

2. Law of Property and Obligations

Product Liability Act

Promulgated on July 1, 1994. Ch. 85. Effective as of July 1, 1995.

[Background of the Legislation]

Traditionally, a consumer who was injured or whose property was damaged by a product which he had bought could bring an action in one of two ways; an action for damages for breach of contract, or an action in negligence. Both presented difficult problems.

With respect to the action for damages, there were two limitations inferred from the doctrine of privity of contract. First, a third party, for example a member of the purchaser's family, cannot bring an action for damages because he is not a party to the contract. Second, the injured party can bring an action only against the retailer who sold the product and not against the manufacturer who was most likely responsible for the product's defective state. On the other hand, with respect to an action in negligence, although any injured party can sue for losses against a retailer or manufacturer who is responsible, there remains the difficulty of proving negligence.

To overcome these difficulties, in America, there emerged the principle of strict liability in tort for harm caused by a defective product. This principle relies upon the argument that manufacturers have superior capacity to absorb the risks of injury from defective products and to spread the costs either through insurance or through adjusting the prices of their products, that manufacturers have an ability to control the risk of defects arising, and that the ultimate consumer is normally unable to analyse or scrutinize the product for safety and implicitly takes it on trust that it is not dangerous to life and limb. Under this principle, the injured party who suffered a loss due to a defective product can recover damages without proving fault. In the European Community this method has been adopted under the European Community's 1985 Directive on Product Liability in 1985, and member states have enacted Product Liability legislation.

In Japan, there have also been attempts to pass a Product Liability

Bill. For example, a private draft of a Product Liability Act was published by the Product Liability Research Group, a scholarly association for studying product liability, in 1975. Recently, prompted by the EC Directive and enactments by the EC countries, there has been interest in Product Liability in Japan. In 1990, the Japan Association of Private Law held a symposium on Product Liability. In 1991, an intermediate report was published by the National Livelihood Council (13th) of the Economic Planning Agency. The next year, the 14th Council published a final report. Finally, in 1994, after discussion, the Product Liability Bill was passed on June 22, with some supplementary resolutions.

[Main Points of the Act]

(1) Aims: The Act aims at protecting injured parties by providing for the liability of the manufacturer or others when injuries to life, limb or property has arisen from product defects, thereby contributing to the improvement in the stability of national livelihood and the sound development of the national economy.

(2) The parties to the action: This Act defines the parties who are responsible for liabilities. The “producers”, who are liable for injuries caused by defective products, and defined as (a) one who produces, imports, or manufactures the product in the pursuit of business; (b) one who indicates his own name, his trade name, his brand name or otherwise, or any other indication which disguises him from recognition, as the producer of the product by himself; (c) other persons who can be recognized as the substantive manufacturer with respect to the producing, manufacturing, importing, or selling of the product or other circumstances in relation to the product (Article 2(3)).

(3) The Products Covered: The Product Liability Act defines “products” as goods which are produced or manufactured (Article 2(1)), therefore many products are included. Agricultural products are excluded.

(4) The Scope and Standard of Responsibility: The producer is strictly liable to compensate losses when its product causes injuries to any person’s life, limb or property by reason of its “defects”,

except the damage which has occurred to the very products (Article 3). “Defects” means that the product does not provide the degree of safety which is normally expected, taking all circumstances into account, including the presentation of the product, the use to which it could reasonably be expected that the product would be put, and the time when the product was supplied to another (Article 2(2)). The extent to which the producers are liable is not provided, and therefore, it is decided by the general tort principle under a reasonable causation test.

(5) The Producers’ Defenses: While the producer cannot defend by arguing no fault, he can be exempt from liability in two ways (Article 4). First, he will be exempted if he can show that the state of scientific and technical knowledge at the time when he supplied the product to another was not such as to enable the existence of the defect to be discovered. Second, he will be exempted if he can show that the defect was the result of compliance with instructions from the manufacturer of the final product in relation to its design and that he had no fault in causing the defect.

(6) Statute of Limitations: The Act provides a short period and a long period. The short period is three years, the same as Article 724 of the Civil Code. The long period is a special period. (The normal period in tort liability is 20 years). Actions under this Act are barred after ten years from the time the producer in question supplies the goods to another.

The other matters with respect to product liability are treated in compliance with general Civil Law principles (Article 6).

[Comment]

The Product Liability Act had been attracting public attention and was finally passed. Businesses recognize this new Act as acceptable for the most part. They have begun to investigate product liability prevention and to enhance product safety activities. Good illustrations are found in directions for the use of electrical appliances. They now contain many cautions about dangerous use.

On the other hand, consumers have a good opinion of this Act. They welcome this new product liability legislation and expect that

it might be easier to provide relief to parties injured by defective products. However, this Act does not contain any provision which mitigates the burden of proof on the part of plaintiffs, for example, the presumptive provision and the duty-to-disclose provision. Therefore, there remain many difficulties in product liability litigations. It is important that, in Japan, the burden of proof is more strict than in other developed countries (major countries require a “preponderance of evidence” standard but Japan requires “proof beyond reasonable doubt”).

For a decision concerning product liability, see “Developments in 1994-Judicial Decisions” (*infra.*)

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3. Commercial Law

An Act to partially amend the Commercial Code and the Limited Liability Company Law.

Promulgated on June 2, 1994. Ch. 66. Effective as of October 1, 1994.

[Background]

Under the Japanese Commercial Code, a stock corporation is, in principle, prohibited from acquiring its own shares. It had been prohibited from doing so since the current Commercial Code was enacted in 1899, except in the cases specified in the particular article in the Commercial Code prior to the 1994 amendment. (The exceptions were increased by the 1938 Reform Act, but only to a limited extent.) A stock corporation could not acquire its own shares, even as a pledge. The 1981 Reform Act, however, allowed it to acquire up to one twentieth of its issued shares as a pledge with no restriction. The 1981 Reform Act also specified in Article 211-1, that a sub-