

to women over 50 years of age and to men over 60 years of age, for life;

to invalids, for the period of their disablement;

to the spouse or a parent of the deceased, regardless of his or her age or ability to work, who does not work and who is engaged in the care of children, grandchildren, brothers or sisters of the deceased who have not reached eight years of age, until such persons reach eight years of age.

In time, as production of passenger vehicles in the Soviet Union increases and the number of motor vehicle accidents increases, liability for injuries caused as the result of defects in the manufacture of automobiles may assume importance. Soviet law relating to motor vehicles is still in the process of development, and the present pre-occupation of litigants and the Courts is with liability for injuries resulting from the negligent operation of motor vehicles, not their defective manufacture.<sup>10</sup>

## Spain

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Spanish legal principles applicable to products liability are derived essentially from the general tort provisions of the Civil Code,<sup>1</sup> as respects rights of third parties, and from the sales warranty of quality provisions of the Civil and Commercial Codes,<sup>2</sup> as respects purchasers' rights.

### Recourse under Negligence Law

The Civil Code in Articles 1091, 1092, and 1093 categorizes obligations as arising from contracts, crimes, and negligence, respec-

<sup>10</sup> No statistics are available concerning the number of motor vehicle accidents in the USSR or the number of persons killed and injured. Compare *Statistical Abstract of the United States* (1966), p. 576, which indicates that 48,500 persons were killed and 4,100,000 injured in the United States in 1965 as a result of traffic accidents. For a recent treatment of Soviet law and judicial practice relating to criminal and civil liability arising from the negligent operation of motor vehicles, see Barry, "The Motor-Car in Soviet Criminal and Civil Law," 16 *Int. & Comp.L.Q.* 56 (Jan., 1967).

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<sup>1</sup> Civil Code, art. 1902.

<sup>2</sup> C. Civ., art. 1484, art. 1486; Commercial Code, art. 336, art. 345.

tively.<sup>3</sup> Obligations arising from negligence, in turn, are subject to the general tort rule found in Article 1902 of the Civil Code which states:

Any person who by act or omission causes damage to another by his fault or negligence shall be liable for the damage so done.

A party who suffers damage caused by negligence in the manufacture of a product may, under the general tort provision cited above, recover from the manufacturer.<sup>4</sup> Both personal injury and property damage are included within the scope of Article 1902. Privity is not required.

Product liability cases brought under the general negligence article cited share the burdens imposed by Spanish law generally on all actions predicated on negligence. The required elements are: first, that damage or loss occur;<sup>5</sup> second, that a wrongful act or omission involving fault or negligence be committed by the defendant;<sup>6</sup> and third, that there be a direct causal relationship between the former and the latter.<sup>7</sup>

Although the older doctrine and cases emphasized fault as a basis of liability and required adequate proof thereof,<sup>8</sup> the clear tendency of Spanish law is to move in the general direction of liability without fault<sup>9</sup> and, as revealed particularly in the decisions of the

<sup>3</sup> Liability for tortious acts is considered to be based on extracontractual obligations. Cf. Tribunal Supremo Decision of April 30, 1959; 12 Manresa y Navarro, *Comentarios al Código Civil Español* 641 (5th Ed. 1951); Borrell Macia, *Responsabilidades Derivadas de la Culpa Extracontractual Civil* (2d Ed. 1958); Puig Peña, "Culpa Extracontractual o Daños Por Imprudencia," 1943 *Revista General de Legislacion y Jurisprudencia* 365; Moreno Mocholi, "La Responsabilidad Civil por Culpa Extracontractual y la Penal por el Delito o Falta de Daños por Imprudencia," 1950 *Revista Juridica de Cataluña* 628.

<sup>4</sup> Tribunal Supremo Decision of May 2, 1961 reported in 40 *Revista de Derecho Privado* 593 (1961).

<sup>5</sup> 12 Manresa y Navarro, *supra*, note 3 at 647; Tribunal Supremo Decision of October 5, 1932.

<sup>6</sup> Tribunal Supremo Decision of December 31, 1932.

<sup>7</sup> Tribunal Supremo Decisions of February 15, 1924; December 22, 1928; January 25, 1933; December 24, 1941; January 2, 1945.

<sup>8</sup> Tribunal Supremo Decisions of March 2, 1897; December 4, 1903; October 31, 1931; March 16, 1936.

<sup>9</sup> Cf. Borrell Macia, "Hacia La Responsabilidad Sin Culpa," 35 *Revista de Derecho Privado* 108 (1951); Fernandez Martin-Granizio, "Responsabilidad Objetiva o Obligación Legal de Indemnizar?" 18 *Anuario de Derecho Civil* 663 (1965); Cf. also Article 39 of Spanish Law on Automobiles (Law of December 24, 1962); Gomez Calero, "La Responsabilidad Objetiva en la Nueva Ley del Automóvil," 49 *Revista de Derecho Privado* 23 (1965); Marti, "La Responsabilidad Civil Automovilística en la Ley de 24 de Diciembre de 1962,"

Supreme Court of Spain (*Tribunal Supremo*) during the last decade or so, to ease the plaintiff's burden of proving negligence. This is particularly true where the negligence action is based upon the manufacture of a defective product. In such case, owing to the manufacturer's control of the product, the negligence will usually be implied and the court's attention will, rather, center on the remaining elements of causation and damages.<sup>10</sup> Nor will the court be reluctant, in appropriate cases, to shift the burden of proof on the question of negligence to the defendant.<sup>11</sup>

Causation, the third element of the Article 1902 action, must be established. While Spanish courts have been no less reluctant than their Anglo-American counterparts to define a causation formula of universal application, they appear to have settled, more often than not, on a test of whether the damage was a "necessary consequence"<sup>12</sup> of the defendant's negligent act or omission. Here again, however, the Spanish courts in product liability cases will not be overly rigorous in their proof requirements. For instance, an award of damage to a plaintiff was sustained by the Supreme Court of Spain where he established the death of several sheep following their vaccination with defendant manufacturer's defective vaccine.<sup>13</sup>

It should be noted that the Spanish Statute of Limitations in negligence actions is comparatively brief, the cause of action expiring one year from the time the claimant learns of the damage.<sup>14</sup>

### **Recourse under Sales Law**

Where damages are incurred by a purchaser as a result of a defective product, such purchaser may, in appropriate cases, have recourse against the seller under pertinent Spanish sales law provisions. The extent of the buyer's rights require a brief analysis of the Spanish warranty of quality. Under provisions of Spanish sales law two important warranties are implied by law,<sup>15</sup> the warranty against

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37 *Revista de Derecho Mercantil* 295 (1964); Goldschmidt, "La Influencia de la Técnica Moderna en el Derecho Privado in *Nuevos Estudios de Derecho Comparado* p. 37 (1962).

<sup>10</sup> Tribunal Supremo Decision of May 2, 1961.

<sup>11</sup> Tribunal Supremo Decision of June 30, 1959.

<sup>12</sup> Tribunal Supremo Decisions of June 16, 1905; October 5, 1932; May 26, 1953; Santamaria, 2 *Comentarios al Código Civil* 953 (1958).

<sup>13</sup> Tribunal Supremo Decision of May 2, 1961.

<sup>14</sup> C. Civ., Art. 1968; Santos Briz, 1 *Código Civil* 982 (1965); Tribunal Supremo Decision of November 16, 1932.

<sup>15</sup> C. Civ., Art. 1474.