 978-1-107-47556-4 Paperback

Hardbacks only available as:

ISBN 978-0-521-19953-7 6-volume set

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.

## CONTENTS

<i>Series editors' preface</i>	<i>page</i>	vii
<i>List of abbreviations</i>		ix
1 Introduction to fault in product liability		1
SIMON WHITTAKER		
2 The development of product liability in England		51
SIMON WHITTAKER		
3 The development of product liability in France		87
JEAN-SÉBASTIEN BORGHETTI		
4 The development of product liability in Germany		114
GERHARD WAGNER		
5 The development of product liability in the Netherlands		152
IVO GIESEN		
6 The development of product liability in Italy		192
NADIA COGGIOLA		
7 The development of product liability in Spain		234
MIQUEL MARTÍN-CASALS AND JOSEP SOLÉ FELIU		
<i>Appendix: code provisions</i>		269
<i>Index</i>		277

Cambridge University Press

978-1-107-47556-4 - The Development of Product Liability: Volume 1

Edited by Simon Whittaker

Frontmatter

[More information](#)

---

## SERIES EDITORS' PREFACE

The European Legal Development series has arisen from a project funded by the Arts & Humanities Research Council (AHRC) from January 2005 until February 2008.

The aim of the project as a whole was 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 that 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 component. 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 that is theoretically better informed.

The topic of legal development is broad; to make it manageable, we have undertaken a programme of work that has built up from a number of case studies and has moved towards a more general analysis and conclusion. 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 that illustrate the general theme of liability for fault and its development within the period:

- legal doctrine
- medical liability
- product 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 at 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 Simon Whittaker, provides us with a good example of the benefits of this approach. We gain a clear insight into the way in which a relatively new area of tortious liability arose, and also the interactions between legal systems in a growing Western economy, an interaction not confined to Europe. The factors for legal development identified in this book are ones that will be developed in later volumes.

John Bell and David Ibbetson



## ABBREVIATIONS

AA	<i>Ars Aequi</i>
AC	<i>Appeal Cases</i> (English)/ <i>Actualidad Civil</i> (Spanish)
AcP	<i>Archiv des Civilistische Praxis</i>
act.	actualités
ADC	<i>Anuario de Derecho Civil</i>
AF	Aranzadi Fiscal
AHRC	Arts & Humanities Research Council
AMG	Arzneimittelgesetz
<i>Ann. Univ. Macerata</i>	<i>Annuale dell'Università di Macerata</i>
ApNDL	Apéndice 1975/85 al Nuevo Diccionario de Legislación Aranzadi
App.	Corte di Appello
ARB	Appelrechsbank
Arb.	Arbeit
<i>Arch. Civ.</i>	<i>Archivio civile</i>
AS	Aranzadi Social
AV&S	<i>Aansprakelijkheid, Verzekering &amp; Schade</i>
AVB	Liability Insurance for Companies (Netherlands)
BGB	Bürgerliches Gesetzbuch
BGBL. I	Bundesgesetzblatt
BGH	Bundesgerichtshof
BGHZ	Bundesgerichtshof in Zivilsachen
BJu	Boom Juridische uitgevers
BLR	<i>Business and Legal Reports</i>
BMLR	<i>Butterworths Medico-Legal Reports</i>
BOE	<i>Boletín oficial del Estado</i> (Spain)
<i>Bull. civ.</i>	<i>Bulletin de la Cour de cassation, civil</i>
Business L. Rev.	<i>Business Law Review</i>
BW	Burgerlijk Wetboek

Cass.	Cour de cassation (France)/Corte di Cassazione (Italy)
Cass. civ.	Cour de cassation, chambre civile
Cass. com.	Cour de cassation, chambre commerciale
Cass. Crim.	Cour de cassation, chambre criminal
Cass. req.	Cour de cassation, chambre des requêtes
Cass. sez.	Corte di cassazione, sezione (Italy)
Cass. sez. lav.	Corte di cassazione, sezione di lavoro (Italy)
CC	Código Civil (Spain)
CEA	Comunidad Europea Aranzadi
CEE	European Economic Community
Chr.	Chronique
civ.	civil(e)
CJCE	European Court of Justice
Col. Leg. Num.	Collection of decisions of the Tribunal Supremo
Co. Rep.	<i>Coke's Reports</i>
<i>Corr. Giur.</i>	<i>Corriere Giuridico</i>
CP	Codigo Penal
D.	Recueil Dalloz
<i>Danno e resp.</i>	<i>Danno e responsabilità</i> (Review)
<i>Dir. e giustizia</i>	<i>Diritto e giustizia</i>
<i>Dir. e prat. ass.</i>	<i>Diritto e pratica del assicuranza</i>
<i>Dir. ecl. economia assicuraz</i>	<i>Diritto ed economia dell' assicurazione</i>
<i>Dir. giur.</i>	<i>Diritto e Giurisprudenza</i>
<i>Dir. giust.</i>	<i>Diritto e Giustizia</i>
<i>Dir. pen. proc.</i>	<i>Rivista italiana del diritto e procedura penale</i>
<i>Dir. uomo</i>	<i>Diritto del Uomo</i>
<i>Discpl. comm.</i>	<i>Disciplina comunitaria</i>
D.lgs	Decreto legislativo
doctr.	doctrine
DP	Recueil Dalloz Périodique
DPR	Presidential Decree (Italy)
Dr. prat. com. int.	<i>Droit et pratique du commerce international</i>
DTI	Department of Trade & Industry
EC	European Community
ECJ	European Court of Justice
ECR	European Court Reports
EEC	European Economic Community

## LIST OF ABBREVIATIONS

xi

EG	Europäische Gemeinschaft (European Community)
ERPL	<i>European Review of Private Law</i>
EU	European Union
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
EWG	Europäische Wirtschaftsgemeinschaft (European Communities)
Ex.	Exchequer
Ex. Ch.	Exchequer Chamber
<i>Foro it.</i>	<i>Foro italiano</i>
<i>Foro it. rep.</i>	<i>Foro italiano, repertorio</i>
<i>Foro lomb.</i>	<i>Foro lombardo</i>
<i>Foro pad.</i>	<i>Foro padovese</i>
<i>Foro sic.</i>	<i>Foro siciliana</i>
<i>Gaz. Pal.</i>	<i>Gazette du Palais</i>
<i>Giur. it.</i>	<i>Giurisprudenza italiana</i>
<i>Giur. merit.</i>	<i>Giurisprudenza di merito</i>
<i>Giur. tor.</i>	<i>Giurisprudenza torinese</i>
<i>Giur. ven.</i>	<i>Giurisprudenza de Veneto</i>
<i>Giust. civ.</i>	<i>Giustizia civile</i>
GPSG	Geräte-und Produktsicherheitsgesetz
HB	Handelsblatt
HC Deb.	<i>Hansard</i> , House of Commons Debates
HL	House of Lords
HLC	House of Lords Cases
HR	Hoge Raad
inf. rap.	informations rapides
JCP	Juris-Classeur Périodique, la Semaine Juridique
J. Leg. St.	<i>Journal of Legal Studies</i>
JPL	<i>Journal of Product Liability</i>
JUR	Jurisprudencia (Spain)
jur.	jurisprudence (France)
KG	<i>Koninklijk Gazette</i>
Law Com.	Law Commission
LG	Landsgericht
LGDCU	Ley general para la Defensa de los Consumidores y Usuarios
LGDJ	Librairie Général de Droit et de la Jurisprudence
LI	Ley de Industria
LM	Ley del Medicamento

LRJAP	Ley de Régimen jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común
LRPD	Ley de Responsabilidad civil por los Daños causados por productos defectuosos
<i>Mass. Foro it.</i>	<i>Massimario, Foro italiano</i>
<i>Mass. Giur. it.</i>	<i>Massimario della giurisprudenza italiana</i>
<i>Mon. trib.</i>	<i>Monitore dei tribunali</i>
NJ	Nederlandse jurisprudentie
NJB	Nederlands juristenblad
NJV	Dutch Lawyers' Meeting
NJW	<i>Neue Juristische Wochenschrift</i>
NTBR	<i>Nederlands Tijdschrift voor Burgerlijk Recht</i>
<i>Nuova dir.</i>	<i>Nuova diritto</i>
<i>Nuova giur. civ. comm.</i>	<i>Nuova giurisprudenza civile comunitario</i>
<i>Nuova riv. dir. comm.</i>	<i>Nuova rivista del diritto comunitario</i>
NY	New York
obs.	observations (note)
OGPESST	Oficina de Gestión de las Prestaciones Económicas y Sociales de Síndrome Tóxico
OJ	<i>Official Journal of the European Community</i>
OJLS	<i>Oxford Journal of Legal Studies</i>
OLG	Oberlandsgericht
PHI	Produkthaftpflicht international
PIQR	<i>Personal Injuries Quarterly Review</i>
Pret.	Tribunale del Pretorio
ProdHaftG	Produkthaftungsgesetz
<i>Rass. dir. civ.</i>	<i>Rassegna di diritto civile</i>
<i>Rass. Giur. umbra</i>	<i>Ressegna Giuridica Umbria</i>
Rb.	Rechtsbank
RD	Real Decreto
<i>Rep. Foro it.</i>	<i>Repertorio del Foro italiano</i>
<i>Resp. civ.</i>	<i>Responsabilità civile</i>
<i>Resp. civ. et assul.</i>	<i>Responsabilité civil et assurance</i>
<i>Resp. civ. prev.</i>	<i>Responsabilità civile e previdenza</i>
RG	Reichsgericht
RGLJ	<i>Revista General de Legislación y Jurisprudencia</i>
RGZ	<i>Reichsgericht, Zivilsachen (Reports)</i>
<i>Riv. critica dir. privato</i>	<i>Rivista critica del diritto privato</i>

## LIST OF ABBREVIATIONS

xiii

<i>Riv. dir. comm.</i>	<i>Rivista del diritto comunitario</i>
<i>Riv. it. dir. e proc. pen.</i>	<i>Rivista italiana del diritto e della procedura penale</i>
<i>Riv. pen.</i>	<i>Rivista penale</i>
<i>Riv. trim. dir. proc. civ.</i>	<i>Rivista trimestriale del diritto e della procedura civile</i>
RJ	Repertorio de Jurisprudencia
RTD civ.	<i>Revue trimestrielle de droit civil</i>
RTR	<i>Road Traffic Reports</i>
RvdW	Rechtspraak van de week
S.	Recueil Sirey
SA	Société anonyme (France), società anonima (Italy)
SAP	Judgment of the Spanish Courts of Appeal
Scot. Law Com.	Scottish Law Commission
somm.	sommaires
STS	Sentencia Tribunal Supremo (Spain)
STSJ	Sentencia Tribunal Superior de Justicia
<i>Temi gen.</i>	<i>Temi generali</i>
<i>Temi rom.</i>	<i>Temi romani</i>
<i>Temi ven.</i>	<i>Temi veneta</i>
TJCE	European Court of Justice Reports
TMA	<i>Tijdschrift voor Milieuschade en Aansprakelijkheidsrecht</i>
Trib.	Tribunale (Italy)
Trib. civ.	Tribunale civile (Italy)
Trib. corr.	Tribunal correctionnel (France)
TvC	<i>Tijdschrift voor Criminologie</i>
UKHL	<i>United Kingdom House of Lords Reports</i>
UTECO	Unión Territorial de Cooperatives del Campo de Zamora
<i>Vita not.</i>	<i>Vita notaio</i>
VR	Verbintenissenrecht
WAM	Motor Liability Insurance Act (Netherlands)
WAO/WIA	Disability Insurance Act (Netherlands)
WPNR	<i>Weekblad voor Privaatrecht, Notariaat en Registratie</i>
WW	Unemployment Insurance Act (Netherlands)