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Edited by Wolfgang Ernst

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## THE DEVELOPMENT OF TRAFFIC LIABILITY

Rail and road accidents are examples of new sources of harm, particularly personal injury, which arose almost simultaneously across Western Europe. The area of rail accidents provides early examples of a move away from fault liability in certain countries, but not in others. Although statutory regulation and extra-statutory standards form part of the context of liability, private law actions for damages and the plasticity of fault ideas remain central to the law's response. Insurance determines the relative importance of private law actions. Traffic liability is a field in which different solutions have been developed by different legal systems. For example, France developed strict liability in the 1920s and 1930s, and no-fault liability in 1985, English law has remained wedded to fault. The stability of each legal solution suggests that the background insurance position has been settled in the different countries, albeit in differing ways.

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

*Series editors*

John Bell and David Ibbetson

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Volume 5

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## 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 been 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

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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:

- 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 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 Wolfgang Ernst, 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 in transportation, first in railways and then in relation to roads. Alongside these, 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 the requirements of private insurers dealt with many of the issues of preventing accidents. Improving the working conditions of railway employees or the conditions of the roads had very rapid and important impacts on the number of deaths and personal injuries. After some time, compensation



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systems outside tort offered remedies to many of the victims of accidents, whether these be the employees of railway companies (through workmen's compensation) or non-driver victims of road 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. There is the question of how far the law of tort or delict changed in the period, and how far it was simply bypassed in order to prevent accidents and provide compensation. In addition, we see the very important place of insurance as a context for measuring whether tort law needed to change and whether it was adequate in channelling compensation. The factors for legal development identified in this book are ones that will be developed in later volumes.

Particularly in relation to this book, the editors are grateful for the contribution of Matthew Dyson, a PhD student on the AHRC project, who made a significant contribution to the formulation, discussion and execution of this part of the project, as well as reviewing the text of several contributions. His own work on the relationship of criminal and civil fault will be published separately and will complement significantly the understanding of the topics presented in this book.

*John Bell and David Ibbetson*

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## ABBREVIATIONS

AAMN	<i>Anales de la Academia Matritense del Notariado</i>
AC	Aranzadi civil
AcP	<i>Archiv für die civilistische Praxis</i>
ADHGB	Allgemeines Deutsches Handelsgesetzbuch (General German Commercial Code)
ALR	Allgemeines Landrecht (Prussian Civil Code 1794)
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
BOE	Boletín Oficial del Estado (Spain)
BW	Burgerlijk Wetboek (Dutch Civil Code)
CA	Court of Appeal
Cass. ch.	Cour de cassation, chambres réunies
Cass. civ.	Cour de cassation, chambre civile
Cass. com.	Cour de cassation, chambre commerciale
CC	Código Civil 1889 (Spanish Civil Code)
CCJC	Cuadernos Cívitas de Jurisprudencia Civil
CCm	Código de comercio
chr.	Chronique
CIV	Additional Convention to the International Convention on the Carriage of Passengers and Luggage by Rail (1973)
CJ	Chief Justice
concl.	Conclusions
COTIF	International Convention on Transport by Rail
CP	Código Penal
D.	Recueil Dalloz (France) / Decreto (Spain) / Digest of Justinian
DA	Damages Act (Sweden)
DAR	<i>Deutsches Autorecht</i>
DC	Recueil Dalloz critique
DP	Recueil Dalloz Périodique
Ds	Departementsserien
EC	European Community

## LIST OF ABBREVIATIONS

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EGBGB	Einführungsgesetz zum BGB
Engelhard and Van Maanen	E.F.D. Engelhard and G.E. van Maanen, <i>Aansprakelijkheid voor verkeersongevallen</i> (Nijmegen: Ars Aequi, 1998)
EVO	Eisenbahnverkehrsordnung (Railway Traffic Regulations)
EWCA Civ	England and Wales Court of Appeal, Civil Division
FED	Forsikrings- og Erstatningsretlig Domsamling (Denmark)
F. Reglero Campos, <i>Accidentes</i>	F. Reglero Campos, <i>Accidentes de Circulación. Responsabilidad Civil y Seguro</i> (Cizur Menor, Aranzadi, 2004)
HGB	Handelsgesetzbuch
HR	Hoge Raad
JC	<i>Jurisprudencia Criminal</i>
JCP	Juris-Classeur Périodique, la Semaine Juridique
JFT	<i>Tidskrift utgiven av Juridske föreningen i Finland</i>
JUR	Jurisprudencia
JW	<i>Juristische Wochenschrift</i>
JZ	<i>Juristenzeitung</i>
KB	Koninklijk Besluit
LGDJ	Librarie générale de droit et de jurisprudence
LJ	Law Journal; Lord Justice
LOPJ	<i>Ley Orgánica della Procedura Judicial</i>
LOV	Lover (Norwegian laws)
LRCSVM	<i>Ley de responsabilidad civil y seguro en la circulación de vehículos de motor</i>
MLR	Modern Law Review
MP	Member of Parliament
MRW	Motor- en Rijwielwet 1924
MvH	Magazijn van Handelsrecht
NJ	<i>Nederlandse Jurisprudentie</i>
NJA	<i>Nytt Juridiskt Arkiv</i>
NJB	<i>Nederlands Juristenblad</i>
NJF	<i>Nederlandse Jurisprudentie Feitenrechtspraak</i>
NJW	<i>Neue Juristische Wochenschrift</i>
NS	Nederlandse Spoorwegen
NTBR	<i>Nederlands Tijdschrift voor Burgerlijk Recht</i>
obs.	Observations
OLG	Oberlandesgerichtshof
PRA	Prussian Railway Act 1838
RD	Real Decreto
RDCirculación	<i>Revista de Derecho de la Circulación</i>
RDN	<i>Revista de Derecho Notarial</i>
RDP	<i>Revista de Derecho Privado</i>
RG	Rettens Gang (Norway)

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RGAT	<i>Revue générale des assurances terrestres</i>
RGLJ	<i>Revista General de Legislación y Jurisprudencia</i>
RGZ	Reichsgerichts in Zivilsachen
RHPFIG	Reichshaftpflichtgesetz (Imperial Law on Liability)
RJ	Repertorio de Jurisprudencia
RJCA	Repertorio de Jurisprudencia Comunidades Autonomas
RRCSCVM	Reglamento sobre la Responsabilidad Civil y Seguro en la Circulación de Vehículos a Motor
Rt.	Norsk Rettstidende
RTD civ.	<i>Revue trimestrielle de droit civile</i>
S.	Recueil Sirey
SAN	Sentencia Audiencia Nacionales
SAP	Sentencia Audiencia Provinciales
SOU	Statens Offentliga Utredningar
SOV	<i>seguro obligatorio de viajeros</i>
SSTS	Sentencias del Tribunal Supremo
Stb.	Staatsblad
STC	Sentenzias Tribunal Constitucional
STS	Sentencia del Tribunal Supremo
STSJ	Sentencias Tribunales Superiores de Justicia
StVG	Straßenverkehrsgesetz (Road Traffic Act) 1952
TC	Tribunal des Conflits
TDA	Traffic Damage Act (Sweden)
TPR	Tijdschrift voor privaatrecht
Trb.	Tractatenblad Trema
TS	Tribunal Supremo
VR	<i>Verkeersrecht</i>
W.	Weekblad van het Recht
WAM	Act on Liability Insurance of Motor Vehicles
wp	Working Paper
WPNR	<i>Weekblad voor Privaatrecht, Notariaat en Registratie</i>
WVW	Wegenverkehrswet 1994 (Road Traffic Act)
ZakDR	Zeitschrift der Akademie für Deutsches Recht