



Global Legal Group

The International Comparative Legal Guide to: Product Liability 2010

A practical cross-border insight
into product liability work

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1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?

A claim for product liability may be brought in Cyprus under any one of the following legislations, for damage caused by a defective product either to person or to property:

- i) the Contract Law, Cap 149 (as amended);
- ii) the Sale of Goods Law of 1994, No. 10(I)/94 (as amended);
- iii) the Civil Wrongs Law, Cap 148 (as amended); and
- iv) the Defective Products (Civil Liability) Law of 1995, No. 105(I)/95 (as amended) (hereinafter referred to as the “Defective Products Law”).

Liability under the Cyprus Contract Law, the Sale of Goods Law and the Civil Wrongs Law, is fault-based.

The Defective Products Law imposes a strict liability for defective products.

Finally, pursuant to the General Safety of Products Law of 2004, No. 41(I)/2004 (hereinafter referred to as the “General Safety Law”), which implements European Directive 2001/95/EC, criminal liability may be established against the producer in relation to a product which is unsafe for use by consumers.

There is no judicial precedent in Cyprus with regard to liability imposed for breach of statutory obligations.

1.2 Does the state operate any schemes of compensation for particular products?

No compensation schemes are currently in force in the Republic of Cyprus.

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the “retail” supplier or all of these?

In contract claims, responsibility rests with the seller with whom the claimant entered into the contract for sale.

In negligence, under the Civil Wrongs Law, Cap. 148, liability rests with the party whose negligence has caused the damage, whether this is the seller and/or the manufacturer and/or any other 3rd

person in the supply chain.

Under the Defective Products Law, liability rests with the “producer”. The term is widely defined in the Law to extend to persons beyond the manufacturer (such as, for example, any person who has manufactured any component part or primary substance/raw material thereof etc.). If two or more persons are responsible for the damage, they shall be jointly and severally responsible.

Under the General Safety Law, liability may be imposed on the “producer” of the product (as the term is defined in the Law), as well as, on the distributor of the product (defined as any professional in the chain of supply whose activity may not influence the safety characteristics of the product).

1.4 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

Under the General Safety Law, there is an obligation to recall a product in case (a) no other measures are deemed sufficient to prevent the risk of damage from the defect, (b) the producer deems such recall necessary, or (c) a recall is ordered by the competent Authority, namely the Competition and Consumer Protection Department of the Ministry of Commerce, Industry and Tourism.

Failure by a producer to recall an unsafe product is considered a criminal offence, punishable by a sentence of up to two years and/or a fine not exceeding Euro 8,543.94.

A manufacturer’s omission to recall a product could also give rise to a claim in negligence.

1.5 Do criminal sanctions apply to the supply of defective products?

Criminal sanctions for the supply of defective products apply only with regard to products falling within the scope of the General Safety Law.

A producer or a distributor/supplier who is found guilty for breach of his statutory obligations under the said Law is liable to imprisonment for a period of up to two years or a fine not exceeding Euro 8,543.94, or both.

2 Causation

2.1 Who has the burden of proving fault/defect and damage?

The plaintiff bears the burden of proving fault/defect and damage in all product liability cases.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure?

In claims for breach of contract, the injured party must prove, on the balance of probabilities, that the alleged breach (i.e. the supply of a defective product in violation of the express or implied terms of the contract) caused the damage suffered by him.

In negligence cases, causation is generally proven by the claimant showing, on the balance of probabilities, that he would not have suffered the damage complained for, but for the defendant's negligence. The damage suffered must also be of a type which was reasonably foreseeable and not remote at the time of the breach.

Under the Defective Products Law, it is sufficient to show that the damage suffered was caused wholly or partly by the defective product.

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

There is no statutory provision providing for such market-share liability in Cyprus and neither is there any judicial precedent on this issue.

If it is not possible to identify the manufacturer; the claim may, in appropriate circumstances, be directed against other persons in the supply chain, such as for example, the importer or seller of the product etc.

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

There is no express statutory provision in Cyprus providing for the principle of "learned intermediary". Neither has this issue been subject to judicial examination.

Under the Defective Products Law, in considering whether a product is unsafe the provision of any instructions or warnings or of any notices relating to the use or consumption of the product are, amongst others, factors that need to be taken into account. Though in case of conflict, an argument can be made by a manufacturer to the effect that the passing of the required instructions and other safety notices/warnings to an intermediary in the chain of supply, has discharged the manufacturer's duty, it is difficult to anticipate whether a Court in Cyprus would uphold such argumentation.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Under the Defective Products Law, it will be a defence for the defendant to prove:

- that he neither manufactured the product with a view to selling or distributing it for a financial purpose nor manufactured it or distributed it in the course of his business;
- that he did not put the product into circulation;
- that the product was contained in another product and that the fault/defect was wholly attributed to the design of the other product or to the compliance, on his part, to the instructions given to him by the producer of the other product;
- that the fault/defect is wholly attributable to the compliance, on his part, to conditions imposed by, or as a result of, any legislative provision;
- that, in the circumstances, it is likely that the fault/defect which caused the damage did not exist when the producer placed the product on the market or that it came into existence at a later stage;
- that, without being the producer or the importer of the product, he revealed the identity of the producer or the person who supplied the product to him; or
- that, when he put the product into circulation, the level of scientific and technical knowledge did not permit the ascertainment of the existence of the fault/defect.

A defendant's liability may be limited or extinguished where the damage suffered was a combination of the defective product and the claimant's fault/conduct.

Under the General Safety Law, it shall be a defence if the defendant can prove that he took all necessary steps and exercised all reasonable care so as to avoid committing any of the offences provided for in the said Law.

In a claim for negligence, the common law defences apply (e.g. *volenti non fit injuria*, etc.).

There are no specific defences in cases where a breach of contract is established.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

The Defective Products Law expressly provides that it shall be a defence for the defendant to establish that the defect was not discoverable given the state of scientific and technical knowledge at the time of supply. The burden of proof is on the defendant.

Likewise, a similar defence can be invoked in a claim in negligence.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

As mentioned in question 3.1 (d) above, compliance with regulatory and/or statutory requirements is a valid defence under the Defective Products Law.

No such express statutory defence exists with regard to negligence or breach of contract claims, although compliance by the defendant to such requirements could perhaps enhance his chances of proving non-breach of a contractual term or the exercise of reasonable care by him.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

A judgment is conclusive only between the parties to certain proceedings and only these parties are estopped from re-litigating any issues of fault, defect or capability of a product which formed the legal basis of the previous proceedings.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings is there a time limit on commencing such proceedings?

Yes. This can be done either in the same proceedings, through the service of a relevant notice to the third party, within a month from the filing in Court of the defendant's defence, or in the context of subsequent proceedings. Such subsequent proceedings must be brought by the defendant against the third party within three years from the date of issuance of judgment against the defendant.

3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?

The defence of contributory negligence may be made out in a claim under both the Defective Products Law and in negligence, in which case the defendant's liability will be reduced according to the claimant's negligence (apportionment of liability).

4 Procedure

4.1 In the case of court proceedings is the trial by a judge or a jury?

All trials in Cyprus (and therefore both civil and criminal trials dealing with issues of product liability) are conducted by a Judge.

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

Although technical and other specialists often provide assistance to the Cyprus Courts in reaching their decisions, the Courts do not have the power to recruit such specialists themselves. It is rather left to the parties to the action to call such specialists as expert witnesses, in order to testify on matters falling within their field of expertise. An expert witness testifying on behalf of one of the parties may be challenged by expert testimony introduced by the adversary and is subject to cross-examination.

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?

Although very rare in practice, class actions may be brought in respect of multiple claims against the same defendant(s), by virtue of Rule 9 of the Cyprus Civil Procedure Rules. The procedure followed in such cases is an "opt-in" one.

A class action is available in situations where many persons share a common interest in a case. Such action may be filed after one or more of such interested persons are authorised by the Court to sue or defend in this class action, as the case may be, on behalf of or for the benefit of all persons interested. Except for cases involving unincorporated religious, charitable, philanthropic, educational, social or athletic institutions or associations not established or conducted for profit, the Court will grant the requisite permission for a class action to be instituted if the claim is accompanied by a power of attorney, duly signed by all of the persons to be represented in the case and certified, authorising the representative person(s) who shall sue or defend in the relevant action on their behalf, to do so.

It should be noted that a judgment issued in the context of a class action binds all of the persons represented in the claim and the judgment can therefore be enforced against each and every one of them as if they were parties to the claim (action).

4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

This is indeed possible, provided that the relevant representative body duly obtains the power of attorney from each individual or entity whom it proposes to represent, as well as the authorisation described in question 4.3 above.

4.5 How long does it normally take to get to trial?

It is not unusual for claims to take about 2-3 years to reach the trial stage. The time needed will ultimately depend on the circumstances and peculiarities of each case, such as delaying tactics employed, cost scale and complexity of the case, any interim applications, any efforts made towards a settlement of the case out-of-court and other related factors.

4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

It is indeed possible for Courts to deal with any preliminary issues raised prior to the trial of the main action, but only with regard to points of law, as opposed to points of fact. All such issues are decided by the presiding Judge.

4.7 What appeal options are available?

Both interlocutory orders (which substantially influence the rights of the parties) and final judgments issued by the District Courts of Cyprus (civil and criminal divisions) are subject to appeal before the Supreme Court of Cyprus. In respect of interlocutory orders, an appeal must be lodged within 14 days, whereas for final judgments,

an appeal should be filed no later than within six weeks from the date of issuance of the order or judgment in question, unless the Court grants an extension in relation thereto.

It should be noted that an appellant may appeal against the whole or part of the order or judgment, stating in his appeal all the points of appeal and the grounds upon which these are based. In turn, the appellate Court will usually confine itself to a review of the lower Court's decision, and only rarely order a re-trial of the case.

4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

As mentioned in question 4.2 above, only the parties to the proceedings may present experts in the course of a trial. Expert evidence must be limited to matters of opinion which fall within the witnesses' expertise and must not be irrelevant or otherwise inadmissible under the relevant Evidence laws and Civil Procedure Rules currently in force in Cyprus.

4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

No legal requirements in respect of the pre-trial deposition of factual or expert witnesses or the exchange of witness statements/expert report exist in Cyprus. However, the disclosure of witness statement/expert reports to the other side may be ordered by the Court prior to the commencement of the trial, following an application by either party to that effect.

4.10 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

There are no disclosure obligations before the commencement of Court proceedings in Cyprus.

As mentioned in question 4.9 above, the disclosure of documentary evidence at the pre-trial stage of Court proceedings may be ordered against any party to the proceedings in respect of the documentation in that party's possession or control. An application for disclosure (setting out a list of documents to be disclosed) will be granted only where the Court has been satisfied that the disclosure sought is material and necessary for the fair disposal of the case or for the purposes of saving costs.

During trial, a party will not be allowed to rely on any documents that it failed to disclose at the pre-trial stage pursuant to a disclosure order.

4.11 Are alternative methods of dispute resolution available e.g. mediation, arbitration?

Alternative methods of dispute resolution are indeed available in Cyprus. Arbitration is the most frequently used method and specific laws have been enacted in an effort to facilitate and regulate both domestic (Cyprus Arbitration Law, CAP 4) and international (Law on International Commercial Arbitration of 1987 No. 101/1987) arbitration. Recourse to mediation, on the other hand, is not addressed in local legislation but may nevertheless be used by the parties as another way of reaching a mutually agreed out-of-court settlement at any stage of the proceedings.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

Yes, please see question 5.2 below.

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the Court have a discretion to disapply time limits?

By virtue of Section 5 of the Limitation of Actions Law, CAP 15, contractual claims are subject to a time limit of six years from the date when the cause of action, i.e. the contractual breach complained of, accrued. However, the implementation of the provisions of the said Law has now been suspended until 30.11.2010 (Law No. 20(I)/2010).

With respect to a claim in negligence, the Civil Wrongs Law, CAP 148, provides that no claim in respect of a civil wrong may be brought, unless:

- the claim in question is brought within three years from the act or omission which gave rise to the claim;
- in cases where the civil wrong causes continuing damage, the claim is brought within three years from the cessation of the damage;
- if the cause of action does not arise from the doing of any act or omission for the doing of any act but from the damage resulting from such act or omission, the claim is brought within three years after the claimant suffered such damage; or
- if the civil wrong was fraudulently withheld from the claimant, the claim is brought within three years of its discovery from the claimant or from the time when such civil wrong could have been discovered by the claimant had he exercised reasonable care and diligence.

It should be noted that where, at the time of accrual of the cause of action, the claimant is not yet 18 years old or is of unsound mind or does not reside in the Republic, the three-year limitation period does not begin to run until only after the claimant turns 18 or becomes of sound mind or returns to the Republic.

Finally, under the Defective Products Law, the right of any person to bring a claim for compensation in relation to damage caused by a defective product may not be exercised after the lapse of three years from the time at which that person became aware or could have reasonably become aware of the damage, the defect or the identity of the producer of the product which caused the damage in question. In any case, a right of action under the said Law shall be extinguished after 10 years from the time when the defective product which caused the damage was put into circulation, unless:

- the producer or, as the case may be, the importer of the product gave a written guarantee that the product may be used for a longer period; or
- the fault/defect came about within the period of 10 years, but could not have easily been discovered until at a later stage.

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

As mentioned in question 5.2 above, in claims brought in respect of negligence, the three-year limitation period will begin to run only after the discovery of the fraud or concealment or from the time when such civil wrong could have been discovered by the claimant had he exercised reasonable care and diligence.

6 Remedies

6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

The remedies available to a claimant in such cases are wide and may include damages (monetary compensation), injunctive or declaratory relief, order for the rescission of a contract etc.

6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

In negligence claims, damages are recoverable in respect of death or personal injury, as well as damage to property and damage to the product itself. It is generally difficult to obtain damages for pure economic loss.

In contract cases, damage to property and to the product itself are recoverable. Damages for personal injury may be recovered provided that the injury sustained was within the reasonable contemplation of the parties at the time of conclusion of the contract in question.

Under the Defective Products Law, it is possible to recover: (a) damage by reason of death or personal injury; and (b) loss of property for private use or consumption or damage thereto.

Please note that no compensation will be awarded under the said Law for damage to the product itself from an own defect or from the defect of another product which formed part thereof at the time of its supply to the claimant; and further, that only damage to property exceeding the amount of Euro 427 may be recovered by the claimant.

In claims under the aforementioned Law, the award of damages to the claimant will be assessed in accordance with the principles applying in negligence claims, i.e. with a view to putting the injured party in the position he/she would have been had the act or omission which caused the injury not taken place.

6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

There is no judicial precedent in Cyprus whereby such damages have been awarded. Generally, it shall be very difficult to convince a Court in Cyprus to award such damages.

6.4 Are punitive damages recoverable? If so, are there any restrictions?

Given that they are not considered as compensatory damages, punitive damages will be awarded in Cyprus only in extreme cases where the Court deems it appropriate to award such damages either due to the defendant's unacceptable or insidious behaviour and/or in order to deter the defendant or others from engaging in similar conduct in the future.

6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

There is no maximum limit on the damages that may be recovered by a claimant from a defendant manufacturer.

6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

In case an out-of-court settlement is reached, then the parties to the proceedings appear before the Court and declare the settlement of the claim. The Court then issues an Order by consent which mirrors the terms of the settlement concluded between the parties.

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the Claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the Claimant in respect of the injury allegedly caused by the product. If so, who has responsibility for the repayment of such sums?

No. The relevant authorities would have to either bring a separate claim against the Defendant or join the Claimant as a party to the existing proceedings.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

The usual practice is for costs to follow the event, i.e. for the unsuccessful party to pay all of the successful party's costs (both Court and legal fees). However, a different Court Order could be made so as to also reflect the orders issued in respect of any applications made in the course of the proceedings (e.g. applications for interim relief, summary judgment, default of the filing of pleadings etc.).

7.2 Is public funding e.g. legal aid, available?

Public funding is not available in product liability cases.

7.3 If so, are there any restrictions on the availability of public funding?

This is not applicable.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Conditional or contingency fee agreements are not allowed in the Republic of Cyprus.

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Though this is not common practice in Cyprus, third party funding of claims is in principle permissible.

8 Updates

8.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Product Liability Law in Cyprus.

No substantial legal developments in the area of Product Liability have taken place during the last year in Cyprus.

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Partner Alexandros Georgiades graduated in law from the University of Reading in 1994, and obtained his LL.M. from Nottingham University, a year later.

Alexandros specialises in all areas of Intellectual Property and Commercial Law, and is particularly experienced in Trademark and Patent Prosecution and Litigation, as well as anti-counterfeiting work. He also has extensive experience in the drafting of Distribution, Franchise and Licensing agreements in his areas of expertise. In addition to IP and Commercial Law, Alexandros also advises on Civil Litigation cases and general consumer protection law issues.

He has been recommended by The Legal 500 (Europe, Middle East & Africa) in the area of Intellectual Property and is a member of the International Trademark Association.

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Associate Victoria-Zoi Papagiannis is a member of the firm's Litigation department.

She obtained her BSc degree (Government) at the London School of Economics and Political Science in 2003, and went on to complete her Graduate Diploma in Law (College of Law, London) in 2005, LL.M. (University College London) in 2006 and Bar Vocational Course (College of Law, London) in 2007.

Victoria currently practices in the areas of Corporate and Commercial Litigation, Banking Law, Torts and General Practice. She has been a member of the Cyprus Bar Association since 2008.



DR. K. CHRYSOSTOMIDES & CO LLC
ADVOCATES AND LEGAL CONSULTANTS

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