

Master in Legal Sciences	
<b>Course:</b> <i>Advanced Course on Tort Law</i>	<b>Trimester:</b> 2
	<b>Number of Credits:</b> 3
	<b>Language:</b> 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.

Syllabus
<ol style="list-style-type: none"><li>1. Statutes on Product Liability of the European Union (<a href="#">Directive 85/374</a> amended by the <a href="#">Directive 1999/34</a>) and of some European Union State Members (Germany, United Kingdom, France, Italy and Spain)</li><li>2. Statutes on Product Safety of the European Union (<a href="#">Directive 2001/95</a>) and of some European State Members (Germany and Spain)</li><li>3. Case Law of the European Court of Justice on products liability (1997-2009)</li><li>4. Some Regulatory Agencies on Product Liability and Safety (<a href="#">European Commission's Directorate-General for Health and Consumer Protection -DG SANCO-</a>) and some other national Agencies (Germany, United Kingdom, France, Italy and Spain)</li><li>5. Concept of product</li><li>6. Concept of defective product<ol style="list-style-type: none"><li>6.1. Manufacturing defect</li><li>6.2. Design defect</li><li>6.3. Failure to warn</li></ol></li><li>7. Concept of safe product</li><li>8. Recalls and withdrawals</li><li>9. Introduction to <a href="#">RAPEX (Rapid Alert System for non-food consumer products)</a></li><li>10. Potential defendants<ol style="list-style-type: none"><li>10.1. Manufacturer of a finished product</li><li>10.2. Manufacturer of a raw material</li><li>10.3. Manufacturer of a component part</li><li>10.4. Importer</li><li>10.5. Dealer</li></ol></li></ol>

- 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

### Grading

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.

### 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.
- Hans Josef KULLMANN, *Produkthaftungsgesetz. Gesetz über die Haftung für fehlerhafte Produkte (ProdHaftG). Kommentar*, 6. Auflage, Erich Schmidt Verlag GmbH & Co., Berlin, 2010.
- 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>.
- 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.
- TortsProf Blog, Products Liability: <http://lawprofessors.typepad.com/tortsprof/>