



Product Liability in Comparative Perspective

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Comparative Product Liability (1993)

Since then

- ▶ Many countries adopted EU model
- ▶ US taken step backwards
- ▶ Case law in EU started to flow
- ▶ Technology moved on
- ▶ Has law affected product liability litigation?

Law is only part of picture

- ▶ Class actions
- ▶ Litigation funding model,
- ▶ Damage levels

Why is EU law such a successful export?

- ▶ Bad press for US legal system
- ▶ Quality of law?
- ▶ No political fall out
- ▶ General acceptance as having struck a balance parties can live with

Liable partners

- ▶ Business liability
- ▶ US focuses on seller
- ▶ EU
 - ▶ Producer
 - ▶ Importer
 - ▶ Own-branding
 - ▶ Supplier has subsidiary liability

Products

- ▶ Distinguished from service liability
- ▶ Movable
- ▶ Include information?
- ▶ Include software?
- ▶ Internet of Things

Damage

- ▶ Death and personal injury (cap?)
- ▶ Property damage (other than to defective product)
- ▶ Query whether damage to product should be included (HK Law Reform Commission)

Liability standard

- ▶ Consumer expectations vs risk:utility
- ▶ Different stands for different categories of defect?
- ▶ Extent to which it socializes risk
 - ▶ Vulnerable groups
 - ▶ Include instances of inappropriate use
 - ▶ Inherent risks
 - ▶ Instructions and warnings
 - ▶ State of art and development risk

Causation

- ▶ Epidemiology
- ▶ Market share liability

Another response

- ▶ New Zealand Accident Compensation Scheme
- ▶ Nordic pharmaceutical liability
- ▶ Proposed in EU Report for development risks

Conclusions

- ▶ Dominance of EU model
- ▶ That model has not been critically reflected upon
- ▶ Case law starting to emerge
- ▶ Need to synthesise experiences and learn between jurisdictions
- ▶ Still need better understanding of underlying policy goals