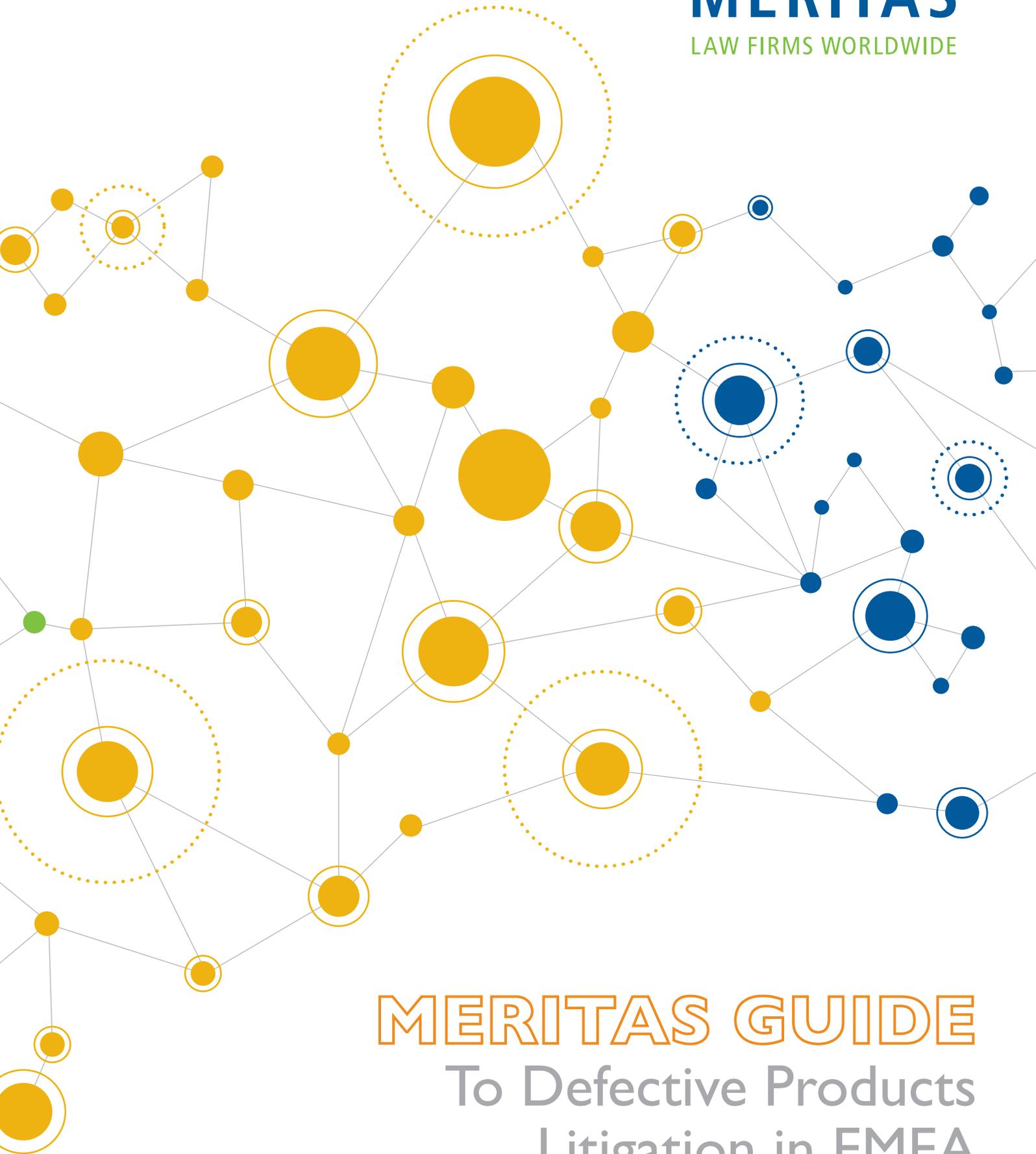




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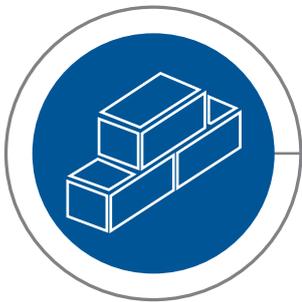
MERITAS GUIDE

To Defective Products
Litigation in EMEA

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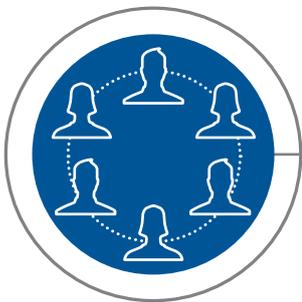
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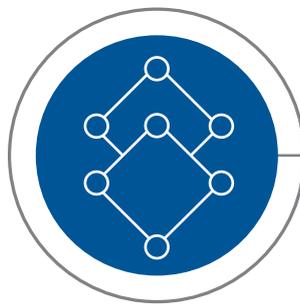
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INTRODUCTION

Key Issues



What claims may be brought for liability for defective products?



Who is liable to compensate a claimant for a claim?

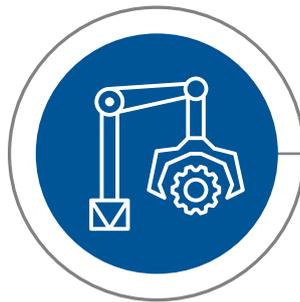
If you manufacture, produce, distribute or sell products **you are responsible** for ensuring they are safe and free from defects that may cause damage or injury. Failure to meet your responsibilities, resulting in damage, injury or death caused by a defect in your product, could have serious consequences including heavy fines and imprisonment, not to mention the loss of business revenue.

Understanding the laws and regulations that concern defective products and the liabilities that may result is therefore vital for any company doing business across Europe, Middle East and Africa.

The trend in many countries has been to **strengthen consumers' levels of protection** in respect of defective products, particularly within the EU.



Is there a difference if you are a consumer or professional buyer of the product?



Can a manufacturer of a defective product limit their liability?

Whilst a consumer may recover damages for losses caused by negligent acts or omissions, there are **important differences** between jurisdictions as to how principles of fault liability are applied. For example, in civil law jurisdictions, the burden of proof is often reversed once a defect and damage is proved and a defendant must prove that it was not negligent. In contrast, in common law jurisdictions, the burden generally rests on the claimant to prove all aspects of the claim.

The following Meritas guide asks these are other **key questions** related to defective products litigation and provides answers as they relate to **30 countries across EMEA**.

Please note: this guide is for general information purposes only and is not intended to provide comprehensive legal advice. For more information, or for detailed legal advice, please contact any of the lawyers listed at the end of each chapter.

The information contained in this guide is accurate as at 1 August 2018. Any legal, regulatory or tax changes made after this date are not included.

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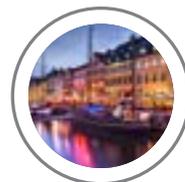
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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective product claims may be brought on a contractual basis, in case of negligence and/or under the Consumer Protection Act (“the Act”).

The Act gives a right to claim compensation against the producer of a defective product if it has caused damage, death or injury. The Act provides a liability claim for defective products making the producer of that product liable for any damage caused. A product in the meaning of the Act is only a physical movable item even if it was put into a stationary item.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Act, the producer, anyone who held themselves out to be the producer, the importer or the supplier who put the product on the market, may be liable. The supplier may have a liability if there is no liable producer and they don't inform the injured party about the producing company or if there was a breach of contract with the injured party.

A claim in negligence can be brought against a party who has breached a duty to take reasonable care and that breach has resulted in personal damage to the claimant.

3. Are there differences if the buyer is a consumer or a professional buyer?

In order to have a claim under the Act, a claimant needs to have suffered death, injury or damage to property. The damage to property has to occur on a property different to the defective product. Professional buyers can bring claims for death or personal injury, but claims for damage to property may only be brought by consumers since the Act only applies to property which was used for private purposes.

Consumers and professional buyers can bring a claim for damage to property on a contractual basis or for negligence.

4. Can the seller or other potentially liable party exclude or limit its liability?

Liability cannot be excluded or limited beforehand under the Act.

However, in case of damage of private items the claimant has a damage excess in the amount of EUR 500. Further, the producer or importer are not liable if they can prove that they did not put the product on the market, that the product had not been defective when it was put on the market, that the defect was due to a mandatory legal provision or that the product was state-of-the-art when it was put on the market and the defect was not considered a defect at that time.

In respect of a contractual claim, liability for goods corresponding with any description or sample cannot be excluded or restricted. Other terms which seek to limit or exclude liability in a consumer contract may be regarded as unfair and therefore unenforceable. However, this needs to be reviewed in each individual case.

Liability for death or severe injury cannot be excluded or restricted in any contract.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

If there is no domestic producer because a product has been manufactured outside of the EU (or outside of Austria), the importer is liable under the Act. Simultaneously, the supplier can be liable on a contractual basis.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Aside from the General Product Safety Regulations, producers are obligated to review their products, otherwise they are liable for damages.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

In general, normal court procedures apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

No pre-action measures are necessary. All documents and other evidence can be presented in the course of the proceedings.



9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Under the Act, damages are available to compensate the injured person for death, personal injury and damage to private property, although not damage to the defective product itself. Damage to property with a value below EUR 500 is not covered by the Act.

In a contractual claim, all damages can be claimed if the injured can prove a breach in contract. This includes the defective product itself. The injured party can claim repair of the product or, if this is not possible, replacement or price reduction. In business-to-business this right can be excluded.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs depend on the value of the defective product / the damage. The losing party has to pay the costs of the winning party, court fees and experts' costs.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the Act, the burden of proof is on the claimant to establish that the product was defective and that it caused the damage / injury. However, a claimant does not need show the exact defect.

In a contract and negligence claim the burden of proof is on the claimant.

12. Is the state of the art defence available?

Yes. If the producer or importer can show that the product was state-of-the-art when it was put on the market and the defect was not considered a defect at that time, they are not liable.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Under the Act, as well as general provisions for contract breaches or negligence, proceedings must be brought forward within three years after the injured party knows of damage and damaging party. The overriding time limit is 10 years from the date on which the defective product was put on the market. The three year deadline can be frozen if there are settlement discussions as long as they last.

14. What are the rules for bringing a claim in a class/collective action?

Class actions are available for product liability claims. However, in Austria class actions are handled very strictly and must be allowed by the court.

15. What is the average duration of defective products litigation?

Approximately 12 to 18 months.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective product claims may be brought in contract, the tort of negligence, under the Product Liability Act 1991 (“**the Act**”), which implemented the EU Product Liability Directive as well as under criminal law.

Under the Act, the producer shall be liable, known as the **strict liability**, when any injured person can prove the defect in the product, the reality and importance of the damage suffered, as well as the causal link between the defect and the damage.

Product liability can also be incurred under the Articles 1382 and 1383 of the Civil Code as **tort liability**. The injured person needs to prove the fault, the damage as well as the causal link between the fault and the damage.

Under the **contractual liability**, the seller/producer can also be liable for hidden defects based on Articles 1641 to 1649 of the Civil Code, if the product had these defects at the time of purchase. Furthermore under the Articles 1649 bis to 1649 octies of the Civil Code that are limited to consumers, the seller is responsible for defects existing at the time of delivery of the goods that become visible within two years after the date of delivery. A consumer is defined in Article 1649 bis section 2 of the Civil Code and Article I.1, 2 of the Economic Code as a natural person who acts for purposes that do not relate to his/her professional or commercial activities.

There is also a risk of **criminal liability**. The Articles 418, 419 and 420 of the Criminal Code are the general provisions on which involuntary manslaughter, injury or death are sanctioned. Furthermore Article 498 of the Criminal Code penalises fraud with regard to the nature or origin of goods sold.

Finally, the **UN Convention on Contracts for the International Sale of Goods 1980** applies in Belgium. It includes the requirement for defective-free products. It therefore also forms a basis for claims for defective products in sales relationships.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Strict liability

The producer as well as the supplier and any person who imports the product into the EU can be liable for a defective product. The Act extends liability to the supplier and an EU importer, under the same conditions as in the Product Liability Directive.

Contractual liability

The seller is also liable to the buyer under the Civil Code for defective products. The seller can also claim against any party in the supply chain. The buyer also has a direct claim against any previous sellers, as the right to claim damages for defective products is considered accessory to the title to the product.

Tort liability

Only the person who has committed a fault will be liable to compensate a claimant.

3. Are there differences if the buyer is a consumer or a professional buyer?

Yes, under the contractual liability, a distinction needs to be made. The Articles 1641 to 1649 apply to hidden defects at the time of purchase. Otherwise the Articles 1649 bis to 1649 octies of the Civil Code are limited to consumers, in case of defects existing at the time of delivery of the goods that become visible within two years after the date of delivery (see the distinctions that are made in the other answers).

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability

Article 10 of the Act states that the liability of a producer cannot be excluded or limited by contract.

Contractual liability

The liability of the supplier for hidden defects, as regulated in Articles 1641 to 1649 of the Civil Code, can be limited by contract if the supplier acted in good faith. However, professional and specialised suppliers are presumed to know about the defect, so they cannot limit their liability in this way. Liability exclusions need to meet two conditions to be valid,

- i. the contractual clause needs to be accepted by the buyer and
- ii. the supplier is not aware of the hidden defect.

Nevertheless, the seller or any previous seller cannot exclude its liability under the Civil Code to consumers.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

When products are manufactured in the EU, Regulation Brussels I and Regulation Rome I are applicable. When the defendant is domiciled outside the EU the Belgian Code of international private law will apply.

As regards criminal law, when all the elements or the main element of this infringement occurred in Belgium, the Belgian courts will have jurisdiction.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

The rules set out in Book IX of the Economic Code (implementing the Product Safety Directive) apply. The FPS Economics (Central Contact Point) supervises the Belgian market and makes sure that all products and services comply with safety requirements.

After receiving information from the Central Contact Point on a dangerous product, the government can impose corrective actions on the producer (Article 7, Book IX, Economic Code). These corrective actions can be warning actions (warning the distributors or the users of the products), and/or doing a product recall. Not to comply with an obligation organised by the Economic Code amounts to a fault and allows the injured party to bring a claim based on articles 1382 or 1383 of the Civil Code.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normally available Court procedures and rules of evidence apply. Product liability cases are brought in the court of first instance or the commercial court. A trader can be sued in the commercial court, even if the claimant is not a trader. A consumer can choose to sue the producer/supplier in the court of first instance.

Typically, written evidence is submitted. In business-to-business sales, all types of evidence are allowed, including e-mails and text messages. All documents submitted and related assumptions can be the basis for a court ruling.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

A warning letter in the form of a formal claim is in any case always recommended. Under the Civil Code, a business-to-business buyer must make a formal claim (by starting litigation) within a short period of discovering the defect. Failure to do so makes the claim inadmissible.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Strict liability

Article 10 of the Act stipulates that damages for personal injury and moral damages are recoverable. Compensation for personal injury or death is unlimited. There is no maximum amount determined in Belgian law. Property damage to another good can be recovered if the other good was made for private use and has only been used for private purposes, but the Act provides that the damaged party must bear the first EUR 500 of the damages, which therefore is deducted from the claim. The damages to the defective product itself are not recoverable.

Contractual liability

In case of latent defects, a distinction needs to be done between the situation that

- i. the seller is aware of the latent defects, in which case he must provide full compensation of the damages resulting from the latent defects in the product and
- ii. the seller legitimately ignores the latent defects, in which case he will have to reimburse the price paid and the expenses resulting from the sale.

In case of a lack of conformity of a good sold to a consumer, the consumer may choose between having the product repaired, reimbursement or the rescission of the contract. The consumer has the right to a repair or replacement of the good, except if it is not possible or disproportionate. If the consumer has no right to the repairs or the replacement of the good or if the seller has not repaired or replaced the good within a reasonable delay, the consumer may obtain a price reduction or the contract rescission

Tort and criminal liability

In case of liability of the producer or the seller, the injured person has the right to be fully compensated for the damages. He must place the injured person in the position he/she would have been in if no fault had been committed.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation are the registry and register fees, writ of summons and notification costs, the (judicial) expert costs as well as the proceedings indemnity.

The administrative costs are normally fully reimbursed to the successful party. The attorneys' fees are not but the successful party will be entitled to a proceeding indemnity to cover (a part) of the attorney's fees. Any final Court decision orders

- i. the payment of the judicial costs by the losing party or
- ii. compensation of the judicial costs. The proceedings indemnity is a fixed intervention in the fees and costs of the lawyer of the successful party. The amount is determined by Royal Decree (and varies from time to time) and depends on the nature and value of the claim. There is a base, reduced and maximum rate. Unless specific factors apply (for example, the claim's complexity or other specific uncommon circumstances) the court will grant the base rate.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

In accordance with Article 870 of the Judicial Code each party has the burden of proof as regards the facts alleged.

As regards strict liability, Article 7 of the Act provides that the burden of proof of the defect, the damage and the causal link between the defect and the damage belongs to the injured person.

Moreover for a claim based on contractual liability, in addition the buyer needs to prove that the defect existed when he bought the product. Finally, as regards sales to a consumer, Article 1649 *quarter* § 4 presumes that the lack of conformity - appearing within a 6-month delay calculated as from the delivery - existed at the moment of delivery unless the contrary can be proven.

12. Is the state of the art defence available?

Yes, accordingly Article 8e of the Act, the producer can prove that the state of scientific or technical knowledge at the time when the product was put into circulation was not such as to enable him to discover the defect. This exemption cause can only be invoked under the strict circumstances as mentioned in the Act.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Strict liability

Under the Act the time limit for claims is three years, from the day on which the claimant became aware, or should have reasonably become aware, of the damage, the defect and the identity of the producer (Article 12 § 2). This delay may be interrupted or suspended.

The right to claim expires ten years from the date on which the producer put the product into circulation (Article 12 § 1).

Contractual liability

Under the Civil Code, a business-to-business buyer must make a formal claim (by starting litigation) within a short period of discovering the defect. Failure to do so makes the claim inadmissible. This short period is not specifically defined in the Civil Code and is determined based on the factual circumstances, particularly the length of time required by the seller to inspect the products and discover any defects, the nature of the good sold, the quality of the parties and the judicial and non-judicial acts (negotiation) accomplished by them. It is generally accepted that if an expert is appointed by the parties or the court, or serious negotiations are conducted between the parties, this short period is suspended. In these circumstances it is not uncommon for a buyer to seek the appointment of a court expert, to determine the defect and the related damages. A delay of 6 months up to 1 year is often considered as a "short delay".

Under the business-to-consumer regime, a consumer must bring his/her claim within one year after discovery of the non-compliance and two years after delivery. Following the two years after delivery, the business-to-business provisions apply.

Tort liability

A delay of 5 years as from the date on which the plaintiff was aware of the damage is applicable (Article 2262 bis § 1 of the Civil Code).

14. What are the rules for bringing a claim in a class / collective action?

The Act on Claims for Collective Redress of 28 March 2014 introduced the possibility for consumers to exercise a collective redress action, and is included in Book XVII of the Economic Code. A collective redress action can only be commenced for alleged violations by an enterprise of

its contractual obligations, or of alleged violations of Belgian and European rules that are exhaustively listed in the Economic Code (for example, violations of rules on product liability, competition law, energy law, and banking and finance).

A class of consumers must be represented by a group representative. The bodies that can act as a group representative and bring an action on behalf of the class of consumers are identified in the Economic Code. Natural persons or law firms are not allowed to act as group representatives.

A collective redress action can only be brought on behalf of a group of consumers who have been personally harmed by an alleged violation by an enterprise. It is only admissible if the action appears more effective than an individual action by each of the consumers.

Since the scope of the Act is rather limited, only a few collective redress actions have been introduced since the adoption of the Act.

Important to note is the fact that on 22 March 2018 the amendment to the Code of Economic Law with regard to class actions was approved by the Belgian Parliament. These changes to Book XVII title 2 of the Code of Economic Law have the consequence that the scope of application *ratione personae* of the class action is extended to SMEs. Once the amendment law will be published in the Belgian Official Gazette, the collective claim can be instituted by the group of SMEs to the extent that the common cause occurred after 1 September 2014.

15. What is the average duration of defective products litigation?

The duration of defective products litigation depends from some various factors such as the type of proceedings, the need for an expertise and its progress, the number of different parties etc. A proceeding on the merits is between 12 months and 24 months in first instance and can last until 5 years in appeal.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

There are two main claims in Bulgarian law whereby victims of defective products can seek compensation for the damage suffered.

A consumer may file a lawsuit based on Art. 133 of the Consumer Protection Act (CPA). The liability for damages due to defective products under CPA is an alternative to the general civil liability. Only consumers are entitled to initiate proceedings based on this order.

The injured person may also seek compensation under the provisions of Art. 45 and following of the Obligations and Contracts Act (tort liability).

The liability for damages caused by defective products is strict. The producer is liable for damage caused by a defect in the product, regardless of whether the defect is caused by the fault of the producer or not. The producer is liable for damage even when the product was produced in compliance with existing standards and good practices or it was put into circulation by permission of an administrative authority.

The CPA provides for a special order for liability, as the manufacturer is responsible, regardless of the presence or absence of fault, while the general procedure (Art. 45 CPA and the following) requires the presence of negligence.

It should also be noted that the liability of the manufacturer, respectively the trader or the distributor under CPA is limited only to the material damage suffered by the consumer. Liability for non-material damage shall be borne only by the order of the Obligations and Contracts Act.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the CPA, the producer is liable for damage caused by a defect in the product. The term “producer” is of a particular significance in the liability arising from the defect of a product. According to CPA: Producer means “any person who or which manufactures, in the course of the business, a finished product, raw materials or component parts used in manufacturing of other products or any person who or which, by putting the name, trade mark or other distinguishing feature on the product, presents himself, herself or itself as its producer. Any person, who or which imports into the territory of the European Union a product for sale, hire, leasing or uses any form of distribution in the course of the business within the territory of the Union, is also deemed to be a producer”.

Subsidiary liability for damages is incurred by the distributor or the trader where the producer of the product or the person who or which imported the product into the territory of the European Union cannot be identified. The distributor or the trader are not liable if they furnish information within 14 days of the name and address of the producer, importer or the person who or which supplied the product. The address must be on the territory of the Republic of Bulgaria.

Under the general rules of tort liability the owner of the product or the person who is supposed to take care for the safety of the product could be held responsible for the damage.

3. Are there differences if the buyer is a consumer or a professional buyer?

Only consumers are entitled to compensation for damages caused by defective goods. As stated in the legal definitions of the Act, “a consumer is any natural person who acquires products or uses services for purposes that do not fall within the sphere of his or her commercial or professional activity, and any natural person who, as a party to a contract under this Act, acts outside his or her commercial or professional capacity”. Therefore, professional buyers are not entitled to seek compensation under CPA, but this does not deprive them of the opportunity to seek compensation under the general rules of tort liability.

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability cannot be excluded under the Act. Any clause in a contract that provides for disallowance or reduction of the liability of the producer in respect to the injured person for any damage caused by defective products is null and void.

The liability of the producer may be excluded or reduced when the damage is caused both by a defective product and by the fault of the injured person. However, the liability of the producer may not be reduced when the damage is caused both by a defective product and by the act or omission of a third party.

Moreover, the producer is not liable in some special occasions, such as when the producer did not put the product into circulation, or it is probable that the defect which caused the damage did not exist at the time the product was put into circulation by the producer or that this defect became apparent afterwards, or the defect is



due to compliance of the product with mandatory requirements issued by the public authorities.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Any person, who or which imports into the territory of the European Union a product for sale, hire, leasing or uses any form of distribution in the course of the business within the territory of the Union, is also deemed to be a producer. Therefore, the consumer may seek to defend his rights against that person.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Where a control authority establishes that a product poses or may pose a risk to the health and safety of consumers, the authority has the obligation to order the products recall from consumers and products destruction. Anyone who fails to execute an order or a mandatory prescription by a control authority for taking measures to ensure the safety of products and services is liable to a fine or a pecuniary penalty of BGN 3,000 or exceeding this amount but not exceeding BGN 15,000.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal court procedures and rules apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The consumer is entitled to request an injunction from the competent court before the action is brought. The injunction securing the action is granted when it will be impossible or difficult for the claimant to realise the rights under the judgment and if the action is supported by convincing written evidence, or a monetary guarantee is furnished. Pre-action measures may include freezing bank accounts, imposing interdiction on an immovable property or any other appropriate measures, determined by the court.

Addressing a complaint to the trader is not a prerequisite for instituting a lawsuit.

Amendments to CPA adopted in 2015 regulate out-of-court settlement of consumer disputes by providing that all disputes between consumers and traders regarding the sale of goods or the provision of services may be referred to an alternative consumer dispute resolution entity (ADR entity). The ADR entity must respect the principle of freedom and not deprive the consumer of the possibility of judicial protection.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Upon addressing a complaint in respect of goods, the consumer may claim reimbursement of the sum paid, replacement of the goods by other

goods conforming with what has been agreed, a reduction of the price, or repairing of the goods free of charge.

In any case, the injured person may institute a court proceeding as compensation is awarded where damage is caused by:

- death or personal injury of a natural person;
- damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of BGN 1,000, provided that the item of property is ordinarily intended for private use and was used by the injured person as intended.

Compensation for non-material damages caused by a defective product can be sought according to the standard procedure under Art. 45 and following of the Obligations and Contracts Act.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

In Bulgarian procedural law the principle is that the proceeding costs and the fees for a lawyer, if any, are paid by the losing party.

In the event of a brought action for compensation for damages caused by defective products, the claimant will have to pay a 4% state fee of the amount of the claim. Additional costs may also arise for the claimant in connection with the gathering of evidence, including for experts.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The injured person is required to prove the defect of the product, the damage and the causal relationship between defect and damage.

12. Is the state of the art defence available?

In addition to other available defences stated in item 4 above, the state of the art defence is available. The producer is not liable if proven that the state of scientific and technical knowledge at the time when the product was put into circulation was not such as to enable the existence of the defect to be discovered.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Any proceedings for the recovery of damages caused by a defective product, are subject to a limitation period of three years, which starts from the day on which the plaintiff became aware, or should have become aware, of the damage, the defect and the identity of the producer.

The rights conferred upon the injured person are extinguished upon the expiry of a period of ten years from the date on which the producer put into circulation the product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer.

Limitation periods could not be frozen or extended. The action must be brought before the expiration of the deadline.

14. What are the rules for bringing a claim in a class/collective action?

A class/collective action lawsuit may be brought on behalf of persons injured by a single offense where, according to the nature of the offense, their circle cannot be precisely defined but is determinable.

Compensation under collective action lawsuits is not a compensation for

the individually suffered damages by the members of the collective but is a compensation for the damaged collective interest.

Consumer protection associations may bring an action for cessation or for prohibition of any acts or commercial practices which infringe on the collective interests of consumers. The Consumer Protection Commission is also entitled to bring collective consumer protection actions.

15. What is the average duration of defective products litigation?

The average duration of defective products litigation is from 15 to 30 months.



CYPRUS



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective product claims may be brought in contract, the tort of negligence and/or under the Defective Products (Civil Liability) Act of 1995 (“the Act”), which implements the EU Directive on the liability of defective products (85/374/EEC). The Act provides a strict liability claim to the person who has suffered damage due to the defective product, without affecting any contractual right that the said person may have or any right arising from any rule of law. Claims in contract and negligence are frequently found in combination with a claim under the Act.

Producers, manufacturers and suppliers may also face criminal liability for defective products, under the General Product Safety Act of 2004 which implements the EU General Product Directive (2001/95/EEC).

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Act, the producer, the importer into Cyprus (provided he imported the goods in the course of business), and the supplier (provided he failed to disclose the manufacturer’s identity upon request), may be held potentially liable. It is noted that the supplier’s and the importer’s liability may be held to be the same as the producer’s liability.

In respect of a contract claim, this can only be brought by one party to a contract against another party.

A claim in negligence can be brought against a party who owes a duty of care to another party due to the proximity of their relationship. When the person that owes the duty falls below the reasonable standard of care required by him/her and breach of that duty can be established, a claim in negligence can be brought provided that the injured party has suffered damage because of that breach.

3. Are there differences if the buyer is a consumer or a professional buyer?

Although the Act does not provide a clear distinction between the consumer and the professional buyer, in order to have a claim under the Act, a person must have suffered damage - death, personal injury, loss or damage to any property (including any immovable property) which constituted at the time in question, property that was intended for private use or consumption.

Claimants do not have to be consumers to bring a claim for damage to property in contract or negligence.

4. Can the seller or other potentially liable party exclude or limit its liability?

According to the Act, no person’s liability can be limited even if the damage is caused partly because of the defective product and partly because the act or omission of a third party. It must be noted that this does not affect the liable person’s right of contribution against the third party. The third party’s liability is determined by the law of torts and the general principles of contributory negligence.

A defendant’s liability may be limited or eliminated where the damage is caused partly by the defective product and partly by the claimant’s fault or any other person’s fault who had acted upon the claimant’s instructions.

Lastly, the defendant’s liability cannot be limited and/or eliminated by any contractual clause and any such clause will not be legally enforceable.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

In order to define the consumer’s rights it is more important to consider where the contract for the sale of the product or where the injury/death by the defective product took place.

The Courts of Cyprus have jurisdiction (and therefore the rights of the consumer are determined by Cyprus law) in circumstances where the cause of action took place wholly or partly in the Republic of Cyprus, or in circumstances where the defendant is domiciled or carries out his/her activities within the Republic of Cyprus.

6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

According to the General Product Safety Act of 2004 a person who is found to be liable for his/her failure to recall a campaign is subject to imprisonment for a period of two years maximum or is subject to a fine not exceeding EUR 8,543.01 or both.



7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

General litigation and evidence rules apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

There are no requirements for pre-action conduct and neither does there exist any pre-action protocol that the Cypriot Courts would expect the parties to follow. The process starts with the commencement and service of proceedings. Therefore, litigation is the most common method of dispute resolution in Cyprus.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The buyer has the right to demand for the product to be repaired and/or replaced without paying any further costs and where this is not possible, the buyer may ask for the price of the product to be reduced and/or for the full amount of the money paid to be returned.

In a contractual claim, the remedies available depend on the classification of the term breached. Remedies include the right to repudiate the contract and/or claim damages.

In a negligence claim, damages are available to compensate a claimant for losses which were a direct and reasonably foreseeable consequence of the negligent act.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depend on the particular case in question. The general rule is that the winning party is awarded their costs payable by the losing party. The Court will control recoverable costs, including the fees of expert witnesses.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The burden of proof is on the claimant to establish that the product was defective and that it caused the loss. The standard of proof is the same for all civil claims and it imposes that the claimant must prove the case against the defendant on the balance of probabilities in order to win.

12. Is the state of the art defence available?

Yes, according to the Act, it is a defence to show that the state of scientific and technical knowledge at the relevant time was such that the existence of a defect could not have been ascertained by the defendant.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

According to the Act, no claim can be brought after the expiry of a period of three years commencing from the date of knowledge of the damage, defect or from the date that the claimant was informed about the producer's identity. The time can alternatively start to run from the date from which the claimant could have reasonably been aware of all the above information.

In any case, a claim cannot be brought after the expiry of a period of ten years from the date from which the defective product was supplied. This time limit does not apply in cases where:

- i. the producer or importer of the product has given written guarantee that the product may be used for a period which is longer than ten years.
- ii. the damage was caused within a period of ten years but could not have been discovered until after a while.

According to the Cypriot Limitation Act, no claim for tortious liability can be brought after the expiry of a period of six years commencing from the date of completion of the cause of action. The limitation period for a negligence claim is three years from the date of the accrual of the cause of action. However, where the injured party becomes aware of the damage at a later stage, time starts to run from the point of awareness. It must be noted that in relation to claims for personal injury and/or death, the Court may extend the said limitation period.

The limitation period for a claim in contract is six years from the date of the breach.

14. What are the rules for bringing a claim in a class/collective action?

Class actions are not available in Cyprus. However, where there are numerous persons having the same interest in one cause or matter, one or more of such persons may be authorised by the Court to sue or defend on behalf, or for the benefit of all persons so interested.

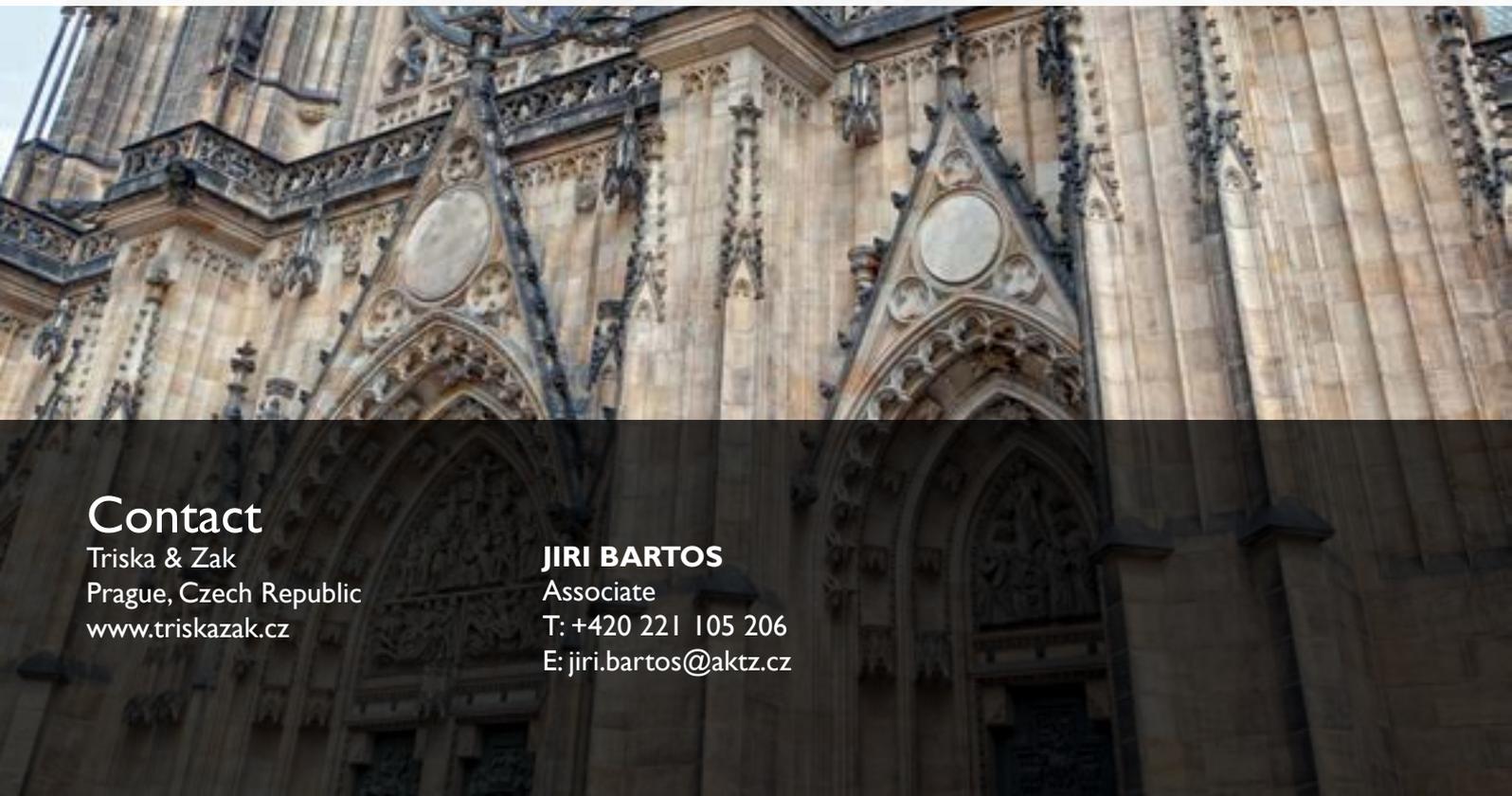
Also, multiple actions pending before the same court may be consolidated if they involve a common question of law or fact bearing sufficient importance in proportion to the rest of the matters involved in the actions to render consolidation desirable.

15. What is the average duration of defective products litigation?

Approximately 3-4 years depending on the particular case.



CZECH REPUBLIC



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

The law distinguishes between the seller's liability for product defects and liability for damage caused by the product.

In case of the sale of consumer goods in a shop, the buyer may claim the rights arising from the seller's liability for product defects if the defect occurs within 24 months of the take-over of the product. If the defect occurs within 6 months of take-over, the buyer does not need to prove that the product was defective upon take-over. However, the warranty period provided by the seller to the buyer may be longer than two years and may be granted in the form of contract, a declaration of warranty, notice on the product package, or by an advert. Depending on the circumstances, the buyer may claim the replacement of the item or a part thereof, withdrawal from the contract, removal of the defect free of charge, or a reasonable discount from the purchase price.

Also as regards consumption products the seller is liable to the buyer for the product being free from any defects, provided that the minimum life must be specified on the product or the best-before date must be specified on perishable goods.

The liability for defects is objective.

The buyer is entitled to compensation for damage caused by the product if the damage exceeds the equivalent of about EUR 500.

The liability for damage caused by the product is objective; however, it may be relieved in certain cases.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

The buyer may exercise the rights arising from defective products with the seller or with the person specified in the declaration of warranty (warranty certificate).

The liability for damage caused by a product with the manufacturer or, in certain specific cases, by the person who has marked attached such a person's name, trade mark or other identification to the product or to a part thereof, or another supplier or the importer.

3. Are there differences if the buyer is a consumer or a professional buyer?

The warranty of two years and six months, respectively, only applies to the sale of products by a professional seller to a consumer. In all the other cases, the buyer has rights arising from defective performance if, at the moment at which the risk of damage is transferred upon the buyer, the defect is present in the product, including if such a defect is demonstrated on a later date, provided that the seller has caused the defect by neglecting the seller's obligations or if the seller has provided a product quality guarantee.

The special provisions regarding liability for damage caused by the product does not apply to the damage of a product intended and used for primarily for business purposes.

4. Can the seller or other potentially liable party exclude or limit its liability?

As regards the sale of products in shops, the two-year warranty does not apply:

- to the defect of products sold at a lower price due to that defect;
- to the regular wear and tear of the product;
- for used products, to a defect corresponding to the level of use or wear the product already demonstrated when it was taken over by the buyer;
- if so warranted by the specific nature of the product.

In addition, the buyer cannot claim defective performance in the case of a sale in a shop if the buyer was aware of the product defect before taking over the product or if the defect has been caused by the buyer.

If the sale is not made in a shop, the seller is not liable for the defect if the defect has been caused by the use of the product that has been handed over by the seller to the buyer and if the seller can prove that he has warned the buyer against that use of the product but the buyer has insisted on such a use or if the seller can demonstrate that could not establish the unsuitability of the product for the relevant purpose with reasonable care.

If the sale is not made in a shop, the buyer has no rights arising from defective performance if the buyer should have been able to identify the defect if it had paid reasonable attention at the time of the conclusion of the agreement, unless the seller has expressly assured the buyer the product is defect free or if the seller has deceptively obscured the defect.

The liable party shall be released from the liability for damage caused by the product defect if the party can demonstrate that

- the damage has been caused by the aggrieved party or by a person for whose action the aggrieved party is responsible;
- the liable party has not put the product on the market;
- with regard to all the circumstances, the defect can be reasonable expected to have been non-existent at the time of the placement of the product of the market or to have occurred later;

- the liable party has not made the product for sale or for another type of use for business purposes or the liable party has not made or disseminated the product as a part of its business;
- the product defect is a result of the provisions of the law that are binding upon the manufacturer;
- the state of scientific and technological knowledge did not enable the identification of the defect at the time of putting the product on the market.

The manufacturer of a part of the product shall also be released from the liability for the compensation for damage caused by the product if the manufacturer can demonstrate that the defect has been caused by the design of the product the part is incorporated in, or by the instructions regarding the product.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Unless the parties have chosen the governing law, the rights and obligations arising from the relationship are governed by the law of the country the contract relates to the most. It is therefore usually not of legal importance where the product is made because the buyer may exercise the rights arising from defective products with the seller or with the person specified in the warranty certificate.

The liability for damage jointly and severally with the manufacturer and the person who has imported the product with a view to its placement on the market as a part of the person's business. The fact that the product has been made abroad thus should not be to the detriment of the consumer.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

The issue of the safety of products placed on the market is governed by the General Product Safety Act.

If the manufacturer or the distributor find the product to be unsafe, they have the obligation to notify the relevant authority, warn the consumers and recall such an unsafe product from the market and from circulation. In addition, the manufacturer/distributor must enable the owner or holder of the unsafe product to return the product to the manufacturer/distributor at the cost of the latter; failing this, the manufacturer/distributor may be ordered to destroy the product at its own cost.

The violation of an obligation under the General Product Safety Act is a misdemeanour and may carry a maximum fine equivalent to about EUR 193,000.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

The general rules of procedure and rules of evidence apply to defective products litigation.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

In order for a right to arise on the grounds of defective product liability, the right must be exercised by the buyer with the seller or with another

person (in the form of a complaint/claim) and the defect must be specifically mentioned. At the same time, or without undue delay, the buyer must state which right arising from defective product liability the buyer claims. The buyer may change his choice without the seller's consent only if the buyer has requested the repair of a defect that has proved to be beyond repair.

If the claim is made by legal action, the plaintiff does not have to send the defendant a warning letter. However, if no warning letter is sent at least 7 days prior to taking legal action, the plaintiff is not usually entitled to the compensation of the legal expenses even in case of successful litigation.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

If the defect is rectifiable, the buyer has the right to have the defect rectified free of charge.

If the defect is beyond repair, the buyer usually has the right to the replacement of the product and, if this is impossible, the right to withdraw from the contract. If the defect only concerns a part of the product, the buyer may request only the replacement of that part.

Even if the defect is rectifiable, the buyer has the right to have the product or its part replaced or to withdraw from the contract if it cannot duly use the product because of the recurrence of the defect after the repair or because of a higher number of defects.

The buyer may also claim a reasonable discount from the purchase price. The buyer also has the right to a reasonable discount if the seller is unable to supply a new product that is free from defects, replace the part or the product, or provide the remedy within a reasonable period or if the remedy would cause significant difficulties to the buyer.

Similar options are also available to the buyer if the product is not sold in a shop.

If the seller is unable to rectify the defect within a reasonable period or if it advises the buyer that the seller is unable to rectify the defect, the buyer may claim a reasonable discount from the purchase price, or the buyer may withdraw from the contract.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The general rules of compensation for the costs of litigation apply to defective products litigation.

Each party is responsible for the costs of the proceedings incurred by that party and for the cost of its representation. In addition, the plaintiff is responsible for the payment of the court fee in connection with the filing of the action. The cost of evidence is paid by the state; however, the court usually instructs the party that has proposed the giving of such evidence or that has stated facts to which such evidence relates to pay an advance on the cost of evidence.

The court usually grants the party that is fully successful in the litigation compensation for the cost of the proceedings necessary for claiming or defending this party's rights against the unsuccessful party.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The general rules concerning the burden of proof apply to defective products litigation.

The parties must identify evidence to demonstrate their claims. The plaintiff must identify evidence to support the plaintiff's assertions of the claim and the defendant must identify evidence to support the defendant's assertions rebutting the claim.

12. Is the state of the art defence available?

The liable party shall be released from the liability for damage caused by the product defect if the party can demonstrate that the state of the art at the time of the placement of the product on the market by the liable party did not enable the identification of the defect.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

If the buyer has failed to report a defect in time, the buyer cannot withdraw from the contract.

If the buyer has failed to report a defect without undue delay after it should have been able to identify it by timely inspection and adequate care, the court will not accept the buyer's right under defective performance. This also applies to latent defects if the defect has not been reported without undue delay after the buyer should have identified it with adequate care and no later than within two years from the take-over of the product.

In all the cases, however, the court will not award the buyer the rights under defective performance only on the basis of seller's objection that the defect has not been reported in time unless the defect is a result of a fact that the seller was or must have been aware of at the time of the hand-over of the product.

The rights arising from defective products liability are subject to the statute of limitations of three years from the date on which the buyer has exercised his rights with the seller or with the person specified in the declaration of warranty.

The statute of limitations for the compensation for damage caused by a defective product is three years from the date the entitled person has learnt, or should have learnt, about the circumstances regarding the damage, the defect and the identity of the manufacturer, and no more ten years following the placement of the defective product on the market by the manufacturer.

The period of limitation can be contractually shortened to no less than one year or extended to no more than 15 years; however, it cannot be reduced as regards the limitation of the consumer's claims arising from a defect of the product, claims arising from the limitation of freedom, death or injury, and claims arising from the intentional breach of obligations. The court will take the statutes of limitation into consideration if the corresponding objection is made by the defendant.

14. What are the rules for bringing a claim in a class/collective action?

Czech law does not recognise class/collective actions.

15. What is the average duration of defective products litigation?

No statistics monitoring the duration of court proceedings by type of claim are currently available. Given the current practice, defective products litigation can be reasonably expected to take two to three years.



DENMARK



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

In Denmark, defective product claims may be brought a) in contract and the tort of negligence and/or b) under the Product Liability Act 1989 (“the Act”), which implemented the EU Product Liability Directive. Claims in contract and negligence are frequently found in combination with a claim under the Act.

Product liability applies to the liability of the producer and/or an intermediary for damage caused by a defect in a product produced or supplied.

The Act provides a strict liability claim for damage caused by a defect in the product, making the producer automatically liable for any damage caused. An intermediary may become liable unless the intermediary can prove that the damage is not due to his fault or negligence.

Outside the Act, a claimant shall typically have to prove fault or negligence on the part of the producer, but allegedly the tendency in case law is going towards presumptive liability. If the producer is liable, any intermediary and supplier will be jointly and severally liable without fault of his own.

Claims subject to product liability concern damage to persons or things or the defective product’s surroundings. The defect or loss of the defective product itself or a pure economic loss are not subject to product liability but may be subject to a claim in contract.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Act, the producer is automatically liable and an intermediary may also be liable.

In respect of a contract claim, generally a claim may only be brought by one party to a contract against another party.

A claim in negligence can be brought against a party who has breached a duty to take reasonable care and that breach has resulted in damage to the claimant. Outside the Act, importers, suppliers, retailers and other intermediaries will be liable towards the claimant for the producer’s liability.

3. Are there differences if the buyer is a consumer or a professional buyer?

The Act covers claims for damage and compensation related to personal injury and loss of provider. Also covered is damage to movables if the damaged item in question was of a type ordinarily intended for private use or consumption and was used by the claimant mainly for his own private use or consumption. Non-consumers therefore may claim for death or personal injury, but claims for damage to property may only be brought by consumers.

Outside the Act, Claimants can bring claims for damage to property in contract or negligence without regard as to whether the Claimant is a consumer or not.

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability for the producer cannot be excluded under the Act, unless the producer can prove:

1. That the producer did not put the product into circulation;
2. That the product neither is manufactured, produced, collected or placed on the market in the course of the producer’s business;
3. That the defect is due to the product being in compliance with mandatory regulations issued by public authority, or

4. That on the basis of the scientific and technical knowledge at the time when the product was brought into circulation, it was not possible to detect the defect.

Furthermore, the producer is not liable, if it can be assumed that the defect which caused the damage was not present at the time when the product was brought into circulation. An intermediary may become liable unless the intermediary can prove that the damage is not due to his fault or negligence. The Act cannot be waived by prior agreement to the detriment of the injured party.

In respect of a contractual claim, general contractual rules apply. Generally, other terms which seek to limit or exclude liability in a contract may be regarded as unfair and therefore unenforceable. Even in business to business contracts there is a tendency to minimise the extent of a clause limiting a party’s liability. In contracts with consumers, one cannot on beforehand agree that a consumer should have lesser opportunities to obtain compensation than the law prescribes.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

A consumer domiciled in Denmark may file a law suit in tort against a producer or intermediary domiciled in the EU if the damage occurred in Denmark.

In contract, essentially, the consumer must file a law suit in the EU country, where the seller is domiciled unless the product was delivered in Denmark or if the seller’s business efforts or were also directed towards Denmark.

Intermediaries of products produced outside Denmark can be subject to the product liability rules. Furthermore, a person who, in the course of his business, introduces a product in the EU and the EEA for resale, rental or other form of marketing can be



considered to be a producer. If it not identified who is the producer of a product, any intermediary of the product is considered to be a producer.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

With regard to criminal liability, the failure of the manufacturers and distributors to notify the authorities of an unsafe product they have marketed, may under the Product Safety Act result in fines, unless higher punishment is implied by other legislation.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normally available Court procedures apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

No specific pre-action measures are mandatory. A party may be asked by the court to report on what contact prior to court proceedings there has been between the parties with the purpose of settling the claim.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The damage to the defective product itself can be compensated after the normal rules regarding purchase in the Danish Purchase Act or following the UN Convention on Contracts for the International Sale of Goods (CISG) with regard to international purchases between businesses. Subject to the Purchase Act, the buyer of a defective product can a) avoid the purchase in its entirety if the defect is material or the buyer can claim b) replacement or c) a proportionate discount of the purchase sum equal to the lesser worth of the purchased item. The buyer of a defective product can claim compensation for his losses including indirect losses and loss of profit. Generally, the seller will in the sales contract exclude liability for indirect losses.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depend on the particular case in question. Costs-shifting applies in Court proceedings. The winning party is generally awarded costs payable by the losing party, but the awarded amount seldom fully compensate the winner's own legal costs. The Court's cost order follows a cost-table where the amount in dispute is the main factor in deciding the costs awarded.

I 1. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the Act, the burden of proof is on the claimant to establish that the product was defective, that all loss occurred and that the defect did cause the loss.

In a contract and negligence claim the burden of proof is also on the claimant.

I 2. Is the state of the art defence available?

In addition to other available defences, the state of the art, or development risks, defence is available. It is a defence to show that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in their products while they were under their control.

I 3. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

An action under the Act must be brought within three years of the date of the Claimant's knowledge of damage. The overriding time limit is ten years from the date on which the producer brought the defective product into circulation, but thirty years with regard to compensation for personal injury outside the Act.

The limitation period is interrupted when the claimant takes legal action against the debtor, including by filing a request for a payment order.

I 4. What are the rules for bringing a claim in a class/collective action?

Class action proceedings are available for product liability claims, in so far as there are procedural mechanisms available that enable claims to be considered in a grouped fashion.

If two or more are liable for the same claim, they are usually jointly and severally liable, but the court may decide that a liable party shall indemnify another liable party in the internal economic relation between such jointly liable parties.

If several are responsible as producers, the responsibility is divided between these in the absence of an agreement, taking account of the cause of the defect, the reason an ability for the individual producer to control the product, present liability insurance and all other circumstances.

I 5. What is the average duration of defective products litigation?

Approximately 12 to 18 months from a claim being issued at Court. Generally, longer if there is a Group Litigation Order.



EGYPT



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Consumers may bring claims for liability for defective products and tortious liability in Egypt under Commercial Code No. 17 of 1999 (“Commercial Code”), Civil Code No. 131 of 1948 (“Civil Code”) and the Consumers’ Protection Law No. 67 of 2006 (“CPL”). The Commercial Code recognise the notion of product liability of both manufacturers and sellers/ distributors. Any person suffering from direct material or physical damage resulting from a defective product, has the right to claim damages by filing a product liability claim against the manufacturer, distributor or both severally.

The manufacturer and/or seller of a defective product is liable in tort if a defective product causes any personal damage, injury or death. The manufacturer and/or seller shall be liable for damages and faults causing harm to other(s), and shall be responsible for any committed torts.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

The manufacturer, seller, importer and/ or distributor of a commodity may be held accountable if a consumer incurs bodily or physical harm caused by a faulty product. The law grants consumers the right to file claims against any of the parties separately or jointly. However, this does not necessitate the liability of all parties if one party is found to be liable.

3. Are there differences if the buyer is a consumer or a professional buyer?

Egyptian law does not provide any differentiations between consumers and professional buyers; professional buyers are not defined in Egyptian law. As such, both consumers and professional buyers are granted the same rights with regards to claims arising out of harm caused by faulty products.

4. Can the seller or other potentially liable party exclude or limit its liability?

The law promulgates that any provision in a contract, memorandum or any document concluded with a consumer cannot indemnify a seller or any other potentially liable party from penalties they may face under the law if a consumer incurs bodily or physical harm. Further, the Commercial Code explicitly provides that the manufacturer and the distributor of a product cannot limit or exclude their liability. The Egyptian Commercial Code defines the term “Manufacturer” as the producer of the product, while the term “Distributor” is defined as the importer of the product, seller, trader, and the retailer in case he is or should be aware of any defects at the time of selling the product.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Laws regarding consumer protection apply to products manufactured inside and outside of Egypt. The law states that in cases where the business centre of a manufacturer or distributor is based outside of Egypt, such manufacturers and distributors may be sued before the competent Egyptian courts with jurisdiction and in the circuit(s) in which a branch, factory, agency or office thereof is located.

6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

Failure by manufacturers and distributors to notify the Egyptian Consumer’s Protection Agency (CPA) of a defective product will lead to fine of at least EGP 5000, and not exceeding EGP 100,000. The value of said fine shall be multiplied by the amount of times it is repeated.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

The CPA investigates complaints that are submitted by consumers or any consumer’s protection organisations regarding an allegedly defected product. Such investigations occur in a manner set out by the law. If the CPA finds that the product is defective, the manufacturer or distributor is informed and is demanded to remedy the situation. If the manufacturer or distributor fails to remedy the situation, litigation takes place whereby normal procedures and rules of evidence apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Upon concluding an investigation that exposes that a product is defective, the CPA’s Board of Directors (the “Board”) informs the manufacturer or distributor of the product whom is then demanded to immediately – or within a time frame set by the Board – remedy the situation. The manufacturer



or distributor is informed by virtue of registered mail with acknowledgement of receipt sent by the CPA's Chief Executive Officer on behalf of the Board.

If the CPA were to find that the defects in such products may cause bodily or physical harm to consumers, a decree is issued suspending the distribution or manufacture of such product or confiscating such product until the situation is remedied or until a court order is issued stating otherwise.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Generally, the consumer of a defective product is remedied through the replacement of the product, free repairing of the product or repayment of the purchase price without any additional expenses to be paid by the consumer.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

Costs of litigation are calculated upon the conclusion of the claim and are incurred by the party against which the judgment is rendered.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

No. In cases where a complaint is filed alleging that a product is defective, the CPA conducts an investigation in order to conclude whether or not the product is, in fact, defective.

12. Is the state of the art defence available?

State of the art defence is not available under Egyptian law. However, manufacturers or distributors are given a period during which they must recall defective products or repair them if they had not known that they were defective.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The statute of limitations for claiming that a product is faulty is three years from the date of discovering such fault or experiencing harm. There is a further statute of limitations of 15 years from the date of purchase of the product after which no claims may be filed.

14. What are the rules for bringing a claim in a class/collective action?

The relevant laws do not set out separate procedures to be undertaken in cases of class or collective action.

15. What is the average duration of defective products litigation?

The average duration of defective products litigation is three to five years depending on the complexity of the claim. However, products' distribution and/or manufacture in Egypt is suspended until proof that the product is not defective is provided.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective product claims may be brought in contract, the tort of negligence and/ or under the Consumer Protection Act 1987 (“**the Act**”), which implemented the EU Product Liability Directive.

The Act gives a right to claim compensation against the producer of a defective product if it has caused damage, death or personal injury. The Act provides a strict liability claim for defective products making the producer of that product automatically liable for any damage caused. Claims in contract and negligence are frequently found in combination with a claim under the Act.

Manufacturers and suppliers of products may additionally face criminal liability if their product is defective, under the General Product Safety Regulations 2005, which implemented the revised EU General Product Safety Directive.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Act, the producer, anyone who held themselves out to be the producer and/ or an importer may be liable and a supplier may potentially have secondary liability.

In respect of a contract claim, generally a claim may only be brought by one party to a contract against another party. This is subject to the parties conferring enforceable rights onto third parties under the Contracts (Rights of Third Parties) Act 1999.

A claim in negligence can be brought against a party who has breached a duty to take reasonable care and that breach has resulted in damage to the claimant.

3. Are there differences if the buyer is a consumer or a professional buyer?

In order to have a claim under the Act, a claimant needs to have suffered death, personal injury or any loss or damage to property which is for private use, occupation or consumption. Non-consumers therefore may claim for death or personal injury, but claims for damage to property may only be brought by consumers.

Claimants do not have to be consumers to bring a claim for damage to property in contract or negligence.

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability cannot be excluded under the Act. England and Wales have not fixed a cap for liability resulting from a death or personal injury caused by identical items with the same defect.

In respect of a contractual claim brought by a consumer, terms implied by statute concerning goods sold in the course of business being of satisfactory quality and being reasonably fit for purpose and goods corresponding with any description or sample cannot be excluded or restricted. Other terms which seek to limit or exclude liability in a consumer contract may be regarded as unfair and therefore unenforceable.

In respect of a business to business contractual claim on a supplier's written standard terms, liability for breach of an express term can only be limited or excluded to the extent that it is reasonable to do so.

Liability for death or personal injury cannot be excluded or restricted, whether in a consumer or business to business contract.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Where a defendant to a claim under the Act is domiciled in England or Wales, the English Courts have jurisdiction and it does not matter if the manufacture, marketing and damage all occurred outside England and Wales.

If a claimant suffers injury in England or Wales, the English Court is likely to have jurisdiction over a claim under the Act on the basis that the harmful event happened in England or Wales.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

In terms of criminal liability, failure by producers and distributors to notify the authorities of an unsafe product they have put on the market, can lead to fines of up to the statutory maximum or up to three months' imprisonment, or both, under the General Product Safety Regulations 2005. It is also a criminal offence under the Act to breach sector-specific product safety regulations.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normally available Court procedures apply.



8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

A prospective claimant may apply for disclosure and inspection of documents before Court proceedings have started. Such an order will be made if:

- i. the respondent is likely to be a party to subsequent proceedings;
- ii. if proceedings had started the respondent's duty to disclose documents would extend to the documents sought; and
- iii. disclosure before proceedings have started is desirable in order to dispose fairly of the anticipated proceedings, assist the dispute to be resolved without proceedings, or save costs.

In an appropriate case, the Court may grant an interim injunction, or order, to preserve the position. In respect of relevant property, this could be for its' detention, custody or preservation, for inspection, for the taking of a sample, or for the carrying out of an experiment.

The Court rules require a Pre-Action Protocol to be followed before Court proceedings are issued. This Protocol includes the claimant writing to the defendant with concise details of the claim, the defendant responding within a reasonable time and the parties considering whether negotiation or some other form of alternative dispute resolution (ADR) might enable them to settle their dispute without commencing Court proceedings. There is a separate Pre-Action Protocol for personal injury claims.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

In a strict liability claim under the Act, damages are available to compensate the injured person for death, personal injury and damage to non-commercial property, although not damage to the defective product itself. Damage to property with a value below GBP275 is not covered by the Act.

In a contractual claim, the remedies available depend on the classification of the term breached. Remedies include the right to repudiate the contract and/ or claim damages. For consumers, there are tiered remedies for certain terms implied by statute, including a 30 day window within which to reject the goods and claim a full refund, or make a request for repair or replacement.

In a claim for negligence, damages are available to compensate a claimant for losses which were a direct and reasonably foreseeable consequence of the negligent act. In respect of product liability, no claim can be made for pure economic loss, namely financial loss not arising from physical injury or damage to property.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depend on the particular case in question. Costs-shifting applies in Court proceedings. The winning party is generally awarded their costs payable by the losing party. The Court will control recoverable costs at an early stage by deciding acceptable levels for the parties' costs budgets for the proceedings, including the fees of expert witnesses.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the Act, the burden of proof is on the claimant to establish that the product was defective and that it caused the loss. However, it is unnecessary for the judge to ascertain the precise defect. For example, a claimant need not demonstrate precisely how a bicycle's handlebars failed in order to show that the bicycle was defective.

In a contract and negligence claim the burden of proof is on the claimant.

In civil claims, the standard is to prove the case against the defendant on the balance of probabilities.

12. Is the state of the art defence available?

In addition to other available defences, the state of the art, or development risks, defence is available. It is a defence to show that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in their products while they were under their control.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

An action under the Act must be brought within three years of the later of the accrual of the cause of action (the date the damage is suffered), or the date of knowledge of the claimant. The overriding time limit is 10 years from the date on which the defective product was supplied by someone to whom the Act applies.

The limitation period for a claim of personal injury or death is three years from the later of the accrual of the cause of action or the date of knowledge of the person injured. The Court has discretion to exclude this time limit if it would be equitable to do so.

The limitation periods for claims in contract and negligence are six years, from the date of breach of contract and the date damage is suffered respectively.

Limitation periods may be extended in cases of disability on the part of the claimant or fraud by the defendant. However, these periods will not affect the above 10 year overriding time limit.

14. What are the rules for bringing a claim in a class/collective action?

Class action proceedings are available for product liability claims, in so far as there are procedural mechanisms available that enable claims to be considered in a grouped fashion. Claims can be consolidated through a Group Litigation Order. It is an opt-in regime rather than an opt-out regime.

15. What is the average duration of defective products litigation?

Approximately 12 to 18 months from a claim being issued at Court. Generally longer if there is a Group Litigation Order.



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I. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Under Ethiopian law product defect liability arises from either contractual or extra contractual relations.

According to the Ethiopian Civil Code of 1960 ('Civil Code'), the buyer should guarantee to the seller that the thing sold conforms to the contract and is not affected by defects. If the thing sold to the buyer is defective the seller has the obligation to repair the defect or replace the defective product with the new one. If neither is done, the buyer may bring a claim against the seller invoking non-performance of contract.

Under the provisions governing tortious liability, liability for defective products can be based on both fault and strict liability. The Civil Code stipulates that whoever causes damage, intentionally or negligently, to another shall make it good. This general principle of fault liability allows a claim to be brought invoking tortious liability through fault for defective products.

The Ethiopian Civil Code also makes a manufacturer strictly liable if such manufacturer sells products to the public for profit and damage is caused to the consumer in the normal use of the products. Liability, however, will not be borne by the manufacturer where the defect which has caused the damage could have been discovered by a customary examination of the goods by the consumer.

A defendant sued for damage caused by defective products, may not avoid liability by claiming that they have committed no offence, or that it was impossible to establish the cause of the damage, or that it was not within their power to prevent the damage or that the damage was due to the fault of a third party. They shall only be relieved of liability, entirely or in part, where the damage is due solely or partly to the fault of the victim.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under Ethiopian law the manufacturer, the importer, the distributor and the retailer could be potentially liable to compensate a claimant to the extent of their liability. Under Trade Competition and consumer protection Proclamation No. 813/ 2016 (Consumer protection law) the consumer has the right to claim compensation or related rights thereof either jointly or severally from the persons who have participated in the supply of goods as manufacturers, importers, wholesalers, retailers or in any other way for the damage he has suffered because of the purchase or use of the goods or services.

3. Are there differences if the buyer is a consumer or a professional buyer?

The Civil Code provisions use the term 'buyer' which could mean both a 'consumer' or a 'professional buyer'. So any rights given by the Code to the buyer in relation to product liability includes both the consumer and the professional buyer.

However, the Trade Completion and consumer protection Proclamation No. 813/ 2016 uses the term 'consumer' which excludes professional buyer from the ambit of the law. Thus, any right stipulated under the law doesn't cover professional buyers.

4. Can the seller or other potentially liable party exclude or limit its liability?

Under the Civil Code, the seller can exclude or limit its liability. However, any provision excluding or restricting the warranty by agreement shall be of no effect were the seller has fraudulently concealed from the buyer defects in the product.

A person may not relieve himself of the consequences of liability arising from a fault. However, a party may exclude or limit liability arising from strict liability or damages caused by a person for whom he or she is liable under the law.

However, the more recent consumer protection law provides that the provisions of a contract made between a consumer and a business person stipulating the waiver of rights vested in the consumer under the law shall be of no effect, including warranty against defects.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Under Ethiopian law the manufacturer, the importer, the distributor and the retailer could be potentially liable to compensate a consumer. The right to compensation exists even if the products are manufactured outside Ethiopia.



6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Ethiopian law doesn't specifically deal with the liabilities of manufacturer or retailer for omitted or delayed recall. However, if the consumer can show that there is a defect in the product and the recall campaigns were omitted or delayed with regards to such product, the consumer can bring action against the manufacturer and retailer for additional damages that may have resulted from such omission or delay. Consumer protection law also puts liability on the retailer's and manufacturer's payment of compensation for any damage resulting from the use of the defective goods or service or from the failure of the seller to replace the goods or services or refund the price.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There is no special procedure or no specific rules of evidence for defective products litigation. The normal rules and procedures apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Under Ethiopian consumer protection law and the Civil Code the consumer must send notification of any defects requiring the retailer or manufacturer

to correct, replace or refund before bringing any court proceedings. If the seller does not respond to such notification the buyer/ consumer can institute a proceeding.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Under Ethiopian law the buyer/ consumer who have regularly given notice of the defects can ask for the replacement of the defective product, a refund of the purchase price or the defective part to be replaced. The law also enables the buyer/ consumer to ask for compensation if he incurred any damage.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The litigation expense under Ethiopian Law includes court fees, lawyer's fees, stationary expenses, transport expenses, daily allowances for witnesses and the like. Usually the judgment debtor bears such costs by court decision. However, the court may, sometimes, decide that each party bear its own expenses.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under Ethiopian evidentiary rules, the one who alleges the existence of a product defect has the burden to prove it.

12. Is the state of the art defence available?

Ethiopian law doesn't recognise the state of the art defence when it comes to strict liability.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

As soon as the buyer has the opportunity, he shall without delay examine the product. Where examination discloses non-conformity with the contract or a defect, the buyer shall without delay give notice thereof to the seller.

Under consumer protection law, if there is a warranty period on the defective product, the buyer must notify the producer / seller of the defect before the expiry of such period. If such a warranty period does not exist or there is no agreement regarding notification, the consumer must notify the seller within 15 days from the date of purchase according to the consumer protection law.

Regarding legal proceedings, under the Civil Code, the buyer shall, under pain of losing his rights, bring proceedings on a warranty against defects within one year from his having given notice to the seller, unless the seller intentionally misled him. The parties may not shorten this period by contract.

14. What are the rules for bringing a claim in a class/collective action?

Class action is not allowed under Ethiopian law except for public interest litigation for environmental issues as allowed in the environmental pollution law. However, under the Ethiopian Civil Procedure Code of 1965, where several persons have the same interest in a suit, one or more of such persons may sue on behalf or for the benefit of all persons so interested on satisfying the court that all persons so interested agree to be so represented.

15. What is the average duration of defective products litigation?

It is difficult to predict the average duration for defective products litigation in Ethiopia as this depends on the complexity of the case and the backlog of court cases. The duration may on average range from 1 to 2 years under normal circumstances.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Product liability can appear in various forms, and defective product claims can be brought under the Product Liability Act (694/1990), the Sale of Goods Act (355/1987), the Consumer Protection Act (38/1978), and in non-contractual circumstances, the Tort Liability Act (412/1974).

When it comes to injury or damage caused by a product to a person or property meant for private use or consumption according to the Product Liability Act, and the product is primarily used for such purposes by the injured party, the liability is strict.

Liability based on fault/negligence is applied under the Sale of Goods Act when the parties have not agreed otherwise, and the Consumer Protection Act (38/1978). Liability under the said acts related to defective products only cover damage to property.

Under the Tort Liability Act, liability is based on negligence. In this case, claims can be brought for such damages as personal injury or damage to property as well as economic loss which is not connected to these damages (if certain preconditions are met).

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Product Liability Act the manufacturer, the importer and the marketer (the party under whose trade mark or other commercial identifier the product has been marketed) are liable in such a claim. In case the manufacturer is not indicated on the product, other suppliers are liable as a manufacturer in case one is not able to identify the manufacturer from whom they acquired the product.

According to the Consumer Protection Act, the consumer is entitled to direct his or her claims also at a business who at an earlier level of the supply chain has supplied the goods for resale (with some exceptions).

Under the Sale of Goods Act, it is mainly the seller who is liable to compensate a claimant because of a faulty product. The seller can, however escape liability, if he/she is able to prove the existence of an impediment against delivery of conforming goods.

A claim based on the Tort Liability Act is directed at the person responsible for the default.

Contractual claims are generally brought against the party who breaches the contract.

In general, a claim based on negligence can be brought against anyone who shows neglect against someone's property and this results in its damage to the said property.

3. Are there differences if the buyer is a consumer or a professional buyer?

According to the Product Liability Act, the Act applies only to damages caused by a product to a person or property meant for private use or consumption and primarily used for such purposes by the injured party. Professional buyers may therefore claim for personal injury, while claims for damage to property may only be brought by consumers

Additionally, in case the buyer is a consumer, not only the Product Liability Act is applicable, but also the Consumer Protection Act.

4. Can the seller or other potentially liable party exclude or limit its liability?

Contractual terms limiting a party's right to compensation agreed on before the injury or damage occurred are deemed null and void under the Product Liability Act. However, companies can agree on the division of the liability for damages between the companies at the different stages of distribution. Suppliers can also limit

their liability through product liability insurance. In business-to-business relationships, limitation of liability clauses can be agreed upon.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The Product Liability Act states that for damages caused by a product manufactured outside the European Economic Area, the party which had imported the product into the European Economic Area with the intention of putting it into circulation there, is liable. Also liable is the party which has imported the product from a Member State of the European Free Trade Association (EFTA country) into the European Community, from the European Community into an EFTA country or from an EFTA country into another EFTA country with the intention of putting it in circulation.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Manufacturers must recall products when they become aware that they are defective, if the defects cannot be eliminated in other ways. Breach of the duty to recall products does not itself establish grounds for civil claims, but is treated as negligent conduct.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal procedures and rules of evidence apply.



8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The surveillance authority can, under the Consumer Safety Act (920/2011), impose a provisional prohibition that will apply until a final decision is issued, in case it is obvious that a consumer product involves a health risk and the danger cannot be eliminated in any other way. The prohibition may relate to the manufacturing, importing, supplying, marketing, selling or otherwise providing the good or service. The surveillance authority may also impose a conditional fine. Similar interim injunctions are available under the Consumer Protection Act.

The claimant starts the proceeding by an application for a summons in which the claimant sets out what is sought and on what grounds. The district court reviews the application and issues a summons to the defendant. Before initiating court proceedings, it is recommendable that a warning letter is sent first.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

According to the Sale of Goods Act (355/1987), if the product is defective due to a reason which is not attributable to the buyer, he or she may require the seller to remedy the defect or to replace the product, require a reduction in the contract price or – if the breach of contract is of substantial importance to him or her, and the seller was or should have been aware of this – to declare the contract terminated and to claim damages. The buyer may also withhold payment.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

If the claim is brought in as a class action based on The Act on Class Actions (444/2007), the group members are not responsible for the litigation costs.

According to Finnish law, the losing party generally pays the court and reasonable legal costs of both parties. In some cases, the court orders each party to bear its own costs.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The person who suffers damage because of a defective product has the burden to prove that damage has occurred, that the product was faulty and that there is a causal connection between the damage and the product. When the liability is strict, the injured party does not have the aforementioned burden of proof, except for the causal connection of the damage and the product. If the claim is brought under the Tort Liability Act, the claimant has to prove that the defendant has acted with intent or neglect.

12. Is the state of the art defence available?

Yes – According to the Product Liability Act, liability for damages shall be exempted if the party from which compensation is claimed proves that the defect in the product which caused the injury or damage is attributable to compliance of the product with mandatory regulations issued by a public authority.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Under the Consumer Protection Act, the buyer has the right to require that the seller rectifies the defect or deliver non-defective goods. Such a rectification has to be made within reasonable time and in a way that the buyer does not incur costs or significant inconvenience.

An action under the Product Liability Act has to be instituted within three years from the date on which the claimant became or should have become aware of the damage, the product's defect and the identity of the liable party. However, the action has to be instituted not later than ten years from the date on which the liable party put the product that caused the damage in circulation.

According to the Sale of Goods Act, the buyer loses the right to rely on a defect if a notice to the seller is not given within a reasonable time after the buyer discovered or should have discovered the defect. The latter does not according to the aforesaid act apply if the seller is guilty of gross negligence or conduct which is incompatible with honour and good faith.

Contractual and tort claims must be initiated within three years from the date when the claimant became aware of the damage and the liable party's identity. The final statute of limitation, however, is ten years from the time of the act or event that was the cause of the damage. Personal injury claims form an exception to the latter.

14. What are the rules for bringing a claim in a class/collective action?

Class actions are regulated in the Act on Class Actions. The act sets forth a number of preconditions for a class action. Firstly, there must be several claims against the same defendant, and they must be based on circumstances that are identical or similar. For the case to be heard, the case must be expedient in light of its size, the subject-matter of the claims that are presented in it as well as the proof offered. The class must also be defined with adequate precision.

The Consumer Ombudsman has an exclusive right to file actions, and he solely exercises the right of a party to be heard in court. The actions are, however, filed on the basis of consumer complaints.

Although class actions are possible, not a single one has been brought to this day.

15. What is the average duration of defective products litigation?

The average duration of defective products litigation depends of the scope of the case.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Liability claims for defective products may be brought on various different bases, depending on the nature of the defect:

- If the product presents a safety defect that caused damage to a property, death or personal injury, a claim may be brought under articles 1245 to 1245-17 of the French Civil Code which has implemented European Directive n°85/374 of 25 July 1985. This “product liability” regime is therefore similar to those existing in other European countries. This is a strict liability regime making the manufacturer automatically liable whether he is bound by a contract with the victim or not. In addition to liability for damages, the manufacturer may face criminal liability.
- If the product presents a latent defect, a liability claim may be brought under articles 1641 to 1649 of the French Civil Code. A latent defect is defined as one that makes the product sold “*unsuitable for the use for which it is intended or which diminishes the use so much that the buyer would not have acquired it, or would have paid a lower price if he had known it*”. The liability of the professional seller is irrefutably presumed whether the product is new or used.
- If the product does not conform to the specifications, a claim may be brought under article 1604 of the French Civil Code for which case law considers to be a breach of the core obligation to deliver under the sales contract, rather than a defect. Specific and stricter provisions are also applicable under Consumer Law.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

All of these parties are potentially liable to compensate a claimant. In the case of a latent defect, the end buyer has a direct contractual claim against the seller but also against the manufacturer or the reseller. Likewise, under the product liability regime of the EU directive, the manufacturer, but also the importer, and, to a lesser extent, resellers are potentially liable for compensation.

3. Are there differences if the buyer is a consumer or a professional buyer?

There are differences between a consumer and a professional buyer. Consumer law offers a specific protection: consumers benefit from statutory warranties regarding hidden defects and lack of conformity and the burden of proof generally lies on the seller. Moreover, a professional seller cannot limit its liability towards a consumer.

4. Can the seller or other potentially liable party exclude or limit its liability?

If the sale occurs between a professional seller and a consumer, the seller cannot exclude its liability, any provision to the contrary being considered null and void.

If the sale occurs between professionals, it depends on the claim brought.

- Under the statutory warranty for hidden defects: if the sale occurs between a professional seller and a professional buyer of the same speciality, the seller can exclude its liability. The notion of “same speciality” is interpreted by the judge.

- Under the warranty of conformity, the seller can exclude or limit its liability but the provisions should not take away any substance of its obligation, i.e., the consequences of the exclusion of liability should not be considered as avoiding any liability of the seller which does not respect its essential obligation resulting from the agreement.
- The French implementation of the product liability regime does not allow the manufacturer to limit or exclude its liability for death or personal injury. The liability for damages to professional property can however be limited, except in certain cases.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Consumers have the same rights whether the products are manufactured outside France or the EU.

6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

Producers and resellers have a general duty of care and information to the public and the authorities in cases where a product on the market is likely to create a safety risk. Therefore, administrative and civil actions may be brought against them where they failed to inform, withdraw or recall a product. Such failure may be sanctioned by fines and imprisonment.



7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There are no specific procedures, nor specific rules of evidence for defective products litigation. The burden of proof depends upon the claim brought and the quality of the buyer (professional or not) but, as a general rule, the claimant has to prove the defect, the damage and a causal link between the defect and the damage except for a product which presents a safety defect in respect of which the claimant must prove the damage, the defect, and the causal link between the defect and the damage.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

In practice, before issuing proceedings, the parties should try to find an amicable settlement as they have a duty to prove they entered into such discussions before bringing an action before the courts.

Though there are no pre-trial proceedings in France, a claimant may appoint its own technical experts to assess the defect and damages. The conclusions of that expert will be taken as evidence and are often discussed and rejected by the defendant. Alternatively, a claimant may request the court to appoint an expert under a procedure for interim relief. This is the more common procedure. Nevertheless, the courts are not bound by the conclusions of an expert.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

In the case of a hidden defect, the buyer has the choice between returning the product and obtaining the reimbursement of the price, or keeping the product and obtaining a price reduction. If the seller is shown to have known that the product was defective, it may be held liable for damages in addition thereto.

In case of lack of conformity, the consumer can choose between the repair and the replacement of the product unless the option chosen induces costs that are disproportionate with respect to the other remedy taking into account the value of the good or the significance of the defect. If the repair and replacement of the product are impossible, the buyer can return the product and obtain reimbursement of the price.

Subject to statutory warranty regimes such as those applicable to hidden defects, which provide for specific remedies (replacement or reimbursement), remedies are generally freely negotiable between professionals: the contract may be terminated, the product replaced or repaired. Although French law provides for a full compensation regime for damages suffered, they are however limited to “direct” damages and where damages result from a contractual claim, they are also limited to “foreseeable” damages.

Under the strict product liability regime resulting from the EU directive, the injured person and the damages to private property can be compensated.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of such litigation comprise court fees (a few hundred euros), incidental fees such as bailiff's costs (a few hundred euros as well) and legal costs which vary according to the length, difficulty and the number of parties involved. The losing party will be required to bear the court fees, bailiff's expenses and the expert's costs (if ordered by the court).

The winning party will probably be entitled to an award of legal costs, but these will only represent a small fraction of the fees actually incurred.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Except in cases where a strict liability regime applies, and for a product presenting a safety defect, the burden of proof lies with the buyer. However a consumer does not have to prove the non-conformity of a product if the defect appears within 24 months of the sale.

12. Is the state of the art defence available?

State of the art is not a defence unless it is possible to prove that at the time the product was made available on the market the technical knowledge could not enable the detection of the defect.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The action resulting from hidden defects must be brought by the purchaser within two years from the discovery of the defect.

An action resulting from a lack of conformity must be brought within two years from the date of delivery of the product.

An action based on tort liability must be brought within five years from the date the damage occurred.

The causes of interruption or suspension of the limitation period are those of ordinary law: they are usually frozen as result of an expertise or a mediation, for example.

14. What are the rules for bringing a claim in a class/collective action?

Class actions have recently been introduced in France in specific sectors and are not yet widespread, the core principle of an action before the court being that a claimant should have a personal and direct interest in the claim.

Class actions have been available to consumers since 2014 and are only possible if they seek reparation of individual material damages suffered by consumers in a similar or identical situation and if the action is based on consumer or competition law.

The collective action is reserved for nationally representative and approved consumer protection associations.

There is a simplified group action when the identity and number of injured consumers are known and when these consumers have suffered a loss of the same amount.

15. What is the average duration of defective products litigation?

A claim for civil liability usually lasts around two years, which can be extended one to two years if a technical expertise takes place.

In case of appeal, the delay may be extended by one or two years.

If the case goes to the French Supreme Court ("*Cour de cassation*"), the duration can be extended by another 18/24 months.



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I. What claims may be brought for defective products? Is liability based on fault/negligence, or strict liability, or both?

The following rights are available to the buyer, of which the first six derive from the German Civil Code (Bürgerliches Gesetzbuch, BGB):

1. The right to demand supplementary performance (Nacherfüllung): The primary right is the buyer's right to supplementary performance. It for both the right to repair and the right to a new delivery.
2. The right to terminate the contract (Rücktritt): In the event of initial impossibility of supplementary performance, subsequent impossibility, failure, as well as performance-related and non-performance-related secondary liability violations, a withdrawal from the contract is possible.
3. The right to claim price reduction (Minderung): Under the same conditions governing the buyer's right to terminate the contract, the buyer may also opt for a reduction in the purchase price.
4. The right to claim compensation in lieu of performance (Schadensersatz statt der Leistung): In the event of initial impossibility, subsequent impossibility, failure and performance-related as well as non-performance-related secondary liability violation of the supplementary performance claim, a claim for damages instead of performance can be asserted. For a successful claim for damages, the seller must be held responsible for the suffered damage.
5. The right to claim compensation for breach of duty (Schadensersatz wegen Pflichtverletzung): A claim for damages in addition to the performance can only exist if the due supplementary performance can still be provided. For a successful claim for damages, the seller must be held responsible for the damage suffered.
6. The right of revocation (Widerruf): In certain cases, the consumer may, by revocation within a specified

period - usually 14 days - break the contract without giving any reason.

7. The right to claim compensation for other material damage caused by the product according to the product liability law (ProdHaftG).

Only the right to compensation according to the product liability law (7. above) is a strict tort liability, the others derive from the contractual relationship.

Product liability Law (Produkthaftungsgesetz, ProdHaftG):

The ProdHaftG provides for different liability limits depending on the damage suffered. In general, the ProdHaftG does not admit claims for compensation for the defective product itself, but only for compensation for other material damage caused by the product. The damage to property must be in the private sphere and must not have arisen in the course of a commercial or freelance activity. A maximum limit for property damage is not provided, but a deductible in the amount of EUR 500 must be paid by the injured party. This ensures that only really serious damage is regulated by the product liability law (ProdHaftG).

2. Who is potentially liable to compensate a claimant in such claims? The manufacturer, the importer, the distributor or the retailer/shop?

According to the German Civil Code (BGB), the seller, as the contracting party, is generally liable to compensate the buyer. The seller can, under certain circumstances, seek redress from his supplier.

According to the Product liability law consumers can also claim damages from the manufacturer and other parties as listed at indented bullet points below, including cases where the product comes from a jurisdiction outside the EU. Product liability does not require a contract between the manufacturer and the user, nor is proof/evidence of the manufacturer's responsibility for

the damage a requirement. The user is protected from certain hazards arising from a faulty product regardless of the fault of the manufacturer, even if these have only become apparent after the product has been placed on the market. It is therefore a strict liability.

- The quasi-manufacturer: Even those who are not the actual manufacturer of a product must be treated as such if they pretend to be manufacturers by affixing their name, brand or other distinguishing mark.
- The importer who introduces a product with an economic purpose from a third country, is liable as a manufacturer. The law in effect deems it unreasonable for the injured party to have to assert his rights in a third country. The import must be done as part of the business activity and for the purpose of distribution.
- The supplier of a product can be held liable as a manufacturer if he cannot name his supplier / importer or manufacturer. In case of an import from a third country, the supplier is also liable if he can name the manufacturer but not the importer. The liability of the supplier is to be regarded as an alternative solution - this is intended to prevent avoidance of liability when anonymous products are placed on the market.

3. Are there differences if the buyer is a consumer or a professional buyer/ entrepreneur?

Selling to a consumer

The sale of consumer goods is in the law of obligations the sale of a movable thing by an entrepreneur as a seller to a consumer as a buyer. The legal consequences of the sale of consumer goods initially consist in the fact that certain general regulations of the purchase right do not apply, for example the transition of risk to the buyer in the moment of sending the product in case of the so called sale by dispatch (Versendungskauf).

A further restriction concerns the liability of the seller in case of defects. The previously usual extensive warranty exclusion (no warranty at

all) is no longer possible today. This has special significance in cases of used car purchase from a commercial car dealer.

In the sale of consumer goods, the limitation period for warranty claims cannot be contractually reduced to less than two years for new items and to not less than one year for used items, to the detriment of the buyer.

Finally, where the existence of defect at the time of delivery (a requirement for liability) is suspected, the seller may attempt to challenge the claim by presenting counter-evidence.

Selling to an entrepreneur

A trade purchase is a contract of sale over a thing that is a trade for at least one of the parties involved. In principle, such contracts are settled in accordance with the provisions of the German Civil Code (BGB). However, the German Code of Commerce (Handelsgesetzbuch, HGB) contains some legal adjustments for commercial trades: § 373 HGB and § 374 HGB extend the possibilities for the debtor; if the creditor is in default of acceptance, whereby the debtor may deposit the goods at a suitable place. The debtor may also have them auctioned off and deposit the proceeds to the creditor. In § 377 and § 379 HGB the commercial duty of reprimand, denying an entrepreneur's warranty rights if he/she objects to a material defect too late, is stipulated.

4. Can the seller or other potentially liable party exclude or limit its liability?

§ 444 of the German Civil Code (BGB) states that the warranty rights of the buyer can also be excluded or limited by contract. However, this does not apply if the seller has fraudulently concealed the defect or has assumed a quality guarantee.

A special feature applies to the sale of consumer goods. § 475 para 1 BGB severely limits the contractual exclusion of liability to consumers. If general terms and conditions are involved, § 309 No. 8b BGB is to be observed, which contains further restrictions on contractual exclusion of liability.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

According to the product liability law (ProdHaftG), producers, importers or suppliers can be held liable for products that were manufactured outside the EU.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

The Product Safety Act (Produktsicherheitsgesetz, ProdSG) provides an important legal basis governing product recalls. It requires manufacturers, importers and distributors to ensure that only safe products are marketed. In addition, manufacturers must actively monitor the market. For example, market surveillance requires manufacturers to carry out random checks, investigate complaints and inform traders.

If a recall is necessary, manufacturers must also take precautions to ensure that the hazard can be eliminated quickly, effectively and reliably. As part of their risk management, manufacturers must therefore have in place measures and protocols to be followed in the event of a necessary recall.

Manufacturers, importers and other distributors face fines of up to EUR 100,000 if they intentionally or negligently violate the provisions of the Product Safety Act (ProdSG).

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal civil law procedures apply.

For the burden of proof generally § 363 BGB applies: If the buyer has accepted the good as fulfilment, the buyer has the burden of proof for a)

the material defect and b) that the defect was present from the beginning. Notwithstanding, the sale of consumer goods § 474 BGB reverses the burden of proof by stipulating that in the first six months after delivery the defect shall be deemed to be present at the time of delivery.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The effective rescission of the purchase contract can only be done if the seller gets a reasonable period for supplementary performance (repair or new delivery).

Of course, if the supplementary performance has failed, there is no need to set a deadline (§ 440 para 1 Var. 2 BGB). The supplementary performance has failed if, in case of repair, after the second attempt the original defect is still present or a new defect was created. A replacement delivery has failed if the replacement item has the same or another new defect and if a second attempt does not promise a chance of success.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The following remedies are available to the buyer, as outlined above:

1. Right to demand supplementary performance (Nacherfüllung)
2. Right to terminate the contract (Rücktritt)
3. Right to claim price reduction (Minderung)
4. Right to claim compensation in lieu of performance (Schadensersatz statt der Leistung)

5. Right to claim compensation for breach of duty (Schadensersatz wegen Pflichtverletzung)
6. Right of revocation (Widerruf)
7. Right to claim compensation for other material damage caused by the product according to the product liability law (ProdHaftG).

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

After the litigation has been settled, the court will charge the costs to the loser of the lawsuit. The winner can then demand reimbursement from the loser. It is also possible that the judge shares the costs between plaintiff and defendant, e.g. 60% to 40%.

If the decision is made in the court of second instance, the court will always award the costs of both instances to the loser of the second instance, even if the latter has won in the first instance.

The so-called dispute-value (Streitwert) is decisive for the calculation of the legal fees and court costs. This is generally the amount that is disputed, whether out of court or judicial.

If a certain amount of money is claimed, for example EUR 30,000, the dispute-value amounts to EUR 30,000. The fee of the lawyer is determined by the fee table for lawyers.

For example, if the dispute-value is EUR 30,000 and the case is settled by a judicial decision in the first instance and the opponent wins, the costs for the whole case would be approximately EUR 7,100, of which EUR 1,200 are the cost for the court and the rest are the cost for the lawyers of the claimant and opponent.

The costs for a judicially appointed expert are to be paid by the loser of the case.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

To be able to assert claims arising from a warranty for defects, the deficiencies claimed must, of course, be proven. As a rule, this obligation is met by the buyer in the case of a purchase contract. The situation is different when it comes to the sale of consumer goods - where there is a reversal of the burden of proof according to § 476 BGB (see above).

Requirement for the latter is that the seller is an entrepreneur, the buyer is a consumer and that the alleged defect occurs within six months of the purchase. Then it is assumed in favor of the buyer that the defect already existed when handing over the object of sale, and the seller must prove that the material defect could not have been present at time of delivery.

12. Is the state of the art defence available?

A defect may arise from the fact that the product in question deviates negatively from the respective state of the art; this basically requires a manufacturer-independent comparison.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

German law has deadlines after which claims can no longer be enforced. The statute of limitations therefore serves to establish legal peace after the expiry of the period in which claims can be enforced and to provide for a time limit in which a legal enforcement of one's own claims can be carried out.

The regular limitation period is three years. The regular limitation for sales of goods is two years. This period cannot be shortened for consumer sales.

However, the statutory limitation periods can be influenced under certain conditions. In the case of an inhibition, the limitation period is calculated differently, only the periods before and after the inhibition is considered. An inhibition of the statute of limitations paralyzes the continuation of the limitation period for their respective duration.

An inhibition can arise:

- when the claimant brings a lawsuit before court,
- when the claimant requests a legal court order,
- etc.

14. What are the rules for bringing a claim in a class/collective action?

In Germany, class action suits are generally not permitted. Each claimant must normally demonstrate individual concern, individual harm, and causality between the two. However, there are currently strong political initiatives to also include such class action proceedings in German law (so called "Musterfeststellungsklage")

15. What is the average duration of defective products litigation?

It is very difficult to predict the duration of litigation for a specific case. The length of litigation varies from district court to district court, from judge to judge and from state (Bundesland) to state. It also depends on whether it is settled by a compromise agreement in court or by a judicial decision. The fastest state for civil cases is Bavaria where a judicial decision is obtained on average in 6 months, whereas in Thuringia on average it takes 10 months, according to the German Federal Statistical Office's 2015 survey of legal proceedings.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Liability for defective products may arise under contract, tort of negligence or under the Sale of Goods Act, 1962, (Act 137).

Under Act 137, there is an implied condition in the contract for the sale of goods that the goods are free from defects which are not declared or known to the buyer before or at the time the contract is made.

Thus, where there is a defect in the goods, the claimant can reject the goods and refuse to pay for them. If payment has already been made, he may sue to recover the price paid for the goods.

Act 137 also permits the claimant to sue and claim damages for breach of the implied condition.

A claim under Act 137 is strict liability since the claimant need not prove that he suffered any injury by virtue of the defect in the goods.

Claims in contract and negligence are frequently found in combination with a claim under Act 137.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under Act 137, the seller is directly liable under the contract for defects in the goods. However, the seller cannot be held liable where the goods in question are not goods sold in the ordinary course of the seller's business and the defects are such that the seller could not reasonably have been aware of the defects.

For hidden defects, the manufacturer of the goods is likely to be held liable, especially if the product cannot be reprocessed or repackaged by a retailer or importer.

It must be noted that if the claimant detects the defect in the product but proceeds to use the product in spite of the defect, the claimant may be held to be contributorily negligent/liable for whatever injury is caused to the claimant after using the product.

3. Are there differences if the buyer is a consumer or a professional buyer?

No, Act 137 makes no differentiation between consumer buyers and professional buyers.

4. Can the seller or other potentially liable party exclude or limit its liability?

Yes, the seller may exclude or limit liability to the extent that it is reasonable to do so.

However, the seller cannot exclude liability for death or personal injury.

Also under Act 137, a buyer may not exclude conditions in the contract that are implied by the Act, such as:

- i. the goods are reasonably fit for their purpose, in a situation where the goods are goods supplied by the seller in the course of his business and the buyer expressly or by implication makes known the purpose for which the goods are required,
- ii. the goods are in existence at the time when the contract is made, or
- iii. the goods correspond exactly with the description of the goods, where the sale is by sample as well as by description.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The rights of the consumer would be the same regardless the jurisdiction where the product is manufactured.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

The manufacturer or retailer may be liable under the Criminal and Other Offences Act, 1960 (Act 29).

The manufacturer or retailer who allows a product which is harmful to health to be traded or to remain on the market may be found guilty of engaging in noxious trade and be liable to a fine not exceeding GHC 300 and shall, upon conviction for a continuance or repetition of any such offence, be guilty of a misdemeanor.

Where the item in question is an edible product and is one likely to be noxious to health, the manufacturer or retailer may also be found guilty of a misdemeanor.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There are no specific rules of evidence or procedure for defective products litigation in Ghana. The normally available Court rules of evidence apply.



8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

There is no legal requirement for the issuance of a warning letter before issuing a writ and statement of claim (proceedings).

However, claimants often send a demand letter to the defendant for a chance to remedy the default within a specified number of days, before instituting the action. The parties may also attempt negotiations to resolve the dispute.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Under Act 137, the remedies available to the buyer are damages for breach of an implied condition in the contract and recovery of purchase price.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs vary from case to case. The losing party pays the costs awarded by the Court. The party who calls in an expert witness is responsible for that expert's costs.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

He who alleges must prove. If the claimant alleges there is a defect, the claimant has the burden to prove that indeed there is a defect in the goods.

If the claimant is suing under torts of negligence, the claimant must prove some form of damage/injury as a result of the breach of duty. However, no such proof of injury is required under contract. It suffices that the product is defective and of less quality than what was agreed between the parties.

12. Is the state of the art defence available?

State of the art defence is not provided for under statute. It may, however, be available through the common law.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Claims arising out of contracts have a limitation period of six (6) years and claims founded on negligence are barred after three (3) years. Time starts running from the date the claimant had knowledge of the defect.

The limitation period may be extended where the claimant is a person of unsound mind and has been detained or the claimant is an infant. However, once such a claimant gains his or her soundness of mind or attains the age of majority, time starts to run in respect of the claim.

The Limitation Act also gives an extension to the claimant where it is proved that the material facts relating to a claim under negligence were outside the knowledge (actual or constructive) of the claimant until two years or more after the commencement of the three-year period. In such a situation, the action must be brought within twelve months after obtaining knowledge of such facts, after leave has been granted by the Court.

14. What are the rules for bringing a claim in a class/collective action?

Per the High court Civil procedure rules, 2004 (C.I. 47), two or more persons may be joined together in the same action as plaintiffs or defendants where

- i. There is a common question of law of fact that arises in the actions, if each person were to bring a separate action, and
- ii. All rights to the relief claimed in the action whether they are joint, several or in the alternative are in respect of or arise out of the same transaction or series of transactions.

15. What is the average duration of defective products litigation?

There is no specific duration for defective products litigation. The duration will depend on the parties, their Counsel and the timelines given by the court.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

The Consumers' Protection Law, hereinafter referred to as CPL, establishes a strict liability regime, i.e. not fault-based. However, this strict liability system does not preclude other liability systems providing a consumer with greater protection on a specific case. Indicatively under Greek law, such additional systems are:

Contractual liability

This liability system requires a contractual relationship between the parties where the buyer must not necessarily be a consumer. The seller is strictly (irrespective of his fault) liable for the sold product's defects or non-conformity with agreed qualities at the time the risk passes to the buyer; the knowledge of the latter releasing the seller from liability under conditions, together with other reasons for such a release provided by law.

Tortious liability

Although the claimant must establish the defendant's fault in tort claims, case law reverses the burden of such proof in favour of the claimant-consumer, thus obliging the defendant to prove absence of fault to be released from liability.

Criminal liability

As derived from the Greek Criminal Code and Law 4177/2013 (Rules Regulating the Market of Products and the Provision of Services). Notwithstanding relevant penal stipulations for specific actions, the CPL also sets penalties based on administrative acts by competent authorities.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Article 6, paras. 2–4 of Consumers' Law provides that the "manufacturer", who bears responsibility for the defect, is the manufacturer of a finished product or of any raw material or of any component, and any other person who presents himself as a producer by putting his name, trade mark or other distinguishing feature on the product. Moreover, any person who imports (within the EU) a product for sale, leasing or rental, or any form of distribution in a commercial capacity shall be responsible as a manufacturer. Where the manufacturer of the product may not be identified, each supplier of the product shall be treated as its manufacturer, unless he/she provides the injured person with information on the identity of the manufacturer or of the person who supplied him with the product. The same applies to the supplier of imported products when the importer's identity is unknown, even if the manufacturer's identity is known.

3. Are there differences if the buyer is a consumer or a professional buyer?

The definition of a consumer is narrowed down to include only natural persons acting in their personal capacity, i.e. for purposes not related to their trade, business or profession, with the exception of small scale businesses, which still enjoy protection equivalent to that of natural persons, with respect to General Terms & Conditions (GTCs) under certain circumstances.

When it comes to defective products litigation between a consumer buyer and professional buyer, there is no difference under the normally applicable rules of civil procedure.

4. Can the seller or other potentially liable party exclude or limit its liability?

Under the strict liability regime which is opted for by the CPL, the liability of such a party may not be excluded. In general, other terms which seek to limit or exclude liability in a consumer contract may be regarded as unfair and therefore unenforceable.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Where a defendant to a claim under the CPL is domiciled in Greece, the Greek Courts have jurisdiction and it does not matter if the manufacture, marketing and damage all occurred outside Greece. If a claimant suffers injury in Greece, the Greek Court is likely to have jurisdiction over a claim under the CPL on the basis that the harmful event took place in Greece.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

There are certain categories of products, e.g. pharmaceuticals, where recall is specifically provided for, as well as the respective liabilities of the persons the provisions stipulate. There are no specific provisions in the CPL. Should producers or distributors become aware that any of their products present dangers to consumers, they must notify the General Secretariat immediately and without delay, and any other competent authority depending on the type of the products at issue, for the prevention of any danger and hazard to consumers. Pursuant to article 13a of the Greek CPL, notwithstanding the stipulations

of the Criminal Code, the Rules regulating the Market of Products and the Provision of Services and other special laws, the following civil and administrative sanctions may be imposed by a decision of the competent minister, acting either ex officio or after a complaint filed, namely:

- Recommendation for compliance within a specified deadline as well as an order to stop the infringement and refrain from it in the future;
- A fine of between EUR 1,500 and EUR 1 million. The maximum amount of the fine may be doubled if more than three fines are imposed on a distributor; or
- If more than three fines are imposed on a distributor, the minister may order the temporary closure of the distributor's business for a period ranging from three months to one year.

Imposed sanctions may be generally readjusted by a joint ministerial decision. A special set of sanctions may be imposed on distributors not responding to consumers complaints per the provided proceedings. Furthermore, the competent minister has the authority, considering the nature and graveness of the violation, as well as its general repercussions on the consumer public, to publicise, through the press or any other means available, the sanctions imposed and the restraining measures taken with regard to the circulation of a product in the market.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

A consumer may initiate a court action on which normally available civil procedures apply as per Greek Civil Procedure Code.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

There is no mandatory pre-action per Greek law.

Given the application of normally available civil procedures to CPL cases, civil courts may order any type of interim measure or remedy that are found suitable for the protection and 'preservation' of the right or the legal relationship until the issue of the judgment on the main trial, as long as the enforcement of such order does not satisfy what would have been the main claim, namely leading to an award of the full exercise of the right or legal interest to the applicant party.

Consumers may also file reports to the competent authorities per type of products/services, before initiating a court procedure, on an individual basis or within consumers' associations.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

According to CPL (article 6, paragraphs 1, 6 and 7), the producer must indemnify the consumer for any damage incurred to the latter due to defects of his or her product, in particular in the event of cause of death or physical injury and damage or destruction, due to the defective product, of any asset of the consumer, apart from the defective product itself, including the right to use goods, on condition that the loss from such damage or destruction exceeds the value of EUR 500, and on the condition that by nature they were intended to be and were actually used

by the injured person for his or her personal use or consumption.

Damages for moral harm or mental distress may also be due based on the above regulation.

Further, and by virtue of article 540 of the Greek Civil Code, the buyer (in general and not only a consumer) is entitled either to demand the repair of the defective goods he or she purchased or their substitution (on the condition that such substitution or repair does not imply excessive and unreasonable cost for the seller), or to require a price reduction or to rescind the contract for sale of goods, unless the defect or the lack of conformity of the goods sold with any agreed qualities is minor. Additionally, according to the general provision of article 914 of the Greek Civil Code, whoever acts unlawfully and by default causes damages to another party is obliged to compensate the injured party.

Moreover, both CPL and the Greek Civil Code regulate the provision by the seller of a product guarantee. In short, where such a guarantee was provided and the defect is detected and noticed within the guaranteed period, the producer or distributor is obliged either to repair or replace the product at issue.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

In Greece, the loser-pays rule applies. Pursuant to Article 173 of the Greek Civil Procedure Code, Court expenses are "only the court and out-of-court expenses that were necessary for the trial" and in particular are:

- a. stamp duties;
- b. judicial revenue stamp duty;
- c. counsels' minimum fees set by the Greek Lawyers' Code;
- d. witnesses' and experts' costs; and

- e. the successful party's travelling expenses in order for him to attend the hearing.

However, the expenses that the successful party recovers are, as per the general practice, substantially lower than his actual expenses, whereas the court very often divides such (low) expenses between the litigants on the basis of complex legal issues involved in the litigation.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The plaintiff-consumer has to prove the defect, the damage and their causal link, whereas proof of fault is not needed. Where a plaintiff sues in tort, as a rule he must prove the defendant's fault. However, case law and theory hold that the burden of proof may be reversed if the plaintiff would otherwise be unable to prove the defendant's culpable conduct. This is held when the fact to be proven lies in the exclusive sphere of the defendant's influence, and the plaintiff is unable to gain access in order to meet his burden of proof obligations; in such a case, the defendant is required to prove that he was not responsible for the occurrence of the injurious fact in question.

The reversal is applied under case law primarily for consumers' claims.

12. Is the state of the art defence available?

Yes. Under art. 6 par. 8 CPL, the producer may be relieved from liability if he proves that when the product was placed on the market, the applicable scientific and technological rules at that time prevented the defect from being discovered (the so-called state-of-the-art defence). It is for the manufacturer to prove that the fault/ defect was not discoverable.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Regarding prescription, CPL provides that claims against the producer or the other persons liable for defective products are prescribed three years after the consumer became aware of the damage or should have been informed about the damage, the defect and the identity of the producer. Ten years after the product is put into the market the rights of the consumer are time-barred (article 6, paragraph 13 of the Greek CPL).

The general limitation period within which a buyer, being a consumer or not, must exercise his or her rights from a contract for the sale of goods is two years. Tort claims are subject to a five-year limitation period starting from the day the victim became aware of the damage and the person liable to compensate him or her. The same action or omission may constitute breach of a contract and tort under requirements. Lastly, the general limitation period applying to claims is 20 years. Claims for unjust enrichment fall within this period.

14. What are the rules for bringing a claim in a class/collective action?

Pursuant to article 10 (para. 16) of the CPL, a class action can be filed only by consumer associations that have more than 500 members which have been listed in the consumer association's public registrar for at least one year prior.

On the other hand, pursuant to article 11 of the CPL, disputes under the CPL may be resolved by amicable dispute resolution (e.g. by reference to the Consumer Ombudsman).

15. What is the average duration of defective products litigation?

This depends on each case. Smaller claims are subject to a quick procedure where the whole process is concluded within a year. For the rest, the average times very much depend on the type of the court, as well as the place where it is located. To speed up proceedings, law 4335/2015 was introduced in 2015 (in force as of 1 January 2016). Under the new legal regime, the hearing is purported to take place around six to seven (6–7) months after the filing of a lawsuit (articles 215 & 237 of Greek Civil Procedure Code) but that time frame is in practice prolonged. Rulings are in general issued within 6 to 8 months from a claim being heard at Court.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Liability for defective products is regulated in the Hungarian Civil Code in line with Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. The product liability regulations are based on strict liability, but this does not prevent the consumer to base its claims on fault or negligence if so practical.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

As a general rule, for claims based on product liability the manufacturer is held liable. However, the Hungarian Civil Code contains a very wide definition as to who is to be regarded as manufacturer: Manufacturer means a producer of a finished or semi-finished product, or raw material, furthermore the person who depicts himself as the manufacturer of the product by the indication of his name, trademark or some other distinguishing mark on the product.

In terms of imported goods, the company, first importing the goods to the territory of the European Economic Area is also to be construed a manufacturer.

In addition, if the manufacturer of a product cannot be identified, all distributors of such product are to be regarded as manufacturers until such distributors reveal to the injured party the identity of the manufacturer or the distributor from whom the product was obtained.

3. Are there differences if the buyer is a consumer or a professional buyer?

Yes. In respect of liability for defective products, damages are defined as follows:

- f. any damage incurred by the death, bodily injury or any impairment in the health of a person caused by a defective product; and
- g. any damage caused by a defective product to property for private use valued in excess of EUR 500.

It follows from the above definition that professional buyers cannot put forward a claim for damages caused by a defective product to property items.

4. Can the seller or other potentially liable party exclude or limit its liability?

No. Such exclusion or limitation of liability is null and void.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

As explained in section 2 above, in such event, the company first importing the products to the territory of the EU will be held liable.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

The manufacturer's liability is irrespective of the fact whether there is a mandatory or voluntary recall campaign in place. However, the manufacturer will be exempt from criminal prosecution if he makes every effort, upon gaining knowledge of the substandard quality of the product, to regain possession of the substandard products in question.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There are no specific procedural rules, i.e. the general rules apply in terms of jurisdiction as well as with regard to rules of evidence. The burden of proof of defect lies with the claimant.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Provisional and protective measures as well as preliminary evidentiary proceedings are available in accordance with the general procedural rules.

Although it is not compulsory to send a warning letter before filing a claim with the court, such practice is very advisable given that in lieu of a warning letter if the defendant acknowledges the claim right away at court, the court will oblige the claimant to bear all costs of the proceedings (even though the judgment is in favour of the claimant).

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Under product liability, the injured party may claim compensation for its losses (see also section 3 above). Obviously, the injured party may suffer losses other than what is included in the definition of losses from the perspective of product liability. Liability and remedy for such losses are regulated under the regime of warranty claims.



10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation include court duty, attorneys' fees, experts' costs, translation fees etc. The value of the court duty generally depends on the value of damages claimed by the injured party. The costs of evidentiary proceedings (including experts' fees) are to be advanced by the party who wants to prove such fact. Once the judgment is rendered, the court will allocate the costs among the parties – generally proportionate to how successful they were. Attorneys' fees are, however, recoverable only up to a certain extent deemed reasonable by the courts.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

As opposed to warranty claims (where a statutory presumption prevails in B2C relations that a defect detected by the consumer within six months of the date of performance is to be presumed to have existed at the time of delivery), under the product liability regime it is always the buyer who is required to prove that the product is defective.

12. Is the state of the art defence available?

Yes. The Civil Code defines the eligible grounds for the manufacturer to get relieved of its liability. Such grounds include, inter alia, if the product was in perfect condition at the time when it was placed on the market, and

the cause of the defect developed subsequently as well as if at the time the product was placed on the market the defect could not have been discovered according to the current state of scientific and technological achievements.

For completeness we add that in addition to the above, the manufacturer will only be relieved of liability if able to prove that:

- a. they did not place the product on the market;
- b. the product was not produced for retail purposes, or it was not produced or distributed within the framework of regular business activities;
- c. the defect in the product was caused by the application of a statutory or regulatory provision.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The injured party may claim his right to compensation within a three-year limitation period.

This term commences when the injured party became, or could be expected to have become, aware of the damage, the defect in the product as well as of the identity of the manufacturer.

This deadline can be frozen or extended (subject to the conditions regulated under the Civil Code) but there is a deadline of 10 years effective from the date of placing the given product on the market, the expiration of which results in forfeiture, i.e. beyond this deadline such claims cannot be enforced.

14. What are the rules for bringing a claim in a class/ collective action?

Class actions are not that popular in Hungary as in Anglo-Saxon jurisdictions. Theoretically, consumer contracts based on product liability can be brought in a class action, too. The most important conditions precedent are that

- i. only consumer contracts may be brought as class action;
- ii. there are at least ten plaintiffs;
- iii. both the facts and legal grounds are substantially identical with respect to all plaintiffs.

It is to be noted that even if all conditions precedent are met, the courts may elect to deny a class action if they rule that class action appears to be impractical or unreasonable.

15. What is the average duration of defective products litigation?

Like any other lawsuits, defective products litigation can easily get protracted— it usually takes 18-24 months to get a judgment of first instance, which is then subject to appeal.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

In Ireland, defective product claims can be made under Statute, Contract, or the Tort of Negligence. Claims will often be brought under all three headings.

Defective product claims can be brought under The Liability for Defective Products Act, 1991 (“the Act”), which implemented Council Directive 83/374 on Liability for Defective Products. The Act supplements rather than replaces the remedies in Contract and Tort. Under the Act a producer/manufacturer shall be liable in damages in tort for damage caused wholly or partly by a defect in its product. Liability under the Act is therefore essentially based not on wrongful conduct by the producer/manufacturer but on proof of fact that a defect in the product caused the claimant damage. The producer will be strictly liable under the Act unless they can fall within the parameters of one of the defences available under the Act.

Claims concerning the quality of goods purchased under contract are governed by the Sale of Goods and Supply of Services Act 1980 (“the 1980 Act”). This Act implies certain terms into a contract requiring goods to be of “merchantable quality” as well as to be safe and fit for purpose.

A claim may also be brought in the absence of a contract under the tort of negligence.

Manufacturers and suppliers of products may additionally face criminal liability if their product is defective, under the European Communities (General Product Safety) Regulations 2004, which implemented the revised EU General Product Safety Directive.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Section 2 of the Act provides that a producer shall be liable for damages caused wholly or partly by a defect in the product. Producer has a wide definition under the Act, in that it includes manufacturers and producers of the finished products, component parts or raw materials and producers of agricultural produce. The definition also extends to importers where they bring a product into the EU for supply in the course of business.

In respect of contract, a claim may only be brought by a party or parties to a contract against another party or other parties to a contract.

A claim in negligence can be brought against a party who has breached their duty of care, and where that breach has resulted in damage to the claimant. Those who may be liable in negligence will be anyone who exercised control over the condition or supply of the product.

3. Are there differences if the buyer is a consumer or a professional buyer?

Under the Act an injured person can bring a claim for death or personal injury, loss of, damage to, or destruction of any item of property (other than the defective product itself), so long as the item of property is one intended for private use or consumption and was used by the injured person mainly for his own private use or consumption.

Claimants do not have to be consumers to bring a claim for damages in contract or negligence and such claims therefore have a broader scope than those made solely under the Act.

4. Can the seller or other potentially liable party exclude or limit its liability?

Under the Act, potentially liable parties can avoid liability fully if they are able to prove one of six defences under the Act. The Act prohibits exclusion of liability, so claimants may be able to find redress under the Act where other causes of action are precluded.

In terms of contractual claims, the terms implied by the 1980 Act cannot be excluded or restricted. Other terms which seek to exclude liability in a consumer contract may be regarded as unfair and therefore unenforceable. For example, liability for death or personal injury cannot be excluded or restricted in either consumer or commercial contracts.

Liability may be excluded or limited under the tort of negligence with proof of Contributory negligence on the part of the claimant or liability on the part of a concurrent wrongdoer.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Generally, a defendant should be sued in the country in which they are domiciled. However, proceedings relating to product liability will often fall within the special rules provided for in Article 7 of the Recast Brussels Regulation, which provides that, in the case of a tort, jurisdiction is granted to courts of the State in which the harmful event occurs. Therefore, if it can be shown that the harmful event caused by a defective product occurred in Ireland, a Non-EU producer may be sued in the Irish courts.



6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Under the 2004 Safety Regulations, the Competition and Consumer Protection Commission is empowered to take actions to ensure products on the market are safe, including the power to order recall of products. A person who fails to comply with a direction of the Competition and Consumer Protection Commission with respect to the recall of products is guilty of criminal offence and is liable on summary conviction to a fine not exceeding EUR 3,000, or to imprisonment for a term not exceeding three months, or to both.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There is no specific procedure or specific rules of evidence for defective products litigation. However when there is Personal Injury claim involved a claimant will have to make an application to the Personal Injuries Assessment Board for compensation before any Court proceedings can be brought. If the claim is not resolved by the Personal Injuries Assessment Board, it will issue an authorization to the Claimant enabling him/her to issue Court proceedings.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

In the case of a claim which involves a personal injury the Personal Injuries Assessment Board application, as mentioned above, must be made pre-issue of proceedings. In claims where there is no personal injury claim there is no such pre-action requirement, but unless there is a Statute of Limitations deadline approaching which requires immediate issue of proceedings it would always be advisable to send a pre-action letter to the Defendant Producer.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The typical remedy under statute and negligence will be Damages and the jurisdictional limits of the court in which the claim is brought will apply.

In contractual claims, the claimant may, under the 1980 Act, be entitled to repayment of the purchase price or replacement of the goods. Damages for breach of contract may be available.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The general rule is that "costs follow the event" i.e. the successful party will be awarded its costs and the unsuccessful party will bear the costs. This general rule applies to expert costs also. The Court does however have discretion in this regard and can make a costs order as it sees fit depending on the specific case and conduct of the parties. A successful party could for example be awarded only a portion of its costs if part of its claim was unsuccessful or unnecessary experts or witnesses were relied upon.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the Act the Claimant must prove that the damage was caused by a defect in the product.

In Contract and Negligence the burden of proof is also on the claimant.

12. Is the state of the art defence available?

The Act provides for the "development risks" or "state of the art defence". This defence is available to a defendant where the state of scientific and technical knowledge at the time the product was put into circulation was not such as to enable the defect to be discovered.

Even where this Defence exists, an action in negligence may still be successful due to the duty of care element in placing a product on the market before all the risks were known.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The Act sets out the relevant limitation period as being 3 years from the date on which the cause of action accrued or the date on which the claimant became aware of the damage, the defect and the identity of the producer

There is also a 10-year limitation from the date on which the producer first put the product into circulation.

The statute of limitations for contractual and negligence claims is 6 years from the date the breach occurred.

In cases where there is a personal injury claim there is a 2 year limitation period from the date the injury occurred. This time period is however extended during the time the claim is submitted to and remains in the Personal Injuries Assessment Board process.

Limitation periods may be extended in cases of a claimant with a disability or fraud by the defendant.

14. What are the rules for bringing a claim in a class/collective action?

There is no mechanism under Irish procedural rules for a class action and proceedings are generally initiated in the name of single parties. However, claimants may apply to court to unite several actions if they can be conveniently disposed of together by the court and provided that they meet certain limited criteria.

15. What is the average duration of defective products litigation?

The duration of defective products litigation will depend on a number of factors and in particular whether there is a personal injury claim involved. As outlined above in claims involving a personal injury element they can be lengthened by the required Personal Injuries Assessment Board application and assessment. In general however the average duration would be 18 months to 2



ITALY



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

A defective product claim may be brought in contract, in tort and/ or under Legislative Decree no. 206/2005 (“the Consumer Code”), which implemented in Italy the EU Product Liability Directive.

A claim in tort provides for the recoverability of the full damage, but the burden of the proof is on the claimant, while the brought in contract and under the Consumer Code provide for limited recoverability of the damage, but the burden of the proof is on the debtor (in contract) and on the manufacturer/importer/distributor if the defect is found within 6 months from the delivery of the product to the consumer. It follows that usually claims in contract, in tort and under the Consumer Code are brought in combination.

The Consumer Code gives a right to claim compensation against the manufacturer, or the distributor if the producer is unknown, of a defective product if it has caused damage to items different from the defective product, death or personal injury. Against these claims the defendant can oppose some limited causes for liability exclusions, but cannot limit its liability in advance, as the Code provides for a strict liability of the manufacturer or its comparable responsible parties.

Manufacturers, suppliers and retailers of defective products which caused the death or personal injury to any third party, may also be found criminally liable to a period of detention and to fine, under both the Italian criminal code and the Consumer code.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Consumer Code, the manufacturer and the importer within the EU borders may be liable and a supplier may potentially have secondary liability in case it does not disclose the name of the manufacturer within 3 months from a written request or in case it is difficult for the buyer to understand who exactly manufactured the defective part of a complex product.

A claim may be brought in contract against the retailer and within the time limits provided by law and by the sale contract, if it is more favourable to the buyer.

A defective product claim for negligence can be brought against a faulty party who presumably has breached a duty to take reasonable care and that breach has resulted in damage to the claimant. Usually this claim is brought against both the retailer and the manufacturer, as a precautionary measure.

3. Are there differences if the buyer is a consumer or a professional buyer?

A claim under the Consumer Code can be brought only by a consumer, who bought the product for private purpose and usage. Professional buyers shall bring a claim in contract or the tort of negligence under the Italian civil code.

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability provided by the Consumer Code cannot be early excluded by the sale contract. In a Court case, the manufacturer and its comparable responsible parties could exclude or limit their liabilities under the Consumer Code.

The retailer, especially in a business to business contract, could early limit its liability save the case of negligence or wilful misconduct. If a contract provides for such limitation this clause is void and null and is unenforceable.

Notwithstanding the negotiability of every contract, the satisfactory quality, the standard safety and the necessary fitting of the product for its purpose cannot be excluded or restricted.

Liability for death or personal injury, cannot be excluded or restricted, whether in a consumer or business to business contract.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The Consumer Code provides for the jurisdiction of the consumer in case of a defective product.

The liability in contract or the tort of negligence shall be claimed before the Court where the manufacturer, or at least its importer, has a domicile.

In case of death or personal injury, it is possible to sue the liable party before the Court competent for the place where the death and the injury have been suffered or where the heirs of the victim suffered the damage.

6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

They are respectively liable for damages suffered by the buyers and users due to a late recall campaign, both under criminal and civil rules.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

The defective product claim is subject to ordinary Court procedures and rules.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Solving a dispute with an Alternative Dispute Resolution (“ADR”) procedure is preferable and cost effective.

The available pre-action measures are

- i. the “Mediation” introduced in Italy from 2010: it is voluntary for defective product claims brought by a consumer or a non-consumer. It is compulsory only in the case –for whatever reason- the claim is brought against an Insurance company;
- ii. the “Assisted Negotiation”, introduced in 2014: it is compulsory for all claims up to EUR 50,000 save when the claimant is a consumer. In this latter case the Assisted Negotiation is on a voluntary basis. To the contrary when the claim for defective products is brought by a consumer association or under a class action this ADR procedure is compulsory.

In case the parties do not find an amicable solution with the above mentioned ADR procedures, the case can be brought before a Court which could negatively consider and charge the party who unreasonably refused to settle the claim.

Another available measure is the Pre-action Technical Expertise (“Accertamento Tecnico Preventivo”): the claimant asks the Judge to appoint an expert to ascertain within sixty days the defects and the anomalies of the product. The manufacturer and the retailer are usually both invited to take part in the judicial technical expertise proceedings and to appoint their own experts to join the Court one. The expertise report can be used by the parties in the following Court proceedings if a settlement is not reached meanwhile.

A warning letter shall be sent before issuing proceedings and before the ADR procedures. The claimant shall give at least 7 days and usually not more than 15 days to the debtor to provide remedies and solve the dispute out of Court.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

In a strict liability claim under the Consumer Code, damages are available to compensate the injured person for death, personal injury and damage to non-commercial property, although not damage to the defective product itself. Damage to property with a value below EUR 387 is not covered by this Code.

A claim in contract provides for the following available remedies depending on the classification of the defect: the right to have the product fixed or defective components replaced, the right to have a reduction of the sale price proportionate to the decreased value for the presence of defect and the right to repudiate the contract with the reimbursement of the full price and claim damages. For on-line sales consumers there is a 14-day window within which the consumer could reject the goods and claim a full refund.

The claim for negligence could bring a full damage recovery, as the Italian civil code does not exclude any head of damage. It follows that the manufacturer and or the retailer can be asked to compensate a claimant for direct and indirect damage and losses which are a direct and reasonably foreseeable consequence of the negligent act.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts’ costs?

The proceedings follows the ordinary rules according to which the loser shall bear the costs of the winner too and meet the Court tax. The legal fees awarded by the Court with the judgments are based on specific parameters (i.e. value of the claim, activity performed during the trial, etc.) provided by Law (Ministry Decree no. 55/2014).

Usually the expert costs are provisionally shared between the parties or anticipated by the party who requests the expertise, but at the end of the proceedings are borne by the loser.

Sometimes the Judges decide that each party shall bear its own costs if the loser is a consumer who acted against a big company.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the Consumer Code, the burden of proof is on the manufacturer / importer / distributor if the defect is found within 6 months from the delivery of the product, while it follows the ordinary rules if the consumer finds the defect after such period.

In a contract and negligence claims the burden of proof is on the claimant.

12. Is the state of the art defence available?

The Consumer Code specifically excludes the manufacturer /importer / distributor's liability in case the state of the art defence is available. The manufacturer shall consequently show that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control.

The claim in tort or for negligence do not specifically provides for the state of art defence, but in case the defendant is able to prove it, in some cases it would be possible to sustain that the defect was attributable to a fortuitous case, as it was not reasonably predictable when the product was under the manufacturer's control.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Under the Consumer Code the consumer has some different possibilities. Against the manufacturer / importer a notice of claim shall be sent within three years of the later of the accrual of the cause of action (the date the damage is suffered), or the date of knowledge of the claimant. This period can be interrupted and starts again if before the expiring three years the consumer renovates the warning letter. The overriding time limit against the manufacturer or the importer within EU borders is ten years from the date on which the defective product was introduced into the market. This 10-year period cannot be interrupted or suspended save by the service of a writ of summons. Against the retailer the consumer shall send a notice of claim within two months from the date

in which the defect was found and no later than 26 months from the date in which the product was delivered to the consumer.

The limitation period for a claim of personal injury or death is three years from the later of the accrual of the cause of action or the date of knowledge of the person injured in case the claim is brought under the Consumer Code, while five years if the claim is for negligence, save the criminal code provides for extended periods if the manufacturer / importer /distributor or retailer behaviour is considered a criminal offence.

The limitation periods for claims in contract in a business to business sale is eight days from the date in which the defect is discovered and in any case one year from the date of the product delivery, save it is extended by the contract provisions. Claims for negligence can be brought within five years from the date the damage is suffered. Such limitation periods can be interrupted and renewed by sending a notice of claim by a registered letter or certified email (only whether the claim was filed within eight days from the defect discovery in case of claims in contract).

14. What are the rules for bringing a claim in a class/ collective action?

Class action proceedings are available for product liability claims and they are ruled by Consumer Code, Part V. The existence of a class action does not preclude the possibility of a consumer to individually sue the manufacturer in case he has been damaged by the same violation and /or defect. The Consumer Association shall commence an alternative dispute resolution procedure before the Chamber of Commerce to amicably discuss the claim before commencing ordinary proceedings.

15. What is the average duration of defective products litigation?

Approximately 24 to 36 months for the first instance phase of Court proceedings. The Appeal phase could last approximately 24 months and, in case it is necessary to appeal the judgment before the Supreme Court of Cassazione it will last further 4 years approximately.



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I. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

There are a number of different provisions of the Dutch Civil Code (“DCC”) (*Burgerlijk Wetboek*) that provides for liability of defective products. The following distinction can be made between these different provisions:

- i. Strict liability for defective products: articles 6:185 through 6:193 DCC contain specific provisions on product liability. These articles are the Dutch implementation of the EU Product Liability Directive (85/374/EEC). Liability under these provisions is strict based. The types of damages which can be claimed are limited. The liability extends to damage caused by:
 - a. death or personal injuries (including mental damage);
 - b. the product to another object, which is usually intended for private use or consumption and which has been used by the person suffering the loss mainly for private purposes, with an excess or deductible of EUR 500 (article 6:190 (1) DCC).
- ii. Fault-based liability: the product liability provisions are without prejudice to all other rights of actions of the injured party (article 6:193 DCC). An injured party can thus also rely on the general provisions for a wrongful act (article 6:162 DCC). Liability under this provision is, in principle, fault based. However, as a basic rule, the Supreme Court (*Hoge Raad*) has accepted that a party acts wrongfully when it brings a product onto the market that causes damage when being used for the normal use intended for that product, even when that party lacks relevant knowledge (e.g. Supreme Court 22 October 1999, NJ 2000, 159).

- a. Under the general liability provisions, the damages which can be claimed are broader in scope, namely according to article 6:95 DCC financial loss and other loss, the latter to the extent that the law confers a right to damages. Article 6:96 DCC provides a further outline of what financial loss could be. Examples are the loss incurred and the profit deprived.
- iii. Contractual liability: a seller can also be held contractually liable for a defective product by the injured party (article 6:74 and, more specifically, for consumer sales, article 7:24 DCC).

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the product liability provisions, the producer, in principle, bears responsibility for a defective product (article 6:185 DCC). A ‘producer’ is defined in article 6:187 (2) DCC as: (a) the manufacturer of a finished product, (b) the producer of any raw material, (c) the manufacturer of a component part, and (d) any person who, by putting his name, trade mark or other distinguishing features on the product, presents himself as its producer.

Article 6:187 (3)-(4) DCC extends the scope of the meaning of ‘producer’ by providing that strict liability for defective products also applies to: (e) any person who imports a product into the European Economic Area for sale, hire, leasing or for any form of distribution in the conduct of his commercial activities, and (f) any supplier or importer of the product, in the event a producer cannot be identified, unless the supplier informs the injured party within a reasonable time of the identity of the producer or importer who supplied him with or who has imported the product into the European Economic Area.

Under the general liability clauses, such as a wrongful act (article 6:162 DCC) and/or a failure in performance of an obligation (e.g. article 6:74 DCC), other parties can be liable as well.

3. Are there differences if the buyer is a consumer or a professional buyer?

Only those who have suffered damage in the sense of article 6:190 DCC can bring a claim under article 6:185 DCC. The liability regulated by articles 6:185 through 6:193 DCC are limited to liability for death or personal injury, and damage to or destruction of property intended for private use or consumption and used as such by the injured party. This means that claims are generally pursued by consumers.

A person who has suffered damage due to a faulty product but whose damage is not listed in article 6:190 DCC can nevertheless pursue claims under tort law (article 6:162 DCC) or under contract law (article 6:74 and, more specifically, for consumer sales, article 7:24 DCC).

4. Can the seller or other potentially liable party exclude or limit its liability?

The liability of the producer based upon the product liability regime of article 6:185 DCC cannot be limited or excluded by contract, according to article 6:192 (1) DCC.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The Dutch provisions regarding jurisdiction in international cases are set out in articles 1 through 14 of the Dutch Code of Civil Procedure (“DCCP”). According to article 2 DCCP, the Dutch court has jurisdiction in cases which should be commenced

by a writ of summons and where the defendant is domiciled in the Netherlands.

Brussels I Regulation (no.44/2001) (“**Brussels I**”) applies in cases relating to civil and commercial matters and where a defendant is domiciled in a Member State. According to article 2 Brussels I, a person who is domiciled in a Member State should be sued in the courts of that Member State. A person can only be sued in another state if Brussels I provides for that.

Whether the Dutch courts are able to exercise jurisdiction over a matter outside the EU is determined under the rules of private international law. Overall in product liability cases, a claimant can bring proceedings against a defendant domiciled outside the Netherlands before a Dutch court if:

- i. the place of event giving rise to the damage is in the Netherlands, and/or
- ii. the place where the harmful event occurred is in the Netherlands.

6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

There is no obligation to recall defective products or pay damages for a failure to recall defective products under the product liability system of articles 6:185 through 193 DCC. Liability is only incurred under the special product liability regime for putting a defective product into circulation, not for neglecting to withdraw it. Furthermore, no statutory duty to recall exists in Dutch law. Nevertheless, not withdrawing a defective product can be regarded as unlawful under tort law (article 6:162 DCC).

An obligation to recall can also be imposed under administrative law. Pursuant to the so called Commodities Act (*Warenwet*) and the General Product Safety (*Commodities Act*) Decree (*Warenwetbesluit algemene*

productveiligheid), it is prohibited to bring products onto the market of which the producer or supplier knows or should know that they can be dangerous for humans when used for the intended use. When a party knows that it supplies dangerous products, it should inform the Food and Consumer Product Safety Authority (“**FCA**”) (*Voedsel en Waren Autoriteit*) immediately. The FCA has the authority to order or initiate the recall of such products, should the recall not be undertaken voluntarily or be done inadequately.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal procedures and rules of evidence are applicable.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

According to Dutch law all parties are required to bring forward all facts which could be relevant for the decision. Nevertheless, there is no obligation to disclose documentary evidence before court proceedings. However, at the request of a party (with a legitimate interest) and subject to strict conditions (to prevent ‘fishing expeditions’), a court may order the other party to disclose or submit certain specified documents (article 843a DCCP).

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Several remedies are available, either under the product liability or general liability provisions, such as monetary compensation and a declaratory relief. The nature and applicability of the remedy depends on the legal basis of the remedy. As a result, a distinction can be made between the following categories of remedies:

- General performance-based remedies: specific performance or other injunctions;
- Performance-based remedies: notably applicable in business to consumer relationships, allowing a consumer, party to a sales agreement, to demand delivery, repair or replacement of the defective product (article 7:21 in conjunction with article 7:22 DCC);
- Pecuniary remedies: compensation for damages; contractual penalties; and recovery of the other party’s breach of a judicially imposed penalty;
- General non-pecuniary remedies: declaratory relief; injunctive relief (including product recall); judicial termination; and annulment or nullification of an act or agreement.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts’ costs?

The costs of defective products litigation depends on the particular case in question. Costs shifting applies in Court proceedings. The successful party is entitled to court fees, incidental costs such as costs for expert evidence and legal fees (article 237 through 239

DCCP). The legal fees which need to be recovered are not the actual costs. According to the “court-approved scale of costs” a fixed amount will be rewarded, which is often far less than the actual costs. As a general remark, a court may always order a party to pay its own legal costs even if it is the successful party.

I 1. Who has the burden to prove that a product is defective? Is it always the buyer?

In principle, the party that relies on legal consequences following from the facts or rights invoked by that party has the burden of proving those facts and rights (article 150 DCCP). When it comes to general liability provisions, the claimant consequently has to prove fault, defect and damage. The product liability provisions contain a specific provision on the burden of proof, namely article 6:188 DCC. This article stipulates that the injured party has to prove damage, defect and the causal relationship between defect and (actual) damage. When the injured party has proven that a product is defective and that defect caused damage, the burden is on the producer to prove (amongst others) that the defect did not exist when the product was brought onto the market. Nevertheless, the court has several ways to meet the interest of the injured party, for example by reversing the burden of proof, which often seems to occur in liability cases.

I 2. Is the state of the art defence available?

Such defence is available. It is up to the producer to prove that the defect was not discoverable. The chances of success are low.

I 3. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The limitation period depends on the grounds invoked. These limits are statutory limitation periods that could result in unsuccessfully upholding a claim, as the court may deem the claim to be expired. Time limits can be interrupted by initiating legal proceedings or by sending a letter in which the claimant or injured party unambiguously reserves its right or title to performance, damages or any other remedy.

If the claimant relies on the product liability clauses, the claim will be time-barred three years after the injured party became or should have become aware of the damage, the defect and the identity of the producer (article 6:191 (1) DCC). In any event, the claim will be time-barred ten years after the product has been brought onto the market (article 6:191 (2) DCC).

Claims based on contractual obligations or wrongful act will be time-barred after five years following the day the injured party became or should have become aware of the information needed to commence proceedings such as the damage and liable party. In spite of the knowledge of the injured party, the claim will in any event collapse after the absolute limitation period – which in most cases is 20 years – has expired.

If a buyer concludes that the product did not fulfil its obligations under the agreement, he has to notify the seller thereof promptly after he has or should have discovered the shortcoming (article 7:23 DCC and article 6:89 DCC). If the injured party fails to comply with this requirement, its potential right lapses.

I 4. What are the rules for bringing a claim in a class/collective action?

A class action as known in the common law system does not exist in the Netherlands, but nevertheless, article 7:907 DCC enables an interest group to have a collective settlement on mass damages declared binding by the Amsterdam Court of Appeal. However, this requires a settlement between one or more interest groups and one or more liable parties. The settlement will be binding with regard to the persons whose interests might be represented by the interest group, unless such person opts out within a time frame set by the judge of at least three months.

I 5. What is the average duration of defective products litigation?

As an estimation, claimants should expect one year in regular proceedings, and 2-3 years in more complex proceedings to obtain a final judgment.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

In Norway, defective product claims may be brought in contract and the tort of negligence and/ or under the Product Liability Act 1988 (“the Act”), which implemented the EU Product Liability Directive.

Product liability applies to the liability of the producer and/or a distributor/ importer for damage caused by a defect in a product produced or supplied.

The Act provides a strict liability claim for damage caused by a defect in the product, making the producer or supplier/importer objectively liable for any damage caused by a safety defect in the product. This does not apply if the producer / supplier / importer can prove:

1. That the producer / supplier / importer did not place the product in the market as part of his ordinary business activities;
2. That the defect was not present at the time when the product was placed in the market and the defect should neither have been prevented or warned about, or
3. That the defect is due to the product being in compliance with mandatory regulations issued by public authority.

The Act cannot be waived by prior agreement to the detriment of the injured party.

Outside the Act, a claimant will have to prove fault or negligence on the part of the producer (subjective liability). In this respect, the Act covers only claims for damage to persons or things which are normally meant for a consumer or used by a consumer. Damages to property in business to business purchases are not

covered by the Act wherefore claims must be based on contract and/or tort. The defect or loss of the defective product itself or a pure economic loss are not subject to product liability but may be subject to a claim in contract or based on the Consumer Protection Act 2002 or the Sale of Goods Act 1988.

negligence.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the Act, the producer is objectively liable. Also, the distributor and/or importer may be held liable.

In respect of a contract claim, generally a claim may only be brought by one party to a contract against another party.

A claim in negligence can be brought against a party who has breached a duty to take reasonable care and that breach has resulted in damage to the claimant. Outside the Act, suppliers, retailers and other intermediaries may be liable towards the claimant.

3. Are there differences if the buyer is a consumer or a professional buyer?

The Act covers claims for damage and compensation related to personal injury and loss of provider. Also covered is damage to movables if the damaged item in question was of a type ordinarily intended for private use or consumption and was used by the claimant mainly for his own private use or consumption. Non-consumers may therefore claim compensation for death or personal injury, but claims for damage to property may only be brought by consumers.

Outside the Act, both consumers and professional parties can bring claims for damage to property in contract or



4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability for the producer can only be excluded or restricted under the Act, if one of the exemptions outlined under no. 1 above are at hand.

In respect of a contractual claim, general contractual rules apply. Generally, other terms which seek to limit or exclude liability in a contract may be regarded as unfair and therefore unenforceable. Even in business to business contracts there is a tendency to minimise the extent of a clause limiting a party's liability. In contracts with consumers, one cannot on beforehand agree that a consumer should have lesser opportunities to obtain compensation than the law prescribes.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Under the Act, the importer of a defective product may be held liable. The distributor of an imported defective product may only be held liable if the importers or intermediary's name and address in Norway are not provided within reasonable time.

Regarding the jurisdiction of the law suit, ordinary jurisdiction rules apply. Generally, the courts of Norway will have jurisdiction if the claim has adequate connection with Norway.

If a claimant suffers injury in Norway, the Courts of Norway is likely to have jurisdiction over a claim on the basis that the harmful event happened in Norway

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

With regard to criminal liability, the failure of the manufacturers, importers and distributors to notify the authorities in cases where they know or should have known that a product they have made available to consumers is unsafe, may under the Product Control Act 1976 result in fines and/or imprisonment, unless higher punishment is implied by other legislation. Criminal liability may also apply if a manufacturer, importer or distributor breaches its duty of care to prevent an unsafe product if they do so with intent or gross negligence.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal procedures and rules of evidence apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Before issuing any court proceedings, the claimant must send a letter of notification to the defendant. Failure to send such notification will not result in rejection of the claim, but it might become significant as to which of the parties will bear the litigation costs

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The damage to the defective product itself can be compensated in accordance with the normal rules under the Norwegian Sale of Goods Act, the Consumer Protection Act or the UN Convention on Contracts for the International Sale of Goods (CISG). The buyer of a defective product may also claim compensation for his indirect losses and loss of profit. Often, the seller will exclude liability for indirect losses in the sales contract.

In addition to compensation, subject to the Sale of Goods Act, the buyer of a defective product can elevate the purchase in its entirety if the defect is material, or the buyer can claim correction, replacement or a proportionate discount of the purchase sum equal to the lesser worth of the product.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depend on the particular case in question. Costs-shifting applies in Court proceedings. Experts' cost is payable by the party who calls for the expert witness. The winning party is generally awarded costs payable by the losing party, and experts' costs are generally a part of the litigation costs. The Court may derive from this main rule.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the Act, the burden of proof is on the claimant to establish that the product was defective, that all loss occurred and that the defect did cause the loss.

In a contract and negligence claim, the burden of proof is also on the claimant.

12. Is the state of the art defence available?

In addition to other available defences, the state of the art, or development risks, defence is available. It is a defence to show that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

An action under the Act must be brought within three years of the date of the Claimant's knowledge of damage or the date when he should have gained such knowledge. The overriding time limit is ten years from the date on which the producer brought the defective product into circulation. The limitation period for compensation for personal injury may be 20 years or longer depending on the circumstances.

The limitation period is interrupted when the claimant takes legal action against the debtor.

14. What are the rules for bringing a claim in a class/collective action?

Class action proceedings are available for product liability claims, in so far as there are procedural mechanisms available that enable claims to be considered in a grouped fashion.

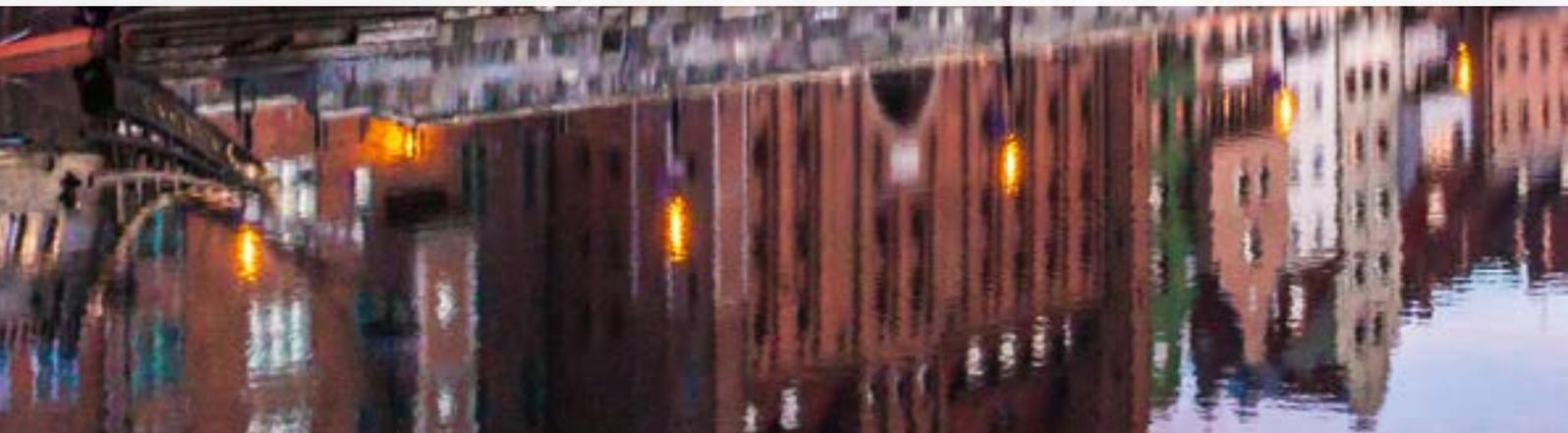
If two or more are liable for the same claim, they are usually jointly and severally liable, but the court may decide that a liable party shall indemnify another liable party in the internal economic relation between such jointly liable parties.

15. What is the average duration of defective products litigation?

Approximately 6-8 months on average (city courts) from a claim being issued at Court. Generally, longer if there is a Group Litigation Order.



POLAND



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Liability for defective products is regulated by provisions of the Polish Civil Code (“**The Code**”).

Generally speaking, the Code stipulates the following types of liability:

1. statutory warranty for defects (strict liability);
2. statutory contractual liability (fault/negligence);
3. statutory liability for hazardous product, implementing the EU Product Liability Directive (strict liability);
4. optional contractual liability, if a contract is established (e.g. guarantee).

The specific claims depend on the type of liability. In principle, the following may be available to the purchaser:

1. repair
2. delivery of product free of defects
3. reduction of price
4. rescission of contract
5. compensation for damage.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

In general, the doctrine of privity of contract determines who is liable for defects. Therefore, in principle the liability is on the other party to the contract, i.e. the seller.

As regards hazardous product, however, this principle is modified. Thus, liability is placed on the producer, anyone who held themselves out to be the producer and/ or an importer.

Only if the above mentioned persons are unknown, liability shall be borne by the seller, unless the seller provides the aggrieved party with name and address of one of the above and - in the case of imported goods - an importer.

A manufacturer of material, raw material or a component part of a product shall bear a liability equal to that of a producer, unless the only cause of the damage was a defective construction of the product or instructions given by the producer.

If the seller cannot indicate the producer or anyone who held themselves out to be the producer and/ or an importer, he shall be released from liability if he indicates the person from whom he himself has purchased the product.

3. Are there differences if the buyer is a consumer or a professional buyer?

Yes, as far as warranty is concerned.

Generally, the scope of available remedies is wider if the buyer is a consumer.

Second, warranty cannot be limited or excluded, unless specific provisions allow that (in non-consumer context warranty can be freely modified or outright excluded).

Third, the law provides for several important exceptions or presumptions that help consumers in potential litigation, e.g. if the defect manifests itself within one year following the sale, it shall be presumed to have existed at the transfer of risk from the seller to the buyer.

4. Can the seller or other potentially liable party exclude or limit its liability?

With regard to statutory warranty, yes (please see above).

With regard to general contractual liability, yes, except for intentional acts or omissions.

Limitations and exclusion of liability pertain only to damage to property.

Liability for a damage caused by a hazardous product may not be excluded or limited.

The producer shall not bear any liability if the hazardous properties of a product were revealed after it had been introduced to trade, unless they have resulted from a cause inherent in the product beforehand. Nor shall the producer bear any liability if the hazardous properties of the product could not be foreseen on the basis of the state of the art in science and technology at the time of introducing the product to trade or if the properties resulted from the observance of provisions of law.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The place of manufacture does not affect consumer rights.

If defendant is domiciled in Poland, the Polish Courts have jurisdiction and it does not matter if the manufacture, marketing and damage all occurred outside Poland.

If a claimant suffers injury in Poland, the Polish Court is likely to have jurisdiction over a claim on the basis that the harmful event happened in Poland.

Situations where the claim is subject to other's country jurisdiction are regulated by the EU provisions on jurisdiction or by the bilateral agreements.



6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Failure by producers and distributors to withdraw the defective product from the market can lead to fines of up to PLN 100,000, under the General Product Safety Regulations 2003.

Depending on the circumstances, such acts or omissions could also lead to criminal liability.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normally available Court procedures apply.

However, as mentioned above, law favours the buyer-consumer by providing for important presumptions that shift the burden of proof to the defendant.

There may be other presumptions favourable to the plaintiff, depending on the type of liability.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Given that warranty liability is strict liability, there are many time limits that must be observed in order to preserve claims against the seller. Suffice to say, that the purchaser should immediately notify the seller of the defects. In principle, warrant expires after 2 years following the sale, 5 for real property.

A statement of claim should also be preceded by call for settlement.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Please see point 1 above.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

Generally, a statement of claim is subject to a court fee of 5% of the demand (in case of monetary claims).

Initially, litigation costs are on the plaintiff.

In Poland, the law is the English rule, i.e. ultimately the loser pays all legal costs, that is court fees and winner's attorney's fees.

However, since the reimbursement of attorney's fees is regulated, the amount actually reimbursed may be dramatically less than the actual cost of a lawyer. Thus, in reality often times the American rule is the law in action, i.e. a party pays its own attorney's fees irrespective of the outcome.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Generally, the burden of proof with respect to all elements of the claim is on the claimant. This includes the existence of defect.

12. Is the state of the art defence available?

The state of the art defence is available only in the context of liability for hazardous products.

The producer shall not bear any liability if the hazardous properties of a product were revealed after it had been introduced to trade, unless they have resulted from a cause inherent in the product beforehand. Nor shall the producer bear any liability if the hazardous properties of the product could not be foreseen on the basis of the state of the art in science and technology at the time of introducing the product to trade or if the properties resulted from the observance of provisions of law.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Generally, an action in tort must be brought within three years following the damage and the knowledge of who the tortfeasor is.

In B2B context, the general statute of limitations is 3 years.

Otherwise, the statute is currently 10 but soon it will be reduced to 6 years.

These cannot be modified in any way. The lapse of the statute can be frozen (under extraordinary circumstances) or interrupted, e.g. by acceptance of liability by the debtor.

Other than that, under warranty provisions the buyer must give notice, otherwise he may lose his claims (please see above).

14. What are the rules for bringing a claim in a class/collective action?

Class action proceedings are available for product liability claims, in so far as there are procedural mechanisms available that enable claims to be considered in a grouped fashion i.e. in cases where claims are of one kind, there are at least 10 claimants and the claims are based on the same factual basis.

15. What is the average duration of defective products litigation?

Duration depends heavily on the location of the court and the availability of court-appointed experts. In general, obtaining a judgment from the court of first instance may take between 16 to 30 months.



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I. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

The liability of defective products is regulated by the:

- Portuguese Civil Code (Articles 913 to 922) which can be claimed by non-consumers;
- Sale of Consumer Goods and Guarantees Law (Decree-Law No. 67/2003, dated of 8 April, as subsequently amended) which is only applicable should the sale is made from a professional to a consumer;
- Consumer Protection Law (Law no. 24/96, dated of 31 July, as subsequently amended) which is only applicable should the sale is made from a professional to a consumer;
- Product Liability Law (Decree-Law No 383/89, dated of 6 November, as subsequently amended) applicable should the producer is responsible for putting the products into circulation;
- Commercial Acts Code (Law Letter dated of 28 June 1888, as subsequently amended) only for the purpose of determining the deadline to notify defects and applicable to non-consumers (dealt in more detail below).

Portuguese Civil Code

In accordance with the Portuguese Civil Code, the claims for liability of defective products that may be brought against the seller are:

- annulment of the sale contract, based on error or willful deception;
- compensation in the case of a seller's willful deception (note that in case there is no fault/negligence of the seller, such compensation is not due);
- a reduction on the price;
- repair or replacement of the product (except in the case where the seller was unaware of the defect of the product, however should there is the obligation to provide a warranty that does in

fact oblige the seller to repair or replace the product irrespectively of fault/negligence or error).

Consumer Goods and Guarantees Law and Consumer Protection Law

Based on Consumer Goods and Guarantees Law, consumers may claim the repair of the product, its replacement, reduction of price or annulment of the sale contract and may exercise any of these rights unless it is considered that the consumer is abusing its rights, e.g. claiming for a replacement when the product is reparable will be deemed an abusive enforcement of a right.

In accordance with the Consumer Protection Law, consumers are entitled to compensation for property and non-property damage arising from the supply of defective products or services.

If the consumer chooses to claim the defect to the producer (or his representative), he can only demand repair or replacement and cannot impose a price reduction or rescission of the contract.

Producer, for the purpose of the Consumer Goods and Guarantees Law can either be the manufacturer, the importer for the EU or any other entity that poses as the manufacturer by placing its identification, trademark or other distinctive sign on the product.

A producer's representative is any entity that acts in the capacity of commercial distributor for the producer and/or an authorised post-sale services centre. Independent retailers will not be deemed and producer's representatives.

Product Liability Law

This Law entitles legal persons to claim compensation against the producer who puts a defective product into circulation; regardless of the fault (this is a strict liability legal provision which is deemed objective liability in the Portuguese law which means that the injured party does not need to prove that the producer's behaviour is unlawful). These claims will be based on death or injury or damages caused in other objects either the defective product, provided that the product is envisaged to private usage.

Producer, for the purpose of the Product Liability Law is the manufacturer of the finished product or any material used to produce it or any other entity that poses as the manufacturer by placing its identification, trademark or other distinctive sign on the product. The importer of a product to the EU is also deemed a producer.

In case the manufacturer of a product established in the EU, or the importer for the EU, are not identified on the product, the supplier of the product may be deemed as the producer in terms of having to assume liability.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

All of the categories mentioned are potentially liable to compensate a claimant in such claim.

Non-consumers can only make a claim

- i. before the seller or
- ii. from the producer/manufacturer if there is a warranty and under the terms thereof.

Consumers may either make a claim before the seller or the producer/producer's representative (please refer to the above answer in order to determine who can be deemed a producer or his representative for defective consumer goods liability).

For the objective product liability, the liability lies with the producer who can be either the manufacturer, the importer or the supplier (please refer to the above answer in order to determine who can be deemed a producer for product liability claims).

3. Are there differences if the buyer is a consumer or a professional buyer?

Yes. A professional buyer is a non-consumer and therefore cannot invoke the Consumer Goods and Guarantees Law and Consumer Protection Law neither the Product Liability Law.

Furthermore, a professional buyer must observe a shorter deadline (8 days only, since verification of the defect as foreseen in the Commercial Acts Code, as opposed to 6 months provided by the Portuguese Civil Code) to claim for a defective product.

4. Can the seller or other potentially liable party exclude or limit its liability?

Excluding or limiting liability for defective products would be possible to agree between professional parties as long as death, serious injuries and intentional conduct is not excluded or limited and such exclusion or limitation is not deemed as offending the laws of the country.

Regarding relationships with consumers, the liability protection are statutory mandatory legal provision which cannot be excluded nor limited.

Furthermore, strict objective product liability cannot be limited or excluded in any way, irrespectively of the nature of the injured party.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The seller is always liable, before a consumer, for any defect in the product.

In order for the manufacturer to be liable, there must be an original defect in the product (manufacturing defect).

However, the manufacturer may not be liable if:

- the defect results from misuse;
- has not placed the product on the market;
- considering the circumstances, the defect did not exist at the time when the product was put into circulation.
- did not manufacture the product for sale or for profit;

- more than 10 years have elapsed since the date of placing the product on the market.

If the manufacturer is from another country and has not put the product in circulation out of his jurisdiction/ or in the EU, then he is not liable.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

In accordance with the legal regime on the safety of products placed on the market (Decree-Law no 69/2005 of 17 March), the fact that manufacturers and distributors do not notify the authorities of an unsafe product they have placed on the market may lead to the application of fines that can go from EUR 7,480 up to 24,940 if it is a legal person.

Manufacturers and distributors also bear the cost of withdrawal operations.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/ summary procedures and rules of evidence apply?

Normally available Court procedures apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Yes, the buyer must send written communication notifying the defect before issuing any proceedings.

Portuguese Civil Code

Notification of the defect must be made up to thirty days after the defect is known and within six months after delivery of the product. If the product is a real estate, the terms are one and five years, respectively.

If the defect is not eliminated, then the buyer can proceed with legal action but has a period of six months to do so, after which its rights expiry.

Consumer Goods and Guarantees Law

If a consumer is involved, the complaint must be made to the seller (or, as mentioned above, directly to the producer) within two months, in the case of movable property, or within one year, in the case of real estate.

A lawsuit aiming at enforcing consumers rights in the event of a product defect must be filed within two years from the notification of the defect if it is a movable asset. In case of real estate, the term is three years. After this period, the consumer cannot claim its rights.

Commercial Acts Law

If the sale is between traders (trading buy/sale), the deadline for the buyer to report the defect of the product is eight days. For starting a lawsuit, the Portuguese Civil Code provisions are applicable.

Product Liability Law

An injured party must file a lawsuit within three years from the date on which it became aware of the damage, the defect and the identity of the manufacturer.

After 10 years of the product being put into circulation, no lawsuit can be brought against the producer. Pending lawsuits will still continue to be valid.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

As mentioned above, the buyer/consumer may choose to claim (with the caveats mentioned above):

- repair of the product;
- replacement of the product;
- adequate price reduction;
- contract cancellation (in this case, the consumer returns the product to the seller, who, in turn, must return to the consumer the amount paid).

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depend on the particular case in question (the official fees paid to the Court depend on the amount of compensation that is sought). The winning party is generally awarded their Court costs payable by the losing party.

Experts are born by each party and may or may not be included in the Court's costs that are compensated by the losing party. It depends on how the experts were used by the party or summoned by the Court.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Portuguese Civil Code

The buyer has the burden of proof that the seller was knowingly selling a defective product and has to prove that it has notified the defect within the deadline. Should the product be protected under warranty, the buyer has the burden of proof that the product is malfunctioning.

Consumer Goods and Guarantees Law

The consumer benefits from the presumptions established by the law that any defect that occurs during the two years period counting from delivery of the product is legally presumed as being present at the time of the sale.

Therefore the burden of proof that the product was/is not defective lies with the seller/producer.

Product Liability Law

The injured party has to prove the defect, the injury and the cause-effect connection between the defect and the injury. Producer's guilt is presumed and does not need to be proven.

12. Is the state of the art defence available?

A state of the art defence is only available under Product Liability Law.

A product is not considered defective, and therefore the manufacturer will not be liable, should the state of the scientific and technical knowledge at the time the product has been put into circulation did not allow to detect the defect.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Please find the answer in point 8.

When the buyer is a consumer, in case a mediation or negotiation procedure is started, or during the time while the product is being repaired, the deadlines set out in point 8 are frozen.

Should a consumer be offered a replacement product, the replacement product shall be granted a new warranty period of two years, if it is movable, or five years if it is a real estate property.

14. What are the rules for bringing a claim in a class/collective action?

Class action proceedings are available for product liability claims, insofar as there are procedural mechanisms available that enable claims to be considered in a grouped fashion.

15. What is the average duration of defective products litigation?

We cannot provide this estimation. It depends on the Court in question (in Lisbon and Porto, legal proceedings take longer, however there are Courts of other locations like Sintra and Loures that are known for being extremely slow). Out-of-court settlement mechanisms for consumer disputes will be faster.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

With respect to the Slovak Republic, there are two regimes that have to be considered – a regime applicable under Slovak Civil Code (Act No. 40/1964 Coll. as amended) and under the Commercial Code (Act No. 513/1991 Coll. as amended).

Slovak Civil Code:

The seller is liable for defects the product contains at the moment of handover to the purchaser. In case of used products the seller is not liable for defects caused by previous use or by wear and tear. In case the product is sold for a decreased price the seller is not liable for the defects, for which the price has been decreased. If a product is defective, the purchaser has the following rights:

- The right to have the defect repaired free-of cost and in time;
- The right to request the defective product to be exchanged with one without defects;
- The right to withdraw from the contract if the defects on the product are repairable, but defects reappeared even after repairs or due to several defects hindering the use of the product;
- The right to withdraw from contract in case the defect hinders the use of the product, is irreparable or if the seller represented the product is without defects;
- Claim for compensation of expenses that were necessary to apply the rights due to defective products;
- General claim for compensation of damages;

Slovak Commercial Code:

The Commercial Code applies between entrepreneurs and contains rules that are in some respect different to those under the Civil Code.

The claims of the purchaser depend upon the level of violation of the purchase contract.

A contract is violated in a substantial way if the party violating the contract knew at the moment of its conclusion or was able to predict, taking into account the purpose of the contract resulting from its contents or circumstances, that the other party would not be interested in the fulfilment of obligations from such a breach of contract.

If the delivery of products with defects represents a substantial violation of the contract, the purchaser may:

- request the delivery of replacement for the defect product or the delivery of missing goods and removal of legal defects;
- request the repair if reparation is possible;
- request a reduction in the price or
- withdraw from contract.

In case of a non-substantial violation, the purchaser may request a reduction in price, the delivery of missing products and the removal of defects.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Civil Code: The rights resulting from liability for defects are applied at the retailer. However, if the warranty deed contains the entity authorised to provide for repairs that is closer for the purchaser, the purchaser may choose to apply for the rights at such authorised entity.

Commercial Code: In principle applied at the seller.

3. Are there differences if the buyer is a consumer or a professional buyer?

Yes, the consumer follows the principles set out by the Civil Code and the Act on the protection of the customer (Act No. 250/2007 Coll. as amended) and his protection is on the highest level – the right to be informed in details, the right for protection against unacceptable conditions, the right to seek protection at organizations for the protection of consumers etc.).

A professional buyer usually (but not exclusively) enters into purchase contract under the rules set out by the Commercial Code, which is less protective and is governed more by the principle “the law belongs to the vigilant”.

4. Can the seller or other potentially liable party exclude or limit its liability?

In general yes – e.g. if the seller did not place the product on the market, if the defects were caused by the purchaser by misuse of the product etc.

The Commercial Code includes many other principles where the liability may be limited or even excluded.

The seller is not liable for a product's defects that the purchaser was aware at the moment of conclusion of the contract or should be aware of considering the circumstances of the conclusion of the contract.

The seller is neither liable for a product's defects that were caused by the use of materials provided by the purchaser if the seller, even despite professional care, was not in the position to notify the purchaser that the materials are not suitable or if the purchaser was notified and insisted on the use of the material.

Obviously, there are more similar rules that limit or even exclude the liability of the seller.



5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

In principle, all products that are manufactured outside EU have to comply with legal and technical norms prior entering the EU market. Therefore, the consumer has the same rights as with respect to products produced within the EU.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

In general, once a product is identified as dangerous by the respective authorities, the manufacturer and/or retailer are obliged to provide for the recall of such products from the market. In case of default to pursue this principle, they can be held liable for damages and fined by the respective authorities.

Please note that the Slovak legislation sets rules for different kinds of products by different legal Acts – e.g. matters related to food products are governed by Act. No. 152/1995 Coll. on food products as amended or matters related to toys are governed by Act. No. 78/2012 Coll. on toy safety as amended.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

In case of consumer litigation (litigation between consumer and provider, resulting from consumer contract or in relation to such contract) several strict rules of procedure do not apply, such as concentration of procedure (the consumer is allowed to present

evidence and statements at the latest prior to the ruling of the court), judgement for default cannot be issued if in disadvantage to the consumer, the plaintiff cannot modify the claim against the consumer etc.

Otherwise general rules of civil dispute procedure apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Under the Civil Code, the purchaser must notify the seller of the product upon delivery, he would have to carry the burden of proof to persuade the court that at the time of delivery the product was defective and of danger to the purchaser.

However, the Commercial Code is a bit stricter. In principle, the failure to notify the defects limits further steps of the purchaser (e.g. in case of failure to notify defects without undue delay after takeover, the purchaser cannot withdraw from contract).

Even if a warning letter is not a condition to present a claim at the court, the failure to notify product defects may have an impact on the proceedings in front of the court as well. For example, if the purchaser omitted to inspect the product upon delivery, he would have to carry the burden of proof to persuade the court that at the time of delivery the product was defective and of danger to the purchaser.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Please refer to point I in this respect.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

There are no special conditions for defective products litigation. The court fee is set as 6% of the value of the dispute. The costs of the procedure (including the costs of expert opinions) are charged to the party that lost the case. Should both parties to the dispute achieve partial success, the costs of the procedure are distributed on a pro rata principle based on the extent of success of the parties.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The burden of proof lies on the plaintiff, who has to prove the defect on the product.

However, if respective state authorities (e.g. the Slovak Trade Inspection) identify a product as defective and/or dangerous, the plaintiff may rely on such information.

12. Is the state of the art defence available?

Under the Civil Code, if a defect on the product is identified later on, the purchaser has the right for reasonable reduction of purchase price; however if the defect causes the product to be unusable, the purchase has the right to withdraw from such contract.

The Commercial Code does not contain such regulation. The basic principle is the duty of the purchaser to inspect the product upon takeover in order to identify potential defects and apply respective rights. If the product fulfils all of the qualities and functions as defined in the contract and the later identified defect does not hinder the use of the product, then the state of the art defence will probably be applicable.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The defects must be notified to the seller without any delay and the applied rights of the purchaser (price reduction or withdrawal) within 24 months from the takeover of the product (different periods apply for food products etc.).

Notification of defects must be applied within the warranty period, which may be agreed upon with the seller or is limited with respect to the character of the product. The period between the notifications of the defects until the product is repaired are not counted into the warranty period.

The Commercial Code contains several rules with respect to hidden defects or defects that the purchase should have noticed if acting with due care, but the key principle is the same.

In principle it is possible to extent deadlines upon agreement between the purchaser and seller.

Under Commercial Code, if the purchaser

- i. fails to notify the seller without any undue delay on the defects once the defects were identified or
- ii. should have been identified at the takeover if the purchaser would have acted with due care or
- iii. the defects could have been identified even later after the takeover, but not later than 2 years, and the seller would object that the purchaser failed to notify in time, the court would not take such objection into consideration, which would have impact on the judicial decision.

14. What are the rules for bringing a claim in a class/collective action?

General rules of civil dispute procedure apply.

15. What is the average duration of defective products litigation?

This varies on a case-by-case basis, even though since the new Act No. 160/2015 Coll. on Civil Dispute Procedure there is a strong emphasis to shorten the court procedures as much as possible. In principle the Act on Civil Dispute Procedure leads the court to take the decision even on the very first hearing, if possible. On the other hand, in complex cases (with many expert opinions and proofs), the duration may take years (taking into account also the possibility of an appeal).



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

In Slovenia, defective products liability is regulated by the general Code of Obligations (“CO”) and consumer protection legislation, i.e. the Consumer Protection Act (“CPA”). The latter also implemented the EU Product Liability Directive. However, due to the settled case law of the European Court of Justice with respect to the maximum harmonization effect of the EU Product Liability Directive, the CO cannot be used in relation to matters pertaining to product liability which are regulated by the CPA, despite the fact that it envisages a more favourable regime for injured parties. Therefore, if the matters in connection with product liability are envisaged by the CPA, they shall be construed in accordance with the CPA and not the CO. This also stems from settled case law of Slovenian courts. The CPA gives a right to claim compensation against the producer of a defective product, if the defect has caused death, personal injury or harm to human health or if the defect has caused damage to another thing. The CPA provides a strict liability for defective products. Namely, the CPA envisages that an injured party shall only prove a defect, damage and causal link between them.

Notwithstanding the above, an injured person can additionally claim compensation in accordance with a contract, but such claims refers to damage which is not covered under the CPA (i.e. under the EU Product Liability Directive), e.g. damage on the product itself, non-material damage, etc.

Finally, compensation for damages, which are not covered by the CPA within the meaning of the EU Product Liability Directive, can also be claimed pursuant to liability based on fault.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

In accordance with the CPA, the manufacturer is primarily liable to compensate a claimant with respect to a defective product. In addition to the manufacturer, the importer is secondarily liable to compensate a claimant, where a producer cannot be identified.

In the event that the producer or importer cannot be identified, each supplier of the product shall be treated as the producer unless it informs the injured person, within a reasonable time, of the identity of the producer or importer or of the person who supplied him with the product. Therefore, suppliers are only secondarily liable for compensation.

3. Are there differences if the buyer is a consumer or a professional buyer?

In principle, there are no differences between situations, where a buyer is a consumer or a professional. Namely, Article 11.a of the CPA sets forth that rights from this chapter (i.e. Chapter 2) also belongs to the persons, who cannot be deemed consumers in accordance with the CPA. This provision is a consequence of generally accepted dichotomy between “general” and consumer legislation, pursuant to which the regime under the CPA is not applicable to B2B or C2C relationships.

However, damage to another thing shall be only covered by the producer in the event that such a thing is commonly intended for private use and it was also predominantly used for such purpose by the injured person. Therefore, non-consumers may claim for death or personal injury, but claims for damage to property may only be brought by consumers.

4. Can the seller or other potentially liable party exclude or limit its liability?

In Article 11, the CPA expressly sets forth that liability under the CPA cannot be contractually limited or excluded. This means that liability cannot be contractually limited with respect to damage caused by death, personal injury or harm to human health or damage to another thing which exceeds EUR 500 (i.e. with respect to legally protected damage under the EU Product Liability Directive).

Limitation of other liability shall be asserted in accordance with the OC. The amount of liability which is not envisaged by the CPA can be contractually limited to the extent that the limitation is not obviously disproportional with the amount of damage. Pursuant to the OC, contractual liability is in any event limited with principle of predictability.

Slovenia did not implement the limitation envisaged in Article 16 of the EU Product Liability Directive.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Even if the products are manufactured outside the jurisdiction of the Republic of Slovenia or the EU, the consumers maintain their rights under the CPA or EU Product Liability Directive as foreign manufacturers selling their products on the EU market should also respect the relevant provisions. Moreover, according to the CPA any importer or distributor shall be secondarily considered a manufacturer and therefore liable for a defective product in the event that the producer cannot be identified (as explained above). In relation, thereof, the importer is any person who imports the product into the customs territory of the EU, and the distributor

of the product that is not manufactured in the Republic of Slovenia is any trader who first placed the product on the market in the Republic of Slovenia.

Additionally, the Slovenian courts are competent for the enforcement of consumer's rights under the CPA. Therefore, when a consumer has a right to claim compensation under the CPA against the manufacturer (or against the importer or distributor) of a defective product, i.e. when such defect has caused death, personal injury or harm to human health or when a defect has caused damage to another thing, the consumer has several options in regards the competent court. Namely, in a case of the manufacturer's liability in addition to the court of a general territorial jurisdiction the competent courts are also the court on the territory of which the tort has been committed, the court on the territory of which the damage has occurred, and if damages involve death or serious bodily injury the court on the territory of which the claimant has its permanent or temporary residence.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

In the Republic of Slovenia, the liabilities of manufacturers and retailers for omitted or delayed recall campaigns are regulated with the Act Regulating Technical Requirements for Products and Conformity Assessment (ARTRPCA) and the General Product Safety Act (GPSA).

According to the aforementioned acts, any failure by manufacturers and retailers to notify the competent authorities (in Slovenia the competent authority is every competent inspector) of an unsafe product they have put on the market or any delayed recall of an unsafe product is an offence and can lead to the fines as provided under Article 18 of the ARTRPCA and Articles 21 and 22 of the GPSA.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There are no special procedural arrangements with respect to defective products litigation. The latter is conducted in general civil procedure under the Civil Procedure Act.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

No, sending a warning is not a procedural requirement for the initiation of procedure. As in any other litigation procedure, the competent court may grant an interim injunction to preserve the position (subject to general conditions for interim injunction envisaged by the Slovenian law).

Otherwise, the CPA does not envisage any other pre-action measures and the procedure is led in accordance with the Civil Procedure Act.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

In the context of strict liability, the CPA gives a right to a person to claim compensation against the producer of a defective product, if the defect has caused death, personal injury or harm to human health or if defect has caused damage to another thing. In the latter case, a producer is obliged to pay

damages caused on other things if the damaged item is commonly intended for private use and the person has predominantly used it for private use, whereas the injured party's obligatory participation in the damage amounts to EUR 500.

With respect to damages, not covered by the CPA within the meaning of the EU Product Liability Directive, the buyer has also claims deriving from contractual relationship with the seller (a purchase contract), under which the seller is obligated to hand-over to the buyer an item, which is at the time of hand-over free of any material defects (contractual liability of the seller for material defects). In this regard, the buyer has the following claims, if the seller does not hand-over to the buyer an item free of material defects:

- i. a claim for repair and claim for replacement (fulfilment claim),
- ii. a claim for a reduction of purchase price,
- iii. a claim for withdrawal from the contract and
- iv. a claim for compensation for damage. In principle,

the buyer is free to decide, which claim he/she will follow (except that the buyer cannot withdraw from the contract without leaving the seller an appropriate deadline to rectify a defect), whereas a damage claim may be combined with all other claims. The CO and CPA determine different deadlines (e.g. guarantee period) for consumers and non-consumers.

With respect to damages, not covered by the CPA within the meaning of the EU Product Liability Directive, an injured person can also claim compensation for damages pursuant to liability based on fault.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depends upon the particular case in question. Costs to be borne by the party are primarily court fees and legal costs (and potentially costs for experts that a party proposes). The general rule for reimbursement of costs is that the winning party is generally awarded its costs payable by the losing party (in part in which the party succeeded with its claim). Legal costs (i.e. the costs of representation) are awarded to the winning party in the amount prescribed by the legislation and not in the actual amount. The party proposing an expert is required to bear those costs in advance and make an advance payment relating thereto, whereas such costs are then reimbursed to such party in accordance with the above mentioned principle for the reimbursement of costs.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The CPA provides that an injured party shall prove a defect, damage and causal link between them. In relation to the contractual liability of the seller for damages, it is for the buyer to prove that a product is defective.

In civil claims, the standard is to prove the case against the defendant on the balance of probabilities.

The above mentioned refers to product liability. In addition, it shall be mentioned that with respect to material defects, the CPA envisages that it shall be deemed that a material

defect had already existed at the time of the delivery, if it appeared within 6 months after the delivery of the product. This assumption makes proving of material defect a little bit easier for the consumer (namely, the CPA does not apply to non-consumers with respect to material defects).

12. Is the state of the art defence available?

According to Slovenian law, the state of the art defence is available. The CPA provides that the producer is not liable for damages if it proves that the worldwide state of scientific and technical progress at the time the product was placed on the market was not such that a product defect could be detected (e.g. by known methods and analyses).

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

According to the CPA, the producer is responsible for the damage caused by the defective product if the damage occurs within ten years after the date on which the product was placed on the market (overriding deadline). This deadline cannot be frozen or extended.

The CO envisages that an action for damages must be brought within three years after the injured person was made aware of the damage and the person who caused the damage. These deadlines can be frozen only in the event of some exceptional events (e.g. war, etc.).

Claims for compensation under contract shall be brought within a time envisaged as a statute of limitation for the respective contractual obligation.

The above mentioned deadlines refer to claims pertaining to product liability. In addition, it shall be emphasised that deadlines with respect to claims pertaining to material defects are a lot shorter.

14. What are the rules for bringing a claim in a class/collective action?

The CPA only provides a class action for injunction and not with respect to product liability claims.

A new Collective Actions Act entered into force on 21 April 2018 and enables an action for damages also with respect to defective product liability.

Only a legal person of a private law, who operates a non-profit activity and who has a direct connection with main goals and rights, which should be violated and in connection with which the collective action is lodged, and a higher state attorney are eligible for lodging the collective action. Such person shall be representative and the latter shall be assessed by the competent court. The latter will assess if such a person is adequate for representation of such group (class).

In addition to regular actions (claims), collective action shall also include certain additional components set out in the Collective Actions Act. The competent court decides whether it will apply the system of inclusion or exclusion to the respective collection action procedure.

15. What is the average duration of defective products litigation?

It takes up to two years that the court of the first instance adopts a decision. It takes another year in the event of an appeal by any party to the procedure.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

In terms of section 61 of the Consumer Protection Act 68 of 2008 (hereinafter referred to as “the CPA”) claims may be brought for damages or harm caused wholly or partly, irrespective of whether the harm resulted from any negligence.

A person, who includes a producer, importer, distributor or retailer of any goods, may be held liable for harm which resulted in: (1) the death of, or injury to, any natural person; (2) an illness of any natural person; (3) any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and (4) any economic loss that results from harm contemplated in supra (1)-(3). Liability is based upon strict liability on the part of the producer, importer, distributor or retailer and does not depend upon actual negligence.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

In light of strict liability, all the various parties in the supply chain who caused the damage, whether it is the importer, distributor, retailer or producer are potentially liable. The CPA states that liability is joint and several in such instances.

3. Are there differences if the buyer is a consumer or a professional buyer?

The CPA does not make mention of the term “buyer”, but rather “consumer”. In this regard, the CPA makes no distinction between a consumer and

a professional buyer. A consumer, in respect of any particular goods or services, is defined as follows:

- a. a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business;
- b. a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of [the CPA] by section 5(2) or in terms of section 5(3);
- c. if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and
- d. a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e)”.

In light of the above, a consumer would include a layman and a professional buyer.

4. Can the seller or other potentially liable party exclude or limit its liability?

Yes, section 61(4) of the CPA provides for instances where liability does not arise and is therefore excluded. Section 61(4) reads as follows:

Liability of a particular person in terms of this section does not arise if—

- a. the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;
- b. the alleged unsafe product characteristic, failure, defect or hazard—
 - i. did not exist in the goods at the time it was supplied by that person to another person alleged to be liable; or

- ii. was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case sub paragraph (i) does not apply;
- c. it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers; or
- d. the claim for damages is brought more than three years after —
 - i. the death or injury of a person contemplated in subsection (5)(a);
 - ii. the earliest time at which a person had knowledge of the material facts about an illness contemplated in subsection (5)(b); or
 - iii. the earliest time at which a person with an interest in any property had knowledge of the material facts about the loss or damage to that property contemplated in subsection (5)(c); or
 - iv. the latest date on which a person suffered any economic loss contemplated in subsection (5)(d)”.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

A consumer's rights remain protected under the CPA, irrespective of whether goods are manufactured within or outside of South Africa. To this end, section 5(8) of the CPA provides that the CPA extends to a matter irrespective of whether the supplier resides or has its principal office within or outside of the Republic.



6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

The CPA does not expressly mention any direct consequences or liabilities for omitted or delayed recall campaigns, but section 60 mentions that the National Consumer Commission (hereinafter referred to as “the Commission”) may require a producer to conduct an investigation or carry out a recall programme on any terms required by the Commission, in the event that a producer or importer of goods have not taken any steps required.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

No, normal procedures and rules of evidence apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

In terms of sections 69 and 70 of the CPA, possible pre-action measures would appear where a consumer aims to resolve a dispute with a supplier by referring the matter to the National Consumer Tribunal, industry ombud, consumer court, dispute resolution or by filing a complaint with the Commission.

A warning letter is not necessarily required, but the CPA in section 71 states that a matter may be initiated by filing a complaint with the Commission.

There are certain limitations in bringing an action, which are canvassed in section 116 of the CPA. These limitations include that a complaint may not be referred to a Tribunal or consumer court more than three years after the act or omission that is the cause of the complaint and that a complaint may not be brought against a wrongful person who is already a party to proceedings in light of the CPA for similar conduct.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The various remedies which are available to a consumer are encompassed in sections 56(2), 56(3) and 76 of the CPA. General remedies include awards for damages, special damages or to recover or reimburse monies paid towards a product or certain goods. Defective goods or products can also be repaired or replaced.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts’ costs?

There are no costs involved with the referral of a dispute or matter to the relevant Commission, ombud or Tribunal. The consumer will, however, bear the normal costs of litigation proceedings before court, but will be able to recover such costs from the manufactures, importer, distributor or retailer, if the consumer is successful.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The general principle is that a party or person who claims or alleges a fact, must prove it. Therefore, the onus rests on a consumer to prove his or her case on a balance of probabilities.

12. Is the state of the art defence available?

The state of the art defence refers to a defence in which a manufacturer could not have known about a particular danger or hazard in a product by using the scientific or technical knowledge available at the time the product was manufactured.

In South Africa, the above mentioned defence is available and liability does not arise with reference to section 61(4)(b)(i). This section states that liability does not arise in the event where the alleged unsafe product characteristic, failure, defect or hazard did not exist in the goods at the time it was supplied by that person to another person alleged to be liable.

Section 61(4)(c) further provides that liability does not arise in instances where it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Section 56(2) of the CPA states that the consumer may return the goods to the supplier, without penalty and at the supplier's risk an expense, within six months after the delivery of any goods to a consumer.

The consumer ultimately has three (3) years to institute legal proceedings from the date of which the consumer had knowledge about the defect. (See the Prescription Act 68 of 1969 in this regard).

14. What are the rules for bringing a claim in a class/collective action?

The rules are exactly the same for bringing a collective claim against multiple people and bringing a claim against a single person.

15. What is the average duration of defective products litigation?

The average duration of defective products litigation is 3 (three) years.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective product claims may be brought in contract, tort or negligence or under the General Law on Protection on the Protection of Consumers and Users (GLPCU) enacted by the Royal Legislative Decree 1/2007 of 16 November, and other complementary regulations. There are also a number of other special laws and regulations dealing with consumer protection in specific sectors or activities.

The regime for product liability of the GLPCU is of a strict liability.

The actions available under the GLPCU do not affect any other right to damages, including moral damages, that the injured party may be entitled as a consequence of contractual liability (lack of conformity of the goods or services, or any other cause of non-performance or defective performance of the contract), or of any non-contractual liability that may apply.

Criminal sanctions may apply insofar as the supply of the defective product is considered a negligent or intentional action. Such action is qualified as an offence under the Criminal Code.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the GLPCU, liability for defective products is borne by the manufacturer or the importer that introduces the product into the European Union.

In the event that the producer cannot be identified, the supplier of the product (the distributor or the retail supplier) shall be liable unless, within the term of three months, he informs the injured party of the identity of the producer or of the person who

supplied the product. This rule also applies if the imported defective products do not indicate the name of the importer, even if the products identify the name of the manufacturer. The supplier of the defective product shall be liable, however, in the event that he has supplied the product having knowledge of the defect.

In respect of a contract claim, a claim can be brought against the other contractual party. A claim in tort or negligence can be brought against a party who has breached a duty to take reasonable care resulting in damage to the claimant.

3. Are there differences if the buyer is a consumer or a professional buyer?

Under the GLPCU a claimant needs to have suffered death, personal injury or any loss or damage to property which is for private use or consumption. The product liability system coexists with the contractual and tort liability systems. Therefore, moral damages and other property damages and losses, excluded from the scope of the GLPCU, may be recovered under the general civil regulation.

Non-consumers may claim for death or personal injury and can bring a claim for damage to property or financial loss in contract or negligence.

4. Can the seller or other potentially liable party exclude or limit its liability?

Strict liability cannot be excluded under the GLPCU. Any clauses exempting or limiting the producer's liability will be ineffective. However, the producer's overall civil liability for death or personal injury caused by identical products with the same defects is limited to EUR 63,106,270.96.

Liability for death or personal injury caused by negligence, or damage arising from fraud or willful misconduct, cannot be excluded or restricted, whether in a consumer or a business to business context.

Supreme Court case law has stated that any bodily harm caused by the use or consumption of a product is non-contractual in nature. Therefore, contract theories of recovery have no application in the context of product liability involving bodily harm in the Spanish legal system.

Liability for the product's lack of conformity can be limited by the supplier. However, in case of products supplied to consumers, terms implied by statute concerning product's conformity cannot be excluded or restricted. A minimum three year guarantee period for conformity is set out for consumers.

In a business to business contractual context, a liability limitation clause included in standard terms might be considered abusive and therefore unenforceable if it is contrary to good faith and creates a significant imbalance between the rights and obligations of the parties.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Among the categories of abusive standard term clauses, the GLPCU include clauses on jurisdiction and applicable law. Spanish Supreme Court case law has established that any submission clauses to the judges of the jurisdiction of the manufacturer or supplier in detriment of the consumer's jurisdiction will be null and void.

Spanish Courts have jurisdiction over claims brought by consumers domiciled in Spain, regardless the manufacture, marketing and damage occurred outside Spain.



6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Any person involved in placing products at the disposal of the consumers and users, shall be obliged, within the limits of its activity, to withdraw from the market, suspend the marketing or recover from the consumer or user any products that do not meet the safety requirements, or which represent a foreseeable risk to personal health or safety on any other grounds. The public administration may order the precautionary or definitive withdrawal or recall of products from the market on the grounds of health and safety.

The producer or retailer infringement of their duty to recall the defective products may lead to criminal and/or administrative fines.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

No, available Court procedures and general rules of evidence apply.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The Spanish legal system does not provide for a general disclosure procedure. However, a prospective claimant may apply for pre-action document disclosure where preliminary proceedings have commenced. This is an extraordinary procedure aimed at preparing the claim and intended to verify the suitability of the respondent

to be a party of the subsequent proceedings and the object of the claim. In preliminary proceedings, where the respondent or the person in possession of the documents refuses the order to disclose, it is possible for the court to enter and search the premises to obtain the documents requested by the claimant. There are no pre-trial depositions under the Spanish procedural system.

The Civil Procedure Act allows for interim relief. However, it is not specifically applicable to product liability issues and would rarely be applicable in product liability regulation. Precautionary measures related to product liability are more generally considered from a product safety perspective.

No pre-action warning letter is requested.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

In strict liability claims under the GLPCU, damages are available to compensate the injured person for death, personal injury and damage to goods intended for private consumption or use, other than the defective product itself, and for a value exceeding EUR 390.66.

In a contractual claim, the remedies available include the resolution of the contract and/or claim damages, the repair or replacement of the product, and the total or partial repayment of the purchase price, depending on the nature of the term breached.

Repair or replacement will be free of charge for the consumer and user, including the necessary expenses incurred to correct the lack of conformity of the products with the contract, especially the shipping costs, as well as the costs related to labor and materials.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

Civil proceedings in connection with defective product litigation gives rise to costs derived from legal representation and attorney's fees plus any additional cost the consumer may incur to prove the damage (e.g. expert opinions, sworn translations, etc.) The costs of defective products litigation follow the general criterion of the Civil Procedure Act, i.e., the losing party bears all costs. In case the claim is only partially upheld by the court, each party shall bear its own costs.

Expert costs follow the same general rule as explained above.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Under the GLPCU the party claiming liability must provide evidence of the

- i. existence of a defect in the product;
- ii. damage or injury; and
- iii. causal relationship between the two.

The Supreme Court requires that the evidence of the existence of a causal link must be clear and precise, and not based on mere deduction, conjecture or probability. The claimant must therefore provide solid and substantial evidence that the damage is a result of the defect and the causal link.

However, in practice, courts also accept that the causal link may be proven by means of judicial presumptions and often reach decisions that come close to applying the "more probable than not" rule. The Spanish courts have developed various concepts of legal causation similar to those found in other jurisdictions, such as in relation to proximate causes, foreseeability and superseding or intervening causes.

In case the manufacturer pleads that is incurring in a situation of exclusion of liability, the burden of proof is on the manufacturer.

In a contract and negligence claim the burden of proof is on the claimant.

12. Is the state of the art defence available?

Yes, manufacturers or importers have a defence and are not liable if the state of the scientific and technical knowledge at the time of putting the product into circulation did not allow the existence of the defect to be discovered. Therefore, manufacturers whose production activity adheres to the scientific and technical knowledge available at the time of putting their products into circulation are relieved of liability.

Under the GLPCU, the development risk or state of art defence is not available in the case of drugs and foodstuffs meant for human consumption, meaning that there are reinforced duties to conduct research into the safety of those products.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The action for civil liability arising from defective products under the GLPCU shall be exercised within a period of three years from the time the victim suffered the damage. Liability claims will be barred ten years after the time the product was placed into circulation (where no legal action is instigated within that period).

The limitation periods for claims in contract and negligence are five and one year respectively. Depending on the nature of the contract, different limitation periods might apply.

14. What are the rules for bringing a claim in a class/collective action?

Under the LGDCU, associations of consumers and users of the supra-autonomous area, legally constituted and registered in the State Registry of Consumers and Users Associations shall have the right to represent their associates and to exercise the corresponding actions in their defence, in defence of the association or of the general, collective or diffuse interests.

In addition, according to Article 11.3 of the Spanish Civil Procedure Act, when a harmful fact affects to a plurality of consumers, their defence could be assumed by the Consumers and Users Associations. Nevertheless, this matter would only concern the Consumers and Users Associations which (under the Law) are sufficiently representative. This representability can be proved by the Associations showing their implantation in the territory where the harmful fact took place, number of associates, etc.

The reference of a harmful fact entails the existence of a requirement of commonality. It will be necessary to prove an identity in the events happened.

15. What is the average duration of defective products litigation?

According to the Spanish Civil Procedure Act, Spanish litigation has no determined time to end or an average duration. It usually depends on the workload of the Court and the development of the trial (if one party decides to appeal the judgement, for example). It usually takes a year or two to have a judgement, which could be seen as the average duration of defective products litigation, but it has not to be necessarily like that.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective product claims can in the first place be brought in accordance with the sales contract and/or the legal provisions of the Swiss Code of Obligations (“**CO**”). Most often, the legal provisions are modified by general terms and conditions (“**GTC**”), which is standard for consumer products. In addition, general tort law and/or the Product Liability Act (the “**PLA**”) may apply.

The liability under the PLA is a strict liability, requiring a defective product (and, of course, a damage) only, while contractual or tort claims require a fault by the seller or other liable party. In case of tort, the fault must be proven by the claimant, in case of contractual claims the defendant must show that he was not at fault.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Depending on the legal basis, potentially all of the above parties can be sued. Claims under the contract can only be brought against the seller (retailer), while claims under the PLA are directed against the manufacturer and the importer. Tort claims can be brought against anyone involved, provided that they have caused a damage by wilful or negligent act.

3. Are there differences if the buyer is a consumer or a professional buyer?

Basically no, but there is a number of specific consumer provisions found in various laws. In particular, a consumer may claim that the GTC of a seller contain unfair provisions which lead to a substantial imbalance of rights and duties between seller and consumer, as per art. 8 of the Unfair Competition Act. See also question no. 5 on the forum for consumer actions and no. 13 on limitation periods.

4. Can the seller or other potentially liable party exclude or limit its liability?

Contractual liability can be limited or excluded except if defects have been fraudulently concealed from the buyer. Normally, sellers’ GTC amend and modify the legal rights to a substantial extent, e.g. by modifying notice periods (to the benefit of the buyer) or by excluding the right to cancel the contract (to the benefit of the seller).

Liability for tort or under the PLA cannot be contracted out.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

A consumer is also entitled to bring claims at his domicile while a professional party must start action before the court of the contract or, if there is no forum clause, at the seat of the defendant.

For tort claims, there is also a forum at the place where the illicit act was committed or where its effects took place.

6. What are a manufacturer’s and a retailer’s liabilities for omitted or delayed recall campaigns?

In addition to civil liability, a manufacturer, importer or retailer may be fined with up to CHF 20,000 for negligence or CHF 40,000 for a wilful act if they fail to comply with orders of a competent authority, including also orders to recall a product (see Product Security Act).

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal procedures apply. For dispute values up to CHF 30,000 the simplified procedure applies which mainly aims at expediting the matter.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

No specific procedures must be followed before issuing proceedings. However, a buyer is subject to rather strict inspection and notification duties under contract law (see below question no. 13).



9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

Under contract law, the buyer can only request rescission of the contract or reduction of the price (art. 205 CO). Very often, this legal right is replaced by provisions of the GTC which only grant a right of repair or replacement.

The rights under tort or the PLA are limited to replace the damage suffered from a defective product; with the PLA in particular limiting such damages to personal injury and damage of consumer products, with the exclusion of damages to the defective product.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation follow general rules and depend on the amount in dispute. Court organization and costs are governed by cantonal law and thus differ from Canton to Canton. Very often, the claimant must advance court costs and will be awarded a claim to recover these from the defendant, if he wins the case. The winning party is generally also awarded an indemnity for its legal costs payable by the losing party. Unless the dispute value is very high, this amount does not normally cover the full costs.

The costs of a court appointed expert must be advanced by the party calling on such expert (normally the party

carrying the burden of proof) and will be included in the court costs to be compensated by the losing party. Expert reports submitted by a party together with legal briefs are treated like pleadings of such party and the costs may be taken into consideration in the party indemnity.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

It generally is the burden of the claimant to prove the factual elements of his claims, in particular defect of the product and damages suffered as a consequence thereof.

12. Is the state of the art defence available?

A state of the art defence is available only under the PLA but could be used also in other claims since a fault by the manufacturer (and possibly also the importer or retailer) might be hard to prove if the product was state of the art when brought onto the market.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Under contract law a buyer must inspect the product as soon as feasible in the normal course of business and notify a defect without delay (art. 201 CO). These duties, however, are very often modified in GTC to the effect that a defect can be notified at any time before the warranty period runs out. The warranty period is two years (five years for goods incorporated

into immovable property) and it is not possible to reduce these periods in a consumer - professional seller relationship. The limitation period can be interrupted (meaning it will start anew) by any action under art. 135 CO, in particular starting of debt enforcement or court proceedings.

Tort claims must be brought within one year and claims under the PLA within three years after the injured person gained knowledge of the damage and the person liable therefore. In both cases there is there is a maximum period of 10 years after the damaging act or omission (tort) or after the product was put on the market (PLA).

14. What are the rules for bringing a claim in a class/collective action?

Switzerland does not yet know class action procedures. A group of claimants can possibly bring a joint action against one or more defendants if the basis of their individual claims is the same for all of them (e.g. the same product with the same defect). However, there are not many known cases of such collective actions in Switzerland. A draft amendment of the Swiss Code of Civil Procedure proposes to introduce collective action but it is open when it will be dealt with by the legislator and in what form it will pass, if at all.

15. What is the average duration of defective products litigation?

This is difficult to answer as it not only depends on the Canton where the case is heard but also on elements such as local court, applicable procedure (in writing or in hearings) and also behaviour or tactics of the parties. As a very rough indication one might say that a first instance decision could be expected within maybe 12 - 18 months.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

It is a strict liability.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

According to article 10 law n°92-117 dated on December 7th, 1992, the final supplier is responsible for the damage caused by the product not offering the safety and the health measures legally required for the consumer; unless he gives the proof of his non-responsibility for the caused damage. It is the same for an imported product, when the identity of the importer is not indicated, even if the name of the producer is known.

3. Are there differences if the buyer is a consumer or a professional buyer?

No, there is no difference.

4. Can the seller or other potentially liable party exclude or limit its liability?

The principle is that in every case, the responsibility of the supplier, cannot be excluded or limited by a contractual clause especially in case that the defect product is not offering the safety and the health measures.

Nevertheless, the Contract and Obligations Code provides that it is possible to exclude the seller's liability if he proves that the purchaser is aware about the default and accepted it when he received the products.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Imported products are subjected to a technical control before importation according to law dated on March 7th, 1994.

Nevertheless, and as indicated previously (point 2 above), the importer is responsible for the damage if he is known but in case the identity of the importer is not indicated, the final supplier will be liable even if the name of the producer is known.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

A retailer who omitted or delayed a recall campaign will be liable either on civil or penal grounds.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

There are no specific procedures or rules of evidences for defective products.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The action may be introduced directly by the buyer. It may be a penal and/ or a civil action. There is no obligation to send a prior warning letter but it's advised to proceed at first with a warning letter in order to be able after to prove the sellers bad faith.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

According to article 18 law n°92-117 dated on December 7th, 1992, in cases of a defective product, the seller should, according to the buyer's choice, proceed with the replacement of the product, its reparation or the repayment of the purchase price without prejudice to the damages' repair.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation depends upon the case in question.

The legal costs and the experts' fees, if any, shall always be borne by the applicant.

Nevertheless, in the event that the court rules in favor of the plaintiff, the latter has the right to request compensation for the costs borne by him from the losing party.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Generally it's always the buyer.

12. Is the state of the art defence available?

N/A

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The claimant must notify defects within 7 days at the latest except hidden defect.

14. What are the rules for bringing a claim in a class/ collective action?

In order to bring a claim in a collective action, the claimant may involve the public authorities. It's generally the Trade Ministry or the public health ministry.

15. What is the average duration of defective products litigation?

It takes approximately about 12-18 months.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

The primary legislation concerning defective product claims is the Consumer Protection Law (“CPL”). Claims can also be brought in contract under the Code of Obligations or under the Commercial Code.

The CPL provides a strict liability claim for defective products making the manufacturer of that product automatically liable for any damage caused. The manufacturer can discharge itself of this liability if it can prove that

- i. it did not put the defective product on the market (e.g. stolen goods),
- ii. the product was not defective when put on the market,
- iii. the product was not produced with the intention of sale,
- iv. the defect is a result of the manufacturer’s mandatory compliance with regulations in force, or
- v. the scientific and technical knowledge available to the manufacturer at the time of production were not sufficient to enable the manufacturer to comprehend the fault or risk in question.

Manufacturers, sellers, distributors and importers of defective products may also face criminal liability, subject to their meeting of certain criminal criteria.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Under the CPL, the manufacturer, importer, distributor and retailer are held collectively liable with regards to compensating consumers for defective products. However, only the

manufacturer of defective products is held liable in case of death, personal injury or damage to property caused by the defective product. Where the consumer or third parties are partially responsible for the damage caused (i.e. contributory liability), the manufacturer’s liability may be limited or fully eliminated, depending on the extent of such contributory liability.

Where the manufacturer of defective products does not have an authorised representative in Turkey, the importer of defective products may be held liable for damages caused by the defective product.

For contractual claims, a claim may only be brought parties to a contract against one another.

3. Are there differences if the buyer is a consumer or a professional buyer?

Where the buyer is a consumer, there is an obligation to first file an application with the Consumer Arbitral Panel for claims that fall below a specific threshold. This threshold, which has been determined as TRY 6,860 for the year 2018 (approximately EUR 1,200), is updated annually. Decisions of the Consumer Arbitral Panel can be appealed against at the Consumer Courts. Professional buyers, on the other hand, need to bring an action at the Commercial Courts of First Instance.

Consumers are able to notify sellers of defective products in any manner they wish (phone, e-mail, etc.) regarding the manner of redress they wish to opt for (see Question 9 below). Professional (commercial) buyers, on the other hand, have to comply with provisions of the Turkish Commercial Code on effective notice between commercial traders. Under the Code, notices regarding the termination of, or reneging on, a contract between commercial traders have to be made via a notary public, certified mail, telegram or certified email containing a valid e-signature.

Consumers are not under an obligation to inspect products upon receipt and can notify sellers of any defects whenever they wish as long as this

is done within the 2-year limitation period prescribed by law (see Question 13 below). Commercial buyers, on the other hand, are under a duty to inspect the products they receive as soon as possible and notify the seller of any defects within a reasonable period of time.

4. Can the seller or other potentially liable party exclude or limit its liability?

Under the Code of Obligations, the seller can exclude or limit its contractual liability with a contractual term to this effect. However, such terms have to be unambiguous and make it clear that it is intended to limit or exclude the seller’s liability. Contracts which include terms that exclude or limit the seller’s liability have to be in writing.

In cases where the seller conceals the defect in a product with malicious intent, terms that limit or exclude liability are considered to be invalid. Any contractual term that limits or excludes liability for gross negligence is also considered invalid.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

Where the manufacturer of defective products is domiciled outside Turkey, its authorised representative in Turkey can be held liable against claims by consumers. In case the manufacturer does not have an authorised representative in Turkey, liability can shift to the importer of defective products.



6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

Under the Law on the Preparation and Implementation of Technical Regulations for Products, manufacturers are under an obligation to recall defective products that pose risks to buyers. Manufacturers who fail to comply with this obligation can face administrative fines of up to TRY 85,000 (approximately EUR 14,000).

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

For commercial buyers, defective product litigation takes place in the Commercial Courts of First Instance, where normally available procedures and rules of evidence apply.

For consumers, the venue can be the Consumer Arbitral Panel or the Consumer Court, depending on the amount of the claim and whether the decision of the Consumer Arbitral Panel is appealed against. The Consumer Arbitral Panel may give its decisions without holding hearings, where the complexity of the application does not require the Panel to hear the parties or any experts.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

Consumers are able to choose one of four rights set out in the CPL with regards to defective products they purchase, and sellers are under an obligation to comply with the manner of redress chosen by consumer as long as the consumer notifies the seller within the 2 year limitation period. Consumers do not need to bring an action to be able to benefit from these rights; they simply need to notify the seller in any manner they wish.

The sending of a warning letter is not a prerequisite to bringing a claim in Turkish courts. That said, for claims falling below the value threshold mentioned above, consumers have to first file an application with the Consumer Arbitral Panel before bringing an action at the Consumer Court.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The CPL allows consumers to choose one of four remedies in case they buy defective products. The seller is then required to comply with whichever option the consumer opts for. These four options are as follows:

- I. To terminate the contract for the sale of the defective product by notifying the seller of their intention to return the product,

2. To retain the defective product and ask for a discount to account for the defect,
3. To request the repair of the product by the seller, free of charge, provided such repair does not require the seller to bear an excessive cost,
4. Where possible, to request the replacement of the product with a non-defective equivalent

The right to request the free repair of the product and the right to request its replacement with a non-defective equivalent can be asserted against the manufacturer or the importer of the product as well, unless the manufacturer or the importer can prove that the defect in question occurred after they placed the product on the market.

Regardless of whether they opt for one of these rights under the CPL, consumers reserve the right to claim damages under the Code of Obligations.

10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

There are no fees for applications filed at the Consumer Arbitral Panel.

Actions brought by consumers at the Consumer Courts are exempt from litigation fees. However, consumers do need to bear other costs such as postage and experts' costs.

Consumer associations who bring an action at the Consumer Court are exempt from payment of experts' costs and the legal retainer fee payable by the losing party.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Where the defect is discovered within 6 months of the delivery of the product to the consumer, the burden of proof is on the seller. Otherwise, the buyer must prove that the product is defective.

12. Is the state of the art defence available?

The state of the art defence is available for the manufacturer of defective goods. If the manufacturer is able to prove that the scientific and technical knowledge available to it at the time of production were not sufficient to enable the manufacturer to comprehend the fault or risk in question, the manufacturer can discharge itself of liability under the CPL.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Unless there is a legal provision or contractual term stipulating a longer period, the limitation period for actions under the CPL is 2 years starting from the date on which the product is delivered to the consumer. Therefore, the point in time at which the consumer actually becomes aware of the defect is irrelevant. This limitation period does not apply in cases where the defect is concealed with malicious intent or as a result of gross negligence.

For applications submitted to the Consumer Arbitral Panel, parties that wish to appeal against the Panel's decision at the Consumer Court must do so within 15 days of service of the Panel's decision.

14. What are the rules for bringing a claim in a class/collective action?

Class actions are generally not available in Turkish law. However, under the CPL, the Ministry of Customs and Trade (the "Ministry") and consumer associations can bring an action for redress in cases where consumers in general, as opposed to individual consumers, are at risk due to defective goods. Similarly, the Ministry and consumer associations can bring actions for the recall of mass produced defective goods.

However, the Ministry or consumer associations cannot bring compensation claims for individual consumers.

15. What is the average duration of defective products litigation?

The Consumer Arbitral Panel is required by law to deliver its decision within 6 months of the filing of an application. This initial period can be extended for a further 6 months depending on the circumstances of an individual application and the complexity of the case. However, in practice, it takes the Panel around 3 months to deliver its decision in most applications.

Depending on its complexity, a case taken to the Consumer Court can take anywhere from 1 to 4 years to finalise.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Defective Products claims may be brought pursuant to the contract between the parties, the Civil Transactions Code No. 5 of 1985 and the Commercial Transactions Code No. 18 of 1993.

Liability in the UAE is broad and can be based on anything from fault, negligence or strict liability.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Generally, the liable party is the seller regardless of whether the latter was a manufacturer, importer, distributor or retailer.

However, the seller may request the court to join the manufacturer for example in a claim filed by the buyer, or the seller may initiate separate proceedings against the manufacturer after being found liable in a claim filed against him by the buyer.

3. Are there differences if the buyer is a consumer or a professional buyer?

The general rule is that there are no differences. Having said that, if the buyer was a professional buyer, then the seller may raise the argument that the buyer was aware of the defect(s) at the time of the purchase which means he cannot claim compensation. The court will have the discretion to decide on such matters and may refer the matter to an expert.

4. Can the seller or other potentially liable party exclude or limit its liability?

The seller cannot exclude or limit liability unless he notified the buyer of the defects before executing the agreement and the buyer accepted.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The rights of the consumer are the same as he will file the claim against the seller regardless of whether or not the latter is the manufacturer.

In the UAE, entry of products manufactured abroad is regulated and products must enter the country through a registered commercial agent or distributor which means that consumers are protected in terms of the products they purchase in the UAE.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

The liabilities are the same whether products are recalled or not as they will have to compensate for the damages caused by their defective products.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal and summary procedures and rules of evidence apply in Defective Products Litigation, with more specific time limitations which will be addressed below.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The main pre-action measure or interim remedy in the UAE is precautionary attachment. Such a remedy is available to preserve a party's right if there was a genuine concern that the right is at risk such as the debtor fleeing the country or concealing his assets.

If a party files a precautionary attachment against his debtor's assets and his request was granted by the court, he must file a claim within 8 days of the attachment taking place. This is to ensure that the action does not harm the debtor if the creditor's claim was unlawful.

There are other interim remedies such as the request for a travel ban to ensure that a debtor does not flee the country to avoid settling his debts.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

All the above remedies are available and it depends on the buyer's claim and request from the court. Usually however, buyers request repayment of the purchase price and compensation for damages caused by defective products.



10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs of defective products litigation is the same as normal litigation; these are very detailed and differ from one emirate to the other. Briefly speaking, the Court fee in Dubai for filing a claim before the Court of First Instance is 6% of the claimed amount capped at AED 40,000 paid in advance by the claimant. The Court fee for the Court of Appeal is half of the fee paid before the Court of First Instance, and the Court of Cassation fee is approximately AED 10,000.

The losing party ultimately bears Court and expert fees. However, lawyer fees cannot be recovered, and at the end of each stage of litigation the court awards an amount as legal fees which is minimal in comparison to actual legal fees borne by a party.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

Yes, the buyer must prove if a product is defective if he was the claimant. It is very common in this region to request the court to appoint an expert to examine and determine if a certain product is defective. In some cases, the court may decide to appoint an expert even if neither party requests such appointment.

12. Is the state of the art defence available?

N/A

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

Pursuant to the Commercial Transactions Code, the buyer must notify the seller of any defect within 15 days of actual delivery of the product, and must file a claim within 60 days of delivery.

If the defect was hidden and not easily discoverable, then the buyer must notify the seller immediately upon discovering the defect and file a claim within six months from delivery at the latest.

The buyer can file the claim within a year from the date of delivery if he can prove that there was fraud from the seller.

14. What are the rules for bringing a claim in a class/collective action?

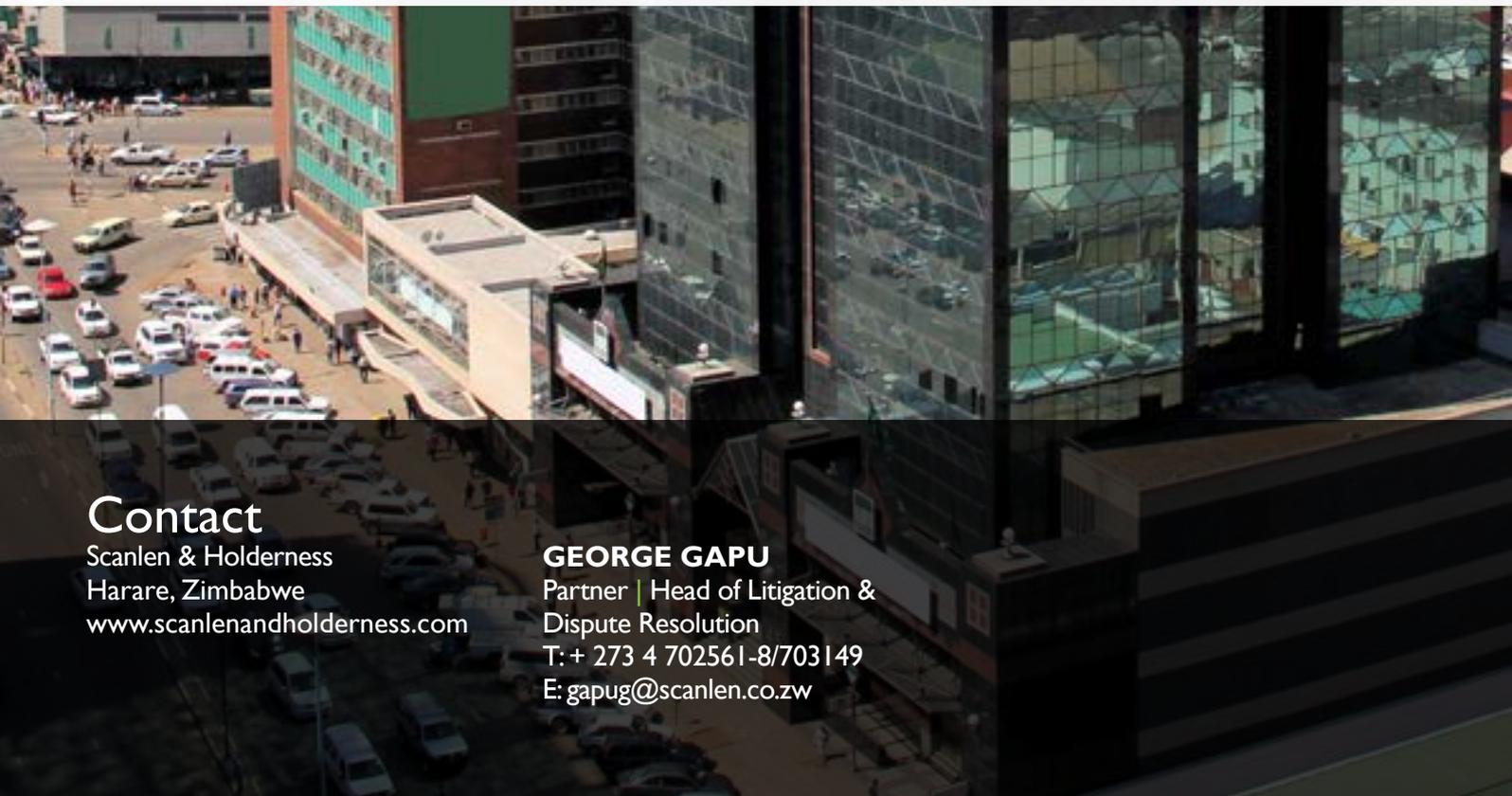
There are no class actions in the UAE.

15. What is the average duration of defective products litigation?

Approximately 18 to 24 months and may be longer depending on the complexity of the matter and other factors which may prolong the life of the trial.



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1. What claims may be brought for liability for defective products? Is liability based on fault/negligence, or strict liability, or both?

Claims can be brought for compensation for any loss suffered as a result of the defective product provided that the damages claimed are not remote. The damages can include damages for pain and suffering, nervous shock, etc. A claim can also be brought for rescission of the sale agreement or reduction of the purchase price.

Under the law of delict, liability is based on fault/negligence. There is no strict liability.

2. Who is potentially liable to compensate a claimant in such a claim? The manufacturer, the importer, the distributor or the retailer/shop?

Any party in the chain who is at fault is potentially liable to compensate the claimant. The claimant must be able to prove that the defendant was at fault or negligent in processing, handling or dealing with the goods.

3. Are there differences if the buyer is a consumer or a professional buyer?

There is no difference.

4. Can the seller or other potentially liable party exclude or limit its liability?

The seller can exclude liability by inserting an exemption/exclusion clause in a contract or notice. For the exclusion of liability to apply, it must not purport to exclude liability for fraud, gross negligence and wilful misconduct or dishonest or criminal activity. Exclusion of liability clauses are narrowly construed by the courts and will not be enforced if they are contra bonos mores. The Consumer Contracts Act (Chapter 8:03) provides that the courts may vary or annul contracts which are deemed to be unfair.

5. What are the rights of the consumer if products are manufactured outside your jurisdiction or the EU?

The consumer can proceed against the local distributor if he was at fault.

6. What are a manufacturer's and a retailer's liabilities for omitted or delayed recall campaigns?

There is no specific law dealing with the liability of the manufacturer and retailer. Their liabilities are governed by the ordinary principles of delictual liability. A deliberate delayed or omitted recall shows that the manufacturer or retailer did not take reasonable steps to protect the claimant and is thus negligent or grossly negligent. He is liable to compensate a claimant for any damage suffered provided that the damages claimed are not remote and are generally recognizable under the law as being claimable.

7. Is there a specific procedure or are there specific rules of evidence for defective products litigation, or do normal/summary procedures and rules of evidence apply?

Normal procedures and rules of evidence apply to such claims.

8. What kind of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?

The general procedure in Zimbabwe is that a party must send a letter of demand before issuing court process. This ensures that legal costs are recoverable if the claim is successful.

9. What sort of remedy is generally available to the buyer of a defective product (replacement of the product, repayment of purchase price and other damages)?

The buyer can sue for either replacement of the product, repayment of the purchase price or reduction of the purchase price. If harm has been caused by the product, the buyer may claim damages under the Aquilian action.



10. What are the costs of defective products litigation? Who ultimately bears such costs? Who is responsible for experts' costs?

The costs include counsel's costs, costs of investigations and expert's costs. The general rule is that the losing party bears the costs unless there are special considerations such as novelty of the case. The claimant is responsible for the expert's costs but if successful these are recoverable from the party liable.

11. Who has the burden to prove that a product is defective? Is it always the buyer?

The buyer has the burden to prove that a product is defective. The general rule is that he who alleges must prove.

12. Is the state of the art defence available?

The defence has not been judicially recognised in Zimbabwe but it is incorporated in the reasonable person test. If the manufacturer took all the precautions that a manufacturer in his position would have taken or ought to have taken to prevent foreseeable harm, then he is not liable.

13. What are the deadlines within which a claimant must notify defects and/or commence proceedings? Can such deadlines be frozen or extended?

The claimant must notify such defects as soon as is reasonably possible upon noting the same. However, when it comes to commencing proceedings the period is three years in accordance with the Prescription Act (Chapter 8:11). The deadline can be extended if

the claimant is not aware of the identity of the debtor or if there is an express or tacit acknowledgment of liability by the debtor. The circumstances under which the deadline can be frozen or extended are stated in the law.

14. What are the rules for bringing a claim in a class/collective action?

According to the Class Actions Act (Chapter 8:17), an application should be made to the High court for leave to institute such action by any person whether or not he is a member of such class of persons. The High Court will then determine issues like the existence of a *prima facie* cause of action and the issues of law and fact which are likely to be common to the claims of the individual members of the class of persons involved. If the court grants leave to sue it then appoints a representative of the group and gives directions as to how the process should be commenced and dealt with.

15. What is the average duration of defective products litigation?

If contested, the litigation takes a minimum of twelve months to obtain judgment. With appeals to the Supreme Court, the process can take another twelve months to be concluded in the courts.

