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Edited by Miquel Martíncasals

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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.

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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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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

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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

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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

<i>AcP</i>	<i>Archiv für die civilistische Praxis</i>
AiB	Arbeitsrecht im Betrieb
<i>AJDA</i>	<i>Actualité Juridique Droit Administratif</i>
App.	Corte di appello (Italy)
<i>Arch. Circolaz.</i>	<i>Archivio giuridico della circolazione e dei sinistri stradali</i>
ARP	Aranzadi Penal
AS	Aranzadi Social
BGB	Bürgerliches Gesetzbuch
BGBL	Bundesgesetzblatt
BGHZ	Entscheidungen des Bundesgerichtshofes in Zivilsachen
BOCG	Boletín Oficial de las Cortes Generales
BOE	Boletín Oficial del Estado
Bull. Civ.	Bulletin de la Cour de cassation, civil
BVerfG	Bundesverfassungsgericht
Cass. (Fr.)	Cour de cassation
Cass. (It.)	Corte di cassazione
Cass. civ	Cour de cassation, chambre civile
Cass. com.	Cour de cassation, chambre commerciale
Cass. Pen.	Corte di cassazione, sezione penale
Cass. Unica	Corte di cassazione, sezione unica
CC	Código Civil
c.c.	Codice civile
C civ.	Code civil
C.E. (Ass.)	Conseil d'Etat (Assemblée plénière)
chr.	Chronique
Cons. Stato	Consiglio dello Stato
Corte cost.	Corte costituzionale
CP	Codigo Penal
c.p.	Codice penale
CPA	Comité permanent amiante
C séc. soc.	Code de la sécurité sociale
D.	Receuil Dalloz

LIST OF ABBREVIATIONS

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<i>Danno e resp.</i>	<i>Danno e responsabilità</i>
D.A.	Receuil Dalloz Analytique
D.C.	Receuil Dalloz Critique
D.H.	Receuil Dalloz Hebdomadaire
<i>Dig. It.</i>	<i>Novissimo Digesto Italiano</i>
D. Lgs.	Decreto legislativo
D.M.	Decreto Ministeriale
D.P.	Receuil Dalloz Périodique
D.P.R.	Decreto Presidente della Repubblica
EGBGB	Einführungsgesetz zum BGB
<i>Enc. Dir.</i>	<i>Enciclopedia del Diritto</i>
<i>Enc. Giur.</i>	<i>Enciclopedia Giuridica Treccani</i>
ERPL	<i>European Review of Private Law</i>
EVBl.	Evidenzblatt der Rechtsmittelentscheidung
<i>Ferr. Ital</i>	<i>Ferrovie Italiane</i>
FIVA	Fonds d'indemnisation des victimes de l'amiante
<i>Foro it.</i>	<i>Foro italiano</i>
<i>Foro sic.</i>	<i>Foro siciliano</i>
FS	Azierda Autonoma delle Ferrovie dello Stato
<i>Gaz. Pal.</i>	<i>Gazette du Palais</i>
<i>Gaz. Trib.</i>	<i>Gazette des Tribunaux</i>
GewO	<i>Gewerbeordnung</i>
<i>Giur. Cost.</i>	<i>Giurisprudenza costituzionale</i>
<i>Giur. It.</i>	<i>Giurisprudenza italiana</i>
<i>Giur. Sic.</i>	<i>Giurisprudenza siciliana</i>
<i>Giust. Civ.</i>	<i>Giustizia civile</i>
<i>Harv. LR</i>	<i>Harvard Law Review</i>
HVVG	Hauptverband der gewerblichen Berufsgenossenschaften with C. Drechsel-Schlund, M. Butz, G. Drexel, W. Plinske and H.-P. Francks, <i>Asbestverursachte Berufskrankheiten in Deutschland – Entstehung und Prognose</i> (Sankt Augustin, 2003)
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
<i>J Econ. Hist.</i>	<i>Journal of Economic History</i>
J.O.	Journal Officiel
J.O. (Doc.)	Journal Officiel (Documents)
JUR	Jurisprudencia
<i>Lav. giuri.</i>	<i>Lavoro giurisprudenziale</i>
Leb.	Receuil Lebon

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MDR	Monatschrift für Deutsches Recht
<i>Monit. Trib.</i>	<i>Monitore dei Tribunali</i>
MSUA	Manchester Steam Users' Association
NJW	Neue Juristische Wochenschrift
NJWE-MietR	Neue Juristische Wochenschrift – Entscheidungen Mietrecht
OAG	oberappellationsgericht
OHofG	Oberhofgericht
O.J.	Official Journal of the European Communities
OLG	Oberlandesgericht
<i>Or. Giur. Lav.</i>	<i>Orientamenti della giurisprudenza del lavoro</i>
Parl. Deb.	Hansard, <i>Parliamentary Debates</i>
PGE	Preußisches Gesetz über die Eisenbahnunternehmungen
Pret.	Pretore (tribunale del)
<i>Rass. dir. civ.,</i>	<i>Rassegna di diritto civile</i>
R.D.	Reale Decreto
<i>Rec. pér. assur.</i>	<i>Recueil périodique des assurances</i>
RENFE	Red nacional de ferrocarriles españoles
Req.	Cour de cassation, chambre des requêtes
<i>Resp. civ. et assur.</i>	<i>Responsabilité civile et assurances</i>
<i>Resp. Civ. Prev.</i>	<i>Responsabilità civile e previdenza</i>
<i>Rev. trim.</i>	<i>Revue trimestrielle de droit civil</i>
RGBL	Reichsgesetzblatt
RG EE	Reichsgericht, Eisenbahn- und Verkehrsrechtliche Entscheidungen und Abhandlungen
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen
RHPfG	Reichhaftpflichtgesetz
<i>Riv. Crit. Dir. lav.</i>	<i>Rivista critica</i>
<i>Riv. Dir. Lav.</i>	<i>Rivista del diritto del lavoro</i>
<i>Riv. Dir. Pubbl.</i>	<i>Rivista del diritto pubblico</i>
<i>Riv. Inf. Mal. Prof.</i>	<i>Rivista degli infortuni e delle malattie professionali</i>
<i>Riv. It. Dir. Proc. Pen</i>	<i>Rivista italiana del diritto e della procedura penale</i>
RJ	Repertorio de Jurisprudencia
ROGE	Reichs-Oberhandelsgericht, Entscheidungen des Reichs- Oberhandelsgerichts
S.	Recueil Sirey
SAP	Sentencias Audiencias Provinciales
sez.	Sezione
somm.	sommaire
STS	Sentencias Tribunal Supremo
STSJ	Sentencias Tribunales Superiores de Justicia
SU	Sezioni uniti (of the Corte di cassazione)

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TA	Tribunal administratif
<i>Tem rom.</i>	<i>Tem romani</i>
Trib.	Tribunale
Trib. civ.	Tribunal civil
Trib. com.	Tribunal commercial
UVG	Unfallversicherungsgesetz
VersR	Versicherungsrecht
WuM	Wohnungswirtschaft und Mietrecht
ZMR	Zeitschrift Mietrecht