

officials promulgated under the Road Traffic Act of 1960 and the efforts of local prosecutors to enforce them. Should latent defects in motor vehicles nevertheless give rise to damages, an owner may hold his dealer liable both in contract and in tort. He and any third party also have a cause of action against the manufacturer under the conditions here described.

## France

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The French law of product liability is based upon the contract and tort provisions of the French Civil Code. Working with broad and general Code provisions, the courts (*la jurisprudence*) and the jurists (*le doctrine*) have developed a comprehensive theory of lia-

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period, not being less than five years, as may be specified therein from the provisions aforesaid any vehicle of that class or description registered under the Vehicles (Excise) Act, 1949, before the expiration of one year from the making of the regulations.

(4) The Minister may by order authorise, subject to such restrictions and conditions as may be specified by or under the order, the use on roads—

- (a) of special motor vehicles or trailers, or special types of motor vehicles or trailers, which are constructed either for special purposes or for tests or trials,
- (b) of vehicles or trailers, or types of vehicles or trailers, constructed for use outside the United Kingdom, and
- (c) of new or improved types of motor vehicles or trailers, whether wheeled or wheelless, or of motor vehicles or trailers equipped with new or improved equipment or types of equipment;

and nothing in the foregoing provisions of this section shall prevent the use of such vehicles, trailers, or types as aforesaid in accordance with the order.

(5) The Minister may by order make provision for securing that, subject to such restrictions and conditions as may be specified by or under the order, regulations under this section shall have effect in their application to such vehicles, trailers and types thereof as are mentioned in the last foregoing subsection subject to such modifications or exceptions as may be specified in the order.

(6) Any order under this section may be varied or revoked by a subsequent order of the Minister.

(7) The powers conferred by this section on the Minister to make orders shall be exercisable by statutory instruments."

The "Minister" referred to is the Minister of Transport for England, the one who holds the same title in Wales, and the Secretary of State for Scotland.

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bility in the field of product liability, and have found solutions to meet an infinite variety of situations. In this analysis, discussion will be limited to a narrow but important aspect of the broader law of product liability.

Are manufacturers of motor vehicles liable for damages caused by the defective condition of their product, and if so, to whom, and in what type of action? How does this apply to the middle man and others in the chain of distribution? If a third party, not a purchaser, suffers property damage, personal injury, or death as a result of a defective motor vehicle, against whom does he or his estate have a right of action, and in what type of action may damages be recovered? If a purchaser of a motor vehicle suffers damage due to a defect, who may be sued, and what damages may be recovered? In all of the above situations, what proof is necessary for recovery?

### **Contract Law and Product Liability**

In France, the Civil Code regulates the responsibility of a vendor who sells defective merchandise. A vendor is obliged to explain clearly to a buyer the extent of the seller's obligation, every obscure and ambiguous contract being interpreted against the vendor.<sup>1</sup>

The vendor impliedly warrants against hidden defects;<sup>2</sup> he is responsible for latent defects which render the merchandise unsuitable for the intended use.<sup>3</sup> He is not liable for patent defects which are apparent upon a superficial examination by the buyer;<sup>4</sup> the purchaser has a duty to act as a diligent man in examining the article he is buying.<sup>5</sup> Furthermore, if there is a hidden defect in the product

<sup>1</sup> Code Civil art. 1602 (hereinafter cited C. Civ.): "Le vendeur est tenu d'expliquer clairement ce à quoi il s'oblige. Tout pacte obscur ou ambigu s'interprète contre le vendeur."

<sup>2</sup> C. Civ. art. 1625: "La garantie que le vendeur doit à l'acquéreur à deux objets: le premier est la possession paisible de la chose vendue; le second, les défauts cachés de cette chose ou les vices rédhibitoires."

<sup>3</sup> C. Civ. art. 1641: "Le vendeur est tenu de la garantie a raison des défauts cachés de la chose vendue qui la rendent impropre à l'usage auquel on la destine ou qui diminuent tellement cet usage, que l'acheteur ne l'aurait pas acquise, ou n'en aurait donné qu'un moindre prix, s'il les avait connus."

<sup>4</sup> C. Civ. art. 1642: "Le vendeur n'est pas tenu des vices apparents et dont l'acheteur a pu se convaincre lui-même." [1929] *Dalloz Périodique* 281 (hereinafter D.P.), note by P. Voirin, Meunier-Collin v. Grange, Trib. Civ. Seine, Dec. 21, 1956 [1957] *Dalloz Jurisprudence* 47 (hereinafter D.J.); Barbier v. Escandre, Cour d'Angers, Feb. 15, 1960 [1960] D. Sommaire 102.

<sup>5</sup> Cour de Bordeaux, [1929] D.P. 2.81, note by Voirin, *supra* note 4.

which is discovered by the buyer, he is deemed to have waived the warranty because of such knowledge.<sup>6</sup>

The seller's warranty covers all latent defects despite the fact that he acted in good faith and was unaware that the article was defective.<sup>7</sup> If the seller knew of the hidden defect, the Code provides that he can be held not only for repayment of the purchase price, but also for all damages suffered by the buyer.<sup>8</sup> These damages include any amounts that a court assesses against the buyer in a suit against him by an injured third party who has suffered personal and property damages because the automobile was defective.

If the seller did not know of any defects, the Code provides that he is bound only "to return the price and to reimburse the buyer for the expenses that were occasioned by the sale."<sup>9</sup> The expenses occasioned by the sale ordinarily would include such expenses as costs of transportation and any expenses incurred in the event of a resale to a sub-purchaser.<sup>10</sup> However, the cases do not limit recovery, as does the Code, to the ordinary expenses occasioned by the sale where the vendor was a person in the business of selling automobile (manufacturers, dealers, etc.); but they have expanded damages in such instances to include "sums which the purchaser has been condemned to pay." This interpretation generally has been followed by the courts despite a great deal of adverse criticism by text writers.<sup>11</sup> The courts reason that a person in the business of

<sup>6</sup> C. Civ. art. 1641; see Cour de Bordeaux, Dec. 10, 1928 [1929] D.P. 2.81, note by Voirin, *supra* note 4.

<sup>7</sup> C. Civ. art. 1643: "Il est tenu des vices cachés, quand même il ne les aurait pas connus, à moins que, dans ce cas, il n'ait stipulé qu'il ne sera obligé à aucune garantie."

<sup>8</sup> C. Civ. art. 1645: "Si le vendeur *connaissait* les vices de la chose, il est tenu, *autre* la restitution de prix qu'il en a reçu, *de tous les dommages et intérêts envers l'acheteur.*" (Emphasis added.)

<sup>9</sup> C. Civ. art. 1646: "Si le vendeur *ignorait* les vices de la chose, il ne sera tenu qu'à la restitution du prix, et à rembourser à l'acquéreur les frais occasionnés par la vente." (Emphasis added.)

<sup>10</sup> See Szladits, "Comparative Aspects of Product Liability," 16 *Buffalo L.Rev.* 229, 246 (1946); 10 Planiol-Ripert-Hamel "*Traité*" *Pratique de Droit Civil Française* (hereinafter called Planiol-Ripert-Hamel), No. 134, and cases cited therein.

<sup>11</sup> Szladits, *supra* note 10, at 246, and n.n 89 and 91. Cour de Cassation (ch req), Oct. 21, 1925 [1926] D. I.9 and note by Josserand; Soc. immobilière du Béarn v. Ville de Pau, Cour de Cassation, (Ch. civ.), March 15, 1948 [1948] D. 346 Grandsire v. Rohaut et autres, Cour de Rouen, June 6, 1956, [1957] D. Sommaire 43; cf. Ferré v. Époux Layre, Cour de Cassation, Oct. 7, 1959 [1959] D. 118 and note.

selling a product, such as a manufacturer or dealer, by reason of his experience should be deemed to know of latent defects.<sup>12</sup> In this way, the presumption of knowledge by the professional seller has been extended so as to hold him liable for all damages the buyer suffers. This includes what he must pay if he is sued either by the purchaser or by third parties.<sup>13</sup> The presumption is generally considered irrebuttable.<sup>14</sup>

Thus a purchaser of a defective automobile who has damaged the property of another or injured or killed a third party and thus incurred liability can recover from and be indemnified by the person who sold him the car (whether he be the manufacturer, distributor, or dealer) and may receive the full amount of the judgment assessed against him.

Article 1643 of the French Civil Code provides<sup>15</sup> that a seller and buyer may agree that the sale is to carry no warranty whatsoever. However, where a buyer purchases an article subject to this type of restriction, the seller may nevertheless be held liable under certain circumstances. A bad faith vendor who knew of a hidden defect in the product cannot escape liability by such a disclaimer, and he may be held liable as if there had been no non-warranty clause.<sup>16</sup> Furthermore, if bodily injury is caused, the agreement of non-warranty will not relieve the manufacturer, dealer, or any other vendor.<sup>17</sup> Moreover, the judicial trend is to hold non-warranty clauses ineffective in the majority of sales by manufacturers or others in the business of making or dealing in the product. They remain liable for hidden defects. For example, the manufacturer of a motor vehicle was held unable to relieve himself of liability (by a warranty

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<sup>12</sup> Szladits, *supra* note 10, at 246, citing *Gaz et Electricité de France v. Établissements Jacob Holtzer*, Cour de Cassation (Ch. civ.), Nov. 24, 1954 [1955] *Jurisclasseur Périodique II* 85 65 (hereinafter J.C.P.). See also *Union Meunière du Gard et Briand v. Dame Veuve Brémond et Autres*, Cour d'Appel de Nîmes, April 20, 1960, [1960] D. 725, and note by Savatier; 10 *Planiol-Ripert-Hamel*, No. 134, 6 *Ripert, Encyclopédie Dalloz Répertoire Droit Civil V*, Vices Cachés, No. 158; *Provenzale v. époux Vignau-Lelièvre*, Cour de Cassation (Ch. req) June 5, 1929, [1929] *Gaz. Pal.* 2.433; [1931] D. H. Sommaire 39.

<sup>13</sup> Szladits, *supra* note 10, at 246.

<sup>14</sup> 10 *Planiol-Ripert-Hamel*, No. 134; *Raymond v. Baglone*, Cour d'Appel de Grenoble, Nov. 20, 1952 [1953] D. 503.

<sup>15</sup> Szladits, *supra* note 10, at 246, 247; see also *Raymond v. Baglone*, Cour d'Appel de Grenoble, Nov. 20, 1952 [1953] D. 503; *Planiol-Ripert-Hamel*, No. 139.

<sup>16</sup> Szladits, *supra* note 10, at 247.

<sup>17</sup> Szladits, *supra* note 10, at 247.

disclaimer under Article 1643), and he was held for damages to a purchaser resulting from a defect in a car.<sup>18</sup> Thus, under the theory of breach of warranty, if a professional seller in the direct chain sells a defective product which causes a purchaser damage because of hidden defects, the purchaser may recover all his damages from his vendor despite a non-warranty clause.<sup>19</sup> Such a suit, however, must be instituted by the purchaser within the time limit set forth in the Code, which provides that the action must be commenced within a short time, according to the nature of the defect and the applicable customary period of limitation of the place where the sale was made.<sup>20</sup>

It has been held that where there has been a series of sales, as for example, by a manufacturer to a dealer, by the dealer to a retailer, and thence to the purchaser, the latter may sue any one of the sellers in the chain for breach of warranty until he finds one who is solvent.<sup>21</sup> Recent case law, however, confines the ultimate purchaser to a breach of warranty suit against his immediate vendor, although he may have a right of action in tort against the other vendors in the chain.<sup>22</sup>

### **Tort Liability**

The French legal system of delictual liability was formulated, like the law of warranty in contracts, by court decisions and by the jurists, reasoning from a few general rules of the Civil Code. The basic premise of the French Code in this area, that fault is the foundation of liability in tort, is enunciated in Article 1382: "Every act of a person which damages another makes the person by whose

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<sup>18</sup> Raymond v. Baglone, note 14, *supra*; Cour de Rennes, Nov. 20, 1955 [1955] GAZ PAL. 2.56; Dr. Savonnet v. Sté. Anonyme Sud-Est Automobile, Tribunal Paix Nice Contres, Oct. 23, 1957, [1958] Jurisprudence II 10528 and note by A. Joly.

<sup>19</sup> Szladits, *supra* note 10, at 247.

<sup>20</sup> C. Civil 1648: "L'action résultant des vices rédhibitoires doit être intentée par l'acquéreur, dans un bref délai, suivant la nature des vices rédhibitoires, et l'usage du lieu où la vente a été faite." See Raymond v. Baglone, *op. cit.* note 14, *supra*; Chaud v. Cornen, Cour de Cassation (Ch. Civ.), July 1, 1956 [1956] D. 719; 10 *Planiol-Ripert-Hamel*, No. 136.

<sup>21</sup> Amos and Walton, *Introduction to French Law* 362, 2nd Ed. (1963); *Planiol-Ripert-Hamel*, No. 104.

<sup>22</sup> Sté. des Eaux Minérales [*sic*] Vittel v. dame Morel d'Arlioux, S.A.R.L., Supermag—Rennes et Scé. des Verreries de Gironcourt, Cour d'Appel de Paris, Dec. 14, 1961 [1961] J.C.P. II.1247 and note by Savatier; [1962] *Revue Trimestrielle droit civil* 314 and note by A. Tunc; Szladitz, *supra* note 10, at 248.

fault the damage occurred liable to make reparation for such damage.”<sup>23</sup>

Article 1383 extends the notion of “fault” to include negligent conduct. It provides that “everyone is liable for the damage he causes not only by his fault but also by his negligence or imprudence.”<sup>24</sup> Moreover, the Article imposes liability upon a person for acts of other persons and things under his control.<sup>25</sup>

Although the notion of fault was utilized as the basis for delictual responsibility until the end of the 19th century, the industrial revolution brought about a change in social values. With the great increase of industrial accidents, it became apparent that the onerous and often impossible burden of proving fault, which rested on the workman who had suffered an industrial accident rather than upon the employer, was uneconomic and socially undesirable. Workmen’s compensation laws were enacted to take care of this problem. It has been said that “the twentieth century has clandestinely fostered another factor or policy consideration [other than fault] that has a bearing upon tort liability. Capacity to bear the loss . . . has had an influence. . . . Today, both capacity to bear the loss and punishment are active and influential factors in determining tort liability.”<sup>26</sup> Generally, however, the French courts and jurists continued to insist upon the fault concept as a basis of liability. The courts, in their search for some way in which to predicate recovery other than upon the fault premises of Article 1382 and 1383, settled upon the first paragraph of Article 1384.<sup>27</sup> They made use of this provision

<sup>23</sup> C. Civ. art. 1382: “Tout fait quelconque de l’homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer.”

<sup>24</sup> C. Civ. art. 1383: “Chacun est responsable du dommage qu’il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence.”

<sup>25</sup> C. Civ. art. 1384: “On est responsable non seulement du dommage que l’on cause par son propre fait, mais encore de celui qui est causé par le fait des personnes dont on doit répondre, ou des chose que l’on a sous sa garde. “Les maîtres et les commettants, du dommage causé par leurs domestiques et préposés dans les fonctions auxquelles ils les ont employes. . . .”

(“A person is liable for the damage he causes not only by his own acts, but also by the acts of persons for whom he is responsible or by things under his guard.” It further is provided in § 2 that “Masters and employers are liable for the damage caused by their servants and employees in the exercise of the functions for which they have been employed.”)

<sup>26</sup> Foster, Jr., and Keeton, “Liability Without Fault in Oklahoma,” 3 *Okla. L.Rev.* 1, 7 (1950).

<sup>27</sup> See Hughes, “Duties to Trespassers: A Comparative Survey and Reevaluation,” 68 *Yale L.Rev.* 633, 673-675 (1959).

to extract a principle of delictual recovery for damages caused by things a defendant had "under his guard,"<sup>28</sup> and then applied it in automobile accident cases to determine liability. But for the most part, Article 1384, paragraph 1, was held a basis for recovery only in instances where the offending automobile was parked or not being operated at the time the accident occurred.<sup>29</sup>

After the first World War, however, the increased number of motor vehicles also brought an increase in the number of motor vehicle accidents and the courts handed down conflicting opinions as to the applicability of Article 1384. It was finally determined that a "presumption of fault" should be admitted against the driver whether or not the automobile was parked or being operated.<sup>30</sup> Finally, in 1930, the Court of Cassation, with all chambers of the court sitting, decided a test case wherein Article 1384, paragraph 1, was held to apply to *all* automobile accident cases.<sup>31</sup> The Court held that a "presumption of liability" arose, which would only be rebutted by proof of *force majeure* (*vis major*) or fault of the plaintiff. It has been said that:

This principle has since become the insatiable comorant of the French law of torts, threatening, as it does, to devour the notion of fault and to dominate utterly the field of delictual recovery.<sup>32</sup>

Under present French law, if a third party, not a purchaser, is injured by a motor vehicle, he may sue the owner as well as the driver under Article 1384 to recover damages caused by the thing "under his guard."<sup>33</sup> His claim can be defeated only by proof of *force majeure*, or by showing that the injury was caused solely by the plaintiff's own fault. If he can prove that the negligence of the manufacturer caused the damage, he can also sue the manufacturer, since a manufacturer is liable for the negligence of its employees.<sup>34</sup>

<sup>28</sup> C. Civ. art. 1384.

<sup>29</sup> For an excellent analysis see Deak, "Automobile Accidents: A Comparative Study of the Law of Liability in Europe," 79 *U. Pa. L.Rev.* 271, 282 f.f. (1931).

<sup>30</sup> *Id.* at 287-289.

<sup>31</sup> *Id.* at 292-294; see *Jand'heur v. Les Galeries Belfortaises*, Cour de Cassation (Chambres Réunies), Feb. 13, 1930 [1930] D.H. 129. *Raul et Durand v. Leroux*, Cour de Cassation (ch. req.) June 7, 1937, [1937] D.H. 471. *Dehan v. Vadi—Aldo*, Cour d'Appel de Colmar, July 28, 1937, [1937] D.H. 593.

<sup>32</sup> Hughes, *supra* note 27, at 675.

<sup>33</sup> See Szladits, *supra* note 10, at 248, n. 102.

<sup>34</sup> C. Civ. art. 1384, § 2.