

**Advanced Master in Legal Sciences /
Master in European and Global Law
2016-2017**

Advanced Course on Tort Law

Trimester: 2

**Number of
Credits:** 4

Language: English

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Course Description

This course focuses on Spanish Products Liability and Products Safety. EU and US materials will be considered, too.

Prerequisites

An undergraduate course on Tort Law is strongly recommended.

Methodology

Class discussion will be based on the analysis of selected materials. Students should be ready to comment on the materials from comparative and law and economics approaches.

A minimum of 4 hours of out-of-class student work per week should be spent to prepare each class.

Syllabus

1. Statutes on Product Liability of the European Union ([Directive 85/374](#) amended by the [Directive 1999/34](#)) and of some European Union State Members (Germany, United Kingdom, France, Italy and Spain)
2. Statutes on Product Safety of the European Union ([Directive 2001/95](#)) and of some European State Members (Germany and Spain)
3. Case Law of the European Court of Justice on products liability (1997-2009)
4. Some Regulatory Agencies on Product Liability and Safety ([European Commission's Directorate-General for Health and Consumer Protection -DG SANCO-](#)) and some other national Agencies (Germany, United Kingdom, France, Italy and Spain)
5. Concept of product
6. Concept of defective product
 - 6.1. Manufacturing defect
 - 6.2. Design defect
 - 6.3. Failure to warn
7. Concept of safe product
8. Recalls and withdrawals
9. Introduction to [RAPEX \(Rapid Alert System for non-food consumer products\)](#)
10. Potential defendants
 - 10.1. Manufacturer of a finished product

- 10.2. Manufacturer of a raw material
- 10.3. Manufacturer of a component part
- 10.4. Importer
- 10.5. Dealer
- 10.6. Insurer
- 11. Potential Plaintiffs
 - 11.1. Consumers
 - 11.2. Bystanders
 - 11.3. Workers
 - 11.4. Companies
- 12. Joint and Several Liability
- 13. Contribution or Reimbursement
- 14. Comparative Negligence
- 15. Defenses
 - 15.1. Manufacturer did not distribute the product
 - 15.2. According to the circumstances, it is likely that the defect did not exist at the time of distribution
 - 15.3. The product was not manufactured for sale or any other form of distribution
 - 15.4. Compliance with mandatory regulations
 - 15.5. State of the Art Defense
- 16. Harms covered (death or bodily injury and damage to private property) and not covered (pain and suffering and economic loss) by the [Directive 85/374](#).
- 17. Statute of Limitations (Section 10 [Directive 85/374](#)) and Statute of Repose (Section 11 [Directive 85/374](#))
- 18. Products Liability and Barriers to Entry
- 19. Law Applicable to Products Liability: [Regulation \(EC\) No 864/2007 \(Rome II\)](#)
- 20. Alternative Dispute Resolution
 - 20.1. Arbitration
 - 20.2. Mediation
 - 20.3. Out of Court Settlement

Evaluation

Grading will be based on a take-home exam.

The take-home exam will consist of essay-questions. Students will be required to answer them using the "IRAC" method: Issue-Rule-Analysis-Conclusion.

Additionally, class participation will be taken into account.

In case of having failed the first evaluation the student will be able to be re-evaluated again. Grading will be based on a take-home exam.

Weekly Working Plan

Session 1

Contents: Main characteristics of Directive 85/374/ECC, July 25th, on products

liability and the extent of the harmonization achieved by the European legislator.

Readings:

[Judgment of the European Court of Justice, December 21, 2011, C-495/10, Centre hospitalier universitaire de Besançon v. Thomas Dutrueux, Caisse primaire d'assurance maladie du Jura.](#)

[Judgment of the European Court of Justice \(First Chamber\), June 4, 2009, C-285/08, Moteurs Leroy Somer v. Dalkia France, Ace Europe](#)

[Judgment of the European Court of Justice \(Fifth Chamber\), April 25, 2002, C-183/00, María Victoria González Sánchez v. Medicina Asturiana, S.A.](#)

[Judgment of the European Court of Justice \(Fourth Chamber\), November 20, 2014, C-310/13, Novo Nordisk Pharma GmbH v. S.](#)

Session 2

Contents: Product Safety and Product Liability. US Preemption Doctrine.

Readings:

Riegel v. Medtronic, Inc., 552 U.S. 312 (2008), February 20, 2008

Wyeth v. Levine, 555 U.S. 555 (2009), March 4, 2009

Pliva, Inc., et. al. v. Mensing (567 U.S. 2011) June 23, 2011

Bruesewitz et al. v. Wyeth LLC et al., 562 U.S. (2011), February 22, 2011

Session 3

Contents: Concept of Product. Information as a product. Product and Service.

Readings:

Jane Stapleton, "*Software, Information and the Concept of 'Product'*" 89 *Tel Aviv Studies in Law* 147 (1989).

Winter v. Putnam's Sons (938 F.2d 1033 (9th Cir. 1991).

Session 4

Contents: Strict liability and the concept of defect. Manufacturing Defect.

Readings:

German Supreme Court Decision, May 9, 1995, NJW 1995, 2162.

Sections 11.2 through 11.10. Mark A. GEISTFELD, "Products Liability", Michael FAURE (Ed.), *Encyclopedia of Law and Economics*, 2nd. ed., Vol. 1: Tort Law and Economics, Edward Elgar, Cheltenham (UK) - Northampton (MA), 2010. On-line version available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1396369.

German Supreme Court

Session 5

Contents: Design Defect

Readings:

French Supreme Court Decision, January 24th, 2006 (Bull. civ. I 2006 no. 33, p. 31, Patient v. Aventis Pasteur MSD)
French Supreme Court Decision, March 3rd, 1998 (Bull. civ. I 1998 no. 95, p. 63, Case Scovazzo v. Les Laboratoires Léo).
James A. Henderson, Aaron D. Twerski, Drug Design Liability: Farewell to Comment K, Brooklyn Law School Legal Studies, Research Paper No. 409, April 201, available at <http://ssrn.com/abstract=2600601>

Session 6

Contents: Failure to Warn Defect.

Readings:

Spanish Supreme Court decisions on the Agreal Drug case.

Session 7

Contents: Recent developments on the concept of defect

Readings:

Spanish Supreme Court Decision, December 9th, 2010. Trilucent Breast Implants Case.

[Judgment of the European Court of Justice, March 5, 2015. Boston Scientific Medizintechnik GmbH c. AOK Sachsen-Anhalt-DIE Gesundheitskasse \(C-503/13\) y c. Betriebskrankenkasse RWE \(C- 504/13\)](#)

Session 8

Contents: Concept of safe product. Recalls and withdrawals. Introduction to [RAPEX \(Rapid Alert System for non-food consumer products\)](#)

Session 9

Contents: Potential defendants and plaintiffs

Readings:

[Judgment the European Court of Justice \(Grand Chamber\), January 10, 2006, C-402/03, Skov Æg v Bilka Lavprisvarehus A/S and Bilka Lavprisvarehus A/S v Jette Mikkelsen, Michael Due Nielsen](#)

Session 10

Contents: Joint and Several Liability. Contribution or Reimbursement. Comparative Negligence. Crashworthiness

Readings:

D'Amario v. Ford Motor Co. [806 So. 2d 424 (Fla. 2001)]
Spanish Supreme Court, November 7, 2008.

Session 11

Contents: Defenses. In particular, State of the Art Defense.

Readings:

[Judgment of the European Court of Justice \(Fifth Chamber\), May 10, 2001, C-203/99, Henning Vedfeld v Århus Amtskommune](#)

[Judgment of the European Court of Justice \(Fifth Chamber\), May 29, 1997, C-300/95, Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland](#)

Session 12

Contents: Time restrictions on claiming and time of commercialization

Readings:

[Judgment of the European Court of Justice \(First Chamber\), February 9, 2006, C-127/04, Declan O'Byrne v. Sanofi Pasteur MSD Ltd, Sanofi Pasteur SA.](#)

[Judgment of the European Court of Justice \(Grand Chamber\), December 2, 2009, C-358-08, Aventis Pasteur S.A. c. OB](#)

Literature and other materials

Some general references are the following ones:

- Rodrigo BERCOVITZ RODRÍGUEZ-CANO (Dir.), *Comentario del Texto Refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras Leyes*, Thomson-Aranzadi, Cizur-Menor (Navarra), 2009.
- Mark A. GEISTFELD, "Products Liability", Michael FAURE (Ed.), *Encyclopedia of Law and Economics*, 2nd. ed., Vol. 1: Tort Law and Economics, Edward Elgar, Cheltenham (UK) - Northampton (MA), 2009. On-line version available at <http://papers.ssrn.com>.
- Mark A. GEISTFELD, *Product Liability Law*, Wolters Kluwer - Aspen, New York, 2012.
- James A. HENDERSON, Jr. and Aaron D. TWERSKI, *Products Liability: Problems and Process*, 7th ed., Wolters Kluwer - Aspen, New York, 2011.
- Geraint Howells, "Product Liability and the European Tort Landscape", Reiner Shulze (Ed.), in *Compensation of Private Losses*, Sellier, 2011, pp. 69 ff.
- Geraint Howells, David A. Owen, "Products Liability law in America and Europe", in Geraint Howells, Iain Ramsay, Thomas Wilhelmsson, "Handbook of Research on International Consumer Law", Edward Elgar Press, 2010, 224-255.
- Hans Josef KULLMANN, *Produkthaftungsgesetz. Gesetz über die Haftung für fehlerhafte Produkte (ProdHaftG). Kommentar*, 6. Auflage, Erich Schmidt Verlag GmbH & Co., Berlin, 2010.
- Michael MOLITORIS und Thomas KLINDT, *Die Entwicklung im Produkthaftungs- und Produktsicherheitsrecht*, NJW 21/2012, 1489.

- A. Mitchell POLINSKY and Steven SHAVELL, "The Uneasy Case for Product Liability", 123 *Harv. L. Rev.* 1437 (2010). Available at <http://www.harvardlawreview.org/index.php>. John C.P. GOLDBERG, Benjamin C. ZIPURSKY, "The Easy Case for Products Liability: A Response to Professors Polinsky and Shavell", 123 *Harvard Law Review* 1919 (2010). Steven SHAVELL, A. Mitchell POLINSKY, "A Skeptical Attitude about Product Liability Is Justified: a Reply to Professors Goldberg and Zipursky", 123 *Harvard Law Review* 1949 (2010).
- Pablo SALVADOR CODERCH y Fernando GÓMEZ POMAR (Coord.), *Tratado de Responsabilidad Civil del Fabricante*, Thomson-Civitas, Cizur Menor (Navarra), 2008.

[See also the 2009 Supplement: Pablo SALVADOR CODERCH, Fernando GÓMEZ POMAR y Sonia RAMOS GONZÁLEZ (Coord.), *Apéndice 2009 al Tratado de Responsabilidad Civil del Fabricante*, Thomson-Civitas, Cizur Menor (Navarra), 2010.]
- Gerhard WAGNER, "Kommentar zum Produkthaftungsgesetz", in Mathias HABERSACK (Redakteur), *Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 5 – Schuldrecht • Besonderer Teil III*, 6. Auflage, C.H. Beck, München, 2012.
- Simon WHITTAKER (Ed.), *The Development of Product Liability*, Vol. 1, in David Ibbetson, John Bell (Eds.), *Comparative Studies in the Development of the Law of Torts in Europe*, Cambridge (GBR): Cambridge University Press, 2010.
- Simon WHITTAKER, *Liability for Products: English Law, French Law and European Harmonisation*, Oxford University Press, 2005.
- TortsProf Blog, Products Liability:
<http://lawprofessors.typepad.com/tortsprof/>

European Court of Justice Case Law

[Judgment of the European Court of Justice \(Fifth Chamber\), May 29, 1997, C-300/95, Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland](#)

[Judgment of the European Court of Justice \(Fifth Chamber\), May 10, 2001, C-203/99, Henning Veedfald v Århus Amtskommune](#)

[Judgment of the European Court of Justice \(Fifth Chamber\), April 25, 2002, C-183/00, María Victoria González Sánchez v. Medicina Asturiana, S.A.](#)

[Judgment of the European Court of Justice \(Fifth Chamber\), April 25, 2002, C-52/00, Commission of the European Communities v. French Republic](#)

[Judgment of the European Court of Justice \(Fifth Chamber\), April 25, 2002, C-154/00, Commission of the European Communities v. Hellenic Republic](#)

[Judgment of the European Court of Justice \(Grand Chamber\), March 14, 2006, C-177/04, Commission of the European Communities v. French Republic](#)

[Judgment of the European Court of Justice \(Grand Chamber\), January 10, 2006, C-402/03, Skov Æg v Bilka Lavprisvarehus A/S and Bilka Lavprisvarehus A/S v Jette Mikkelsen, Michael Due Nielsen](#)

[Judgment of the European Court of Justice \(First Chamber\), February 9, 2006, C-127/04, Declan O'Byrne v. Sanofi Pasteur MSD Ltd, Sanofi Pasteur SA.](#)

[Judgment of the European Court of Justice \(First Chamber\), July 5, 2007, C-327/05, Commission of the European Communities v. Denmark](#)

[Judgment of the European Court of Justice \(First Chamber\), June 4, 2009, C-285/08, Moteurs Leroy Somer v. Dalkia France, Ace Europe](#)

[Judgment of the European Court of Justice \(Grand Chamber\), December 2, 2009, C-358-08, *Aventis Pasteur S.A. c. OB*](#)

[Judgment of the European Court of Justice, December 21, 2011, C-495/10, Centre hospitalier universitaire de Besançon v. Thomas Dutruieux, Caisse primaire d'assurance maladie du Jura.](#)

[Judgment of the European Court of Justice \(Fourth Chamber\), November 20, 2014, C-310/13, Novo Nordisk Pharma GmbH v. S.](#)

[Judgment of the European Court of Justice, March 5, 2015. Boston Scientific Medizintechnik GmbH c. AOK Sachsen-Anhalt-Die Gesundheitskasse \(C-503/13\) y c. Betriebskrankenkasse RWE \(C- 504/13\)](#)