

European Product Liability

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Butterworths

London, Dublin, Edinburgh, Munich

1992

United Kingdom	Butterworth & Co (Publishers) Ltd, 88 Kingsway, LONDON WC2B 6AB and 4 Hill Street, EDINBURGH EH2 3JZ
Australia	Butterworths Pty Ltd, SYDNEY, MELBOURNE, BRISBANE, ADELAIDE, PERTH, CANBERRA and HOBART
Canada	Butterworths Canada Ltd, TORONTO and VANCOUVER
Ireland	Butterworth (Ireland) Ltd, DUBLIN
Malaysia	Malayan Law Journal Sdn Bhd, KUALA LUMPUR
New Zealand	Butterworths of New Zealand Ltd, WELLINGTON and AUCKLAND
Puerto Rico	Equity de Puerto Rico, Inc, HATO REY
Singapore	Malayan Law Journal Pte Ltd, SINGAPORE
USA	Butterworth Legal Publishers, AUSTIN, Texas; BOSTON, Massachusetts; CLEARWATER, Florida (D & S Publishers); ORFORD, New Hampshire (Equity Publishing); St PAUL, Minnesota; and SEATTLE, Washington

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A CIP Catalogue record for this book is available from the British Library.

ISBN 0 406 17944 1

Typeset by Phoenix Photosetting, Chatham, Kent
Printed and bound in Great Britain by
Mackays of Chatham plc, Chatham, Kent

Preface

Liability for defective products is a key concern to manufacturers, wholesalers and retailers throughout Europe, particularly since the issue of the EC Product Liability Directive. The need to know and understand the laws of each country through which goods are to pass is becoming ever more important. This book seeks to offer a practical guide to those laws. To achieve this aim, we have brought together contributions from leading practitioners in the field of product liability in their respective jurisdictions. We have included a chapter relating to product liability insurance and a comparative table summarising liability for defective products in the countries covered. The law is stated as at September 1991.

We would like to thank Kathryn Albert, Beryl Blackburn, Elaine Gardiner, Phaedra Hesse, Stephen Hobbs, Antonia Kennett, Jane Landy, Lynn Richards, Lorna Roberts and everyone else at Laytons for all their help and support in producing this book. We would also like to thank each of the contributors without whom this book would not, of course, have been possible.

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December 1991

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Contents

Preface	v
Contributors	vii

Chapter I The EC Product Liability Directive by Andrew Turner 1

1	Background	3
2	Introduction	3
3	Objectives	4
4	The system	4
5	Structure	4
6	Liability	4
7	Burden of proof	8
8	Defences	8
9	Compensation	9
10	Limitations	10
11	Implementation	11
12	Enforceability	12
13	Conclusion	13

Chapter II Austria by Peter Madl 15

1	Introduction	17
2	Liability in contract	18
3	Liability in tort	22
4	Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety	24
5	Special liabilities arising in respect of particular products	25
6	Liability for defective products arising from national law in Austria: implementation of the Directive	25
7	Practical effects EC product liability law will have on various businesses in the chain of supply of products	37
8	Comparison of the effects of product liability law with the previous position in contract and tort	37
9	Risk management in the new era of product liability	39

Chapter III Belgium by Lucien Simont and Manuela von Kuegelgen 45

1	Introduction	47
2	Liability in contract	48
3	Liability in tort	59
4	Special regulations	62

- 5 The effects of the new law on liability arising from defective products 67
- 6 Risk management in the new era of product liability 69
- Addendum 75

Chapter IV Denmark by Georg Lett 77

- 1 Introduction 79
- 2 Liability in contract 80
- 3 Liability in tort 80
- 4 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 89
- 5 Special liabilities arising in respect of particular products 90
- 6 Liability for defective products arising from national law in Denmark: implementation of the Directive 90
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 92
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 94
- 9 Risk management in the new era of product liability 94

Chapter V France by Muriel de Courrèges 101

- 1 Introduction 103
- 2 Seller's liability in contract 103
- 3 Liability for tortious or contractual breach 110
- 4 Liability in tort based on article 1384 paragraph 1 112
- 5 Criminal liability 113
- 6 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 114
- 7 Special liabilities arising in respect of particular products 115
- 8 Liability for defective products arising from national law in France: implementation of EC Directive 85/374 on product liability 116
- 9 Comparison of the effects of product liability law with the previous position in contract and tort 121

Chapter VI Federal Republic of Germany by Klaus-Ulrich Link and Thomas Sambuc 123

- 1 Introduction 125
- 2 Liability in contract 126
- 3 Liability in tort 138
- 4 Liability based on the disregard of protective laws 148
- 5 Special liabilities arising in respect of particular products 149
- 6 Liability for defective products arising from the Product Liability Act (implementation of the Directive on product liability) 151
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 157
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 159
- 9 Risk management in the new era of product liability 161

Chapter VII Ireland by L K Shields & Partners 169

- 1 The Irish legal system: an introduction 171
- 2 Product liability: introduction 172
- 3 Liability in contract 173
- 4 Liability in tort 185
- 5 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 196
- 6 Special liabilities arising in respect of particular products 198
- 7 Liability for defective products arising from proposed national law in Ireland: implementation of the Directive 198
- 8 Practical effects EC product liability law will have on various businesses in the chain of supply of products 201
- 9 Comparison of the effects of product liability law with the previous position in contract and tort 206
- Addendum 214

Chapter VIII Italy by Gabriele Dara 217

- 1 Introduction 219
- 2 Liability in contract 222
- 3 Liability in tort 225
- 4 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 227
- 5 Special liabilities arising in respect of particular products 228
- 6 Liability for defective products arising from national law in Italy: implementation of EC Directive 85/324 on product liability 228
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 233
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 233
- 9 Risk management in the new era of product liability 234

Chapter IX Luxembourg by René Diederich 239

- 1 Introduction 241
- 2 Liability in contract 242
- 3 Liability in tort 250
- 4 Vicarious liability 252
- 5 Criminal liability 253
- 6 Special regulations 253
- 7 Law on Defective Products of 21 April 1989 257

Chapter X Netherlands by S S H Wibbens 261

- 1 Introduction 263
- 2 Liability in contract 265
- 3 Liability in tort 273
- 4 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 276
- 5 Special liabilities arising in respect of particular products 278

- 6 Liability for defective products arising from national law in the Netherlands 279
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 284
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 287
- 9 Risk management in the new era of product liability 288

Chapter XI Norway by Wilhelm Matheson 295

- 1 Introduction 297
- 2 Liability in contract 298
- 3 Liability in tort 300
- 4 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 304
- 5 Special liabilities arising in respect of particular products 305
- 6 Liability for defective products arising from national law in Norway: harmonisation of the Directive with Norwegian law 306
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 310
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 310
- 9 Risk management in the new era of product liability 311

Chapter XII Portugal by Jorge Santiago Neves 315

- 1 Introduction 317
- 2 Liability in contract 318
- 3 Liability in tort 324
- 4 The Consumer Protection Law 330
- 5 Liability for defective products arising from Decree Law 383/89 of 6 November: implementation of the Directive 331
- 6 Risk management in the new era of product liability 334
- 7 Further reading 335

Chapter XIII Spain by Ramon Mullerat and Sonia Cortes 337

- 1 Introduction 339
- 2 Liability in contract 341
- 3 Liability in tort 346
- 4 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 350
- 5 Special liabilities arising in respect of particular products 355
- 6 Liability for defective products arising from national law in Spain: implementation of the Directive 356
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 363
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 364
- 9 Risk management in the new era of product liability 365

Chapter XIV Sweden by Christer Wagenius 373

- 1 Introduction 375
- 2 Liability in contract 377
- 3 Liability in tort 382
- 4 Risk management in the new era of product liability 388
- Appendix 392

Chapter XV Switzerland by Peter Honegger 411

- 1 Introduction 413
- 2 Overview 414
- 3 Claims against producers 416
- 4 Claims against retailers/distributors 418
- 5 International considerations 421
- 6 Risk management in the new era of product liability 422
- 7 Summary 427
- 8 Bibliography 427

Chapter XVI United Kingdom by Michael Thornton and Tom Ellis 429

- 1 Introduction 431
- 2 Liability in contract 433
- 3 Liability in tort 450
- 4 Liability for defective products brought about by breach of statutory regulation designed to protect consumers and/or to promote safety 456
- 5 Special liabilities arising in respect of particular products 457
- 6 Liability for defective products arising from national law in the UK: implementation of EC Directive 85/324 on product liability 459
- 7 Practical effects EC product liability law will have on various businesses in the chain of supply of products 462
- 8 Comparison of the effects of product liability law with the previous position in contract and tort 463

Chapter XVII Jurisdiction, enforcement of judgments and conflicts of laws
by Rebecca Attree 473

- Introduction 475
- 1 The international Conventions 475
- 2 The considerations when bringing an international claim 480
- 3 Conflict of laws 496
- 4 Should forum shopping be allowed? 505
- 5 Conclusion 505

Chapter XVIII Product liability insurance by D A Thomas 507

- 1 Introduction 509
- 2 The product liability policy 510
- 3 Definitions 511
- 4 Indemnity limits 513
- 5 Exclusions 513
- 6 Policy conditions 516
- 7 The 'claims made' product liability policy 517

8	Placing and underwriting the product liability risk	518
9	Multi-national policies	519
10	The EC Product Liability Directive and product liability insurance	521

Schedule comparing and contrasting the law on product liability in Europe 523

Appendix EC Product Liability Directive 557

Index 567

CHAPTER I

The EC Product Liability Directive

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CHAPTER I

The EC Product Liability Directive of 25 July 1985

1. BACKGROUND

Council Directive 85/374/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products was issued on 25 July 1985. It was notified to the Member States on 30 July 1985. This chapter summarises and explains the principal provisions and implications of the Directive.

This chapter is arranged in the following sections:

2. Introduction;
3. Objectives;
4. The system;
5. Structure;
6. Liability;
 - 6.1 The producer;
 - 6.2 Damage;
 - 6.3 Product;
 - 6.4 Defects;
7. Burden of proof;
8. Defences;
9. Compensation;
10. Limitations;
11. Implementation;
12. Enforceability;
13. Conclusion.

2. INTRODUCTION

The Directive was introduced within the framework of the continuing drive towards European harmonisation, to unify throughout the Common Market the law relating to defective products.

Historically, national legal systems have imposed a variety of obligations on producers and afforded different levels of protection to consumers.

By introducing the Directive the Community recognised that these different levels of protection could distort the movement of goods within the Common Market and sought to remove this obstruction to free trade.

3. OBJECTIVES

The Directive was issued to implement throughout the Common Market a strict liability system to compensate consumers for death, personal injury or damage to personal property due to defects in industrially produced, movable products.

Essential to the Commission's consumer protection policy, it aims to harmonise the laws of the Member States in readiness for completion of the single market in 1992.

4. THE SYSTEM

The system to be implemented introduces a fundamental change to product liability law in more than half of the Member States. Before the introduction of the Directive, in Denmark, Germany, Italy, the Netherlands and the United Kingdom, strict product liability was not available under national law to the consumer as a cause of action against the producer of a product.

The new system does not replace but instead supplements, the prevailing systems of consumer protection. It is designed to afford additional protection, co-existing with other consumer rights, whether based upon contract, negligence or breach of statutory duty. Consumer rights which go beyond its scope are not precluded. Hence, national law may provide consumer rights whereby the producer of a product will be strictly liable for defects without limit.

The Directive, therefore, seeks to introduce a system under which there are prescribed minimum consumer rights, upon which consumers throughout the Common Market can rely and according to which producers will be held responsible.

5. STRUCTURE

The Directive broadly divides into the following areas:

- (a) Liability;
- (b) Burden of proof;
- (c) Defences;
- (d) Compensation;
- (e) Limitations;
- (f) Implementation;

6. LIABILITY

Article 1 provides that *the producer* shall be liable for *damage* caused by a *defect* in his *product*. This article sets out the basis upon which the Directive is formulated. It introduces the concept of liability without the need to prove fault. The obligation on a producer under article 1 arises from the fact of the supply of defective goods and there is no need for the consumer to prove that