International Comparative Legal Guides

Product Liability 2021

A practical cross-border insight into product liability work

19th Edition

Featuring contributions from:

Addleshaw Goddard LLP
Allen & Gledhill LLP
Allen & Gledhill (Myanmar) Co., Ltd.
Arnold & Porter
Bae, Kim & Lee LLC
Bahas, Gramatidis & Partners
BLD Bach Langheid Dallmayr
Campos Ferreira, Sá Carneiro – CS Associados
Clayton Utz
Faegre Drinker Biddle & Reath LLP
Faus & Moliner Abogados
Harris Kyriakides
Herbert Smith Freehills LLP
Iwata Godo Law Offices
Kellerhals Carrard
Kluge Advokatfirma AS
Lee and Li, Attorneys-at-Law
LEGALI RIUNITI LEX Avvocati Associati
Legaltree
Rahmat Lim & Partners
Sidley Austin LLP
Soemadipradja & Taher
Squire Patton Boggs

ICLG.com

Expert Analysis Chapters

1 **European Product Liability Update**
Adela Williams & Tom Fox, Arnold & Porter

6 **U.S. Product Liability Law: Recent Developments, Trends, and Future Outlook**
Julie M. Becker & Shalyn L. Caulley, Sidley Austin LLP

13 **Defective Products: Managing a Product Recall in the UK and Beyond**
Howard Watson & David Bennett, Herbert Smith Freehills LLP

20 **COVID-19 and Vaccine Development: Navigating the UK Regulatory Landscape and Beyond**
Louisa Caswell, Mark Chesher & Cécile Burgess, Addleshaw Goddard LLP

Q&A Chapters

25 **Australia**
Clayton Utz: Colin Loveday & Andrew Morrison

35 **Cyprus**
Harris Kyriakides: Ioanna Leonidou & Charis Andreou

42 **England & Wales**
Arnold & Porter: Adela Williams & Tom Fox

56 **France**
Squire Patton Boggs: Carole Sportes & Valérie Ravit

64 **Germany**
BLD Bach Langheid Dallmayr: Dr. Martin Alexander, LL.M. & Tamara Fabry

71 **Greece**
Bahas, Gramatidis & Partners: Dimitris Emvalomenos

80 **Indonesia**
Soemadipradja & Taher: Romi Emirat, Verry Iskandar, Oene Marseille & Aris Budi Prasetiyo

87 **Italy**
LEGALI RIUNITI LEX Avvocati Associati: Giuseppe Francesco Bonacci & Edoardo Tosetto

94 **Japan**
Iwata Godo Law Offices: Shinya Tago, Landry Guesdon & Kohei Yamada

105 **Korea**
Bae, Kim & Lee LLC: Tony Dongwook Kang & Yongman Bae

113 **Malaysia**
Rahmat Lim & Partners: Karen Foong Yee Ling & Kwong Chiew Ee

122 **Myanmar**
Allen & Gledhill (Myanmar) Co., Ltd.: Minn Naing Oo, Thaw Dar Sein & Myitzu Aung Thame

130 **Netherlands**
Legaltree: Antoinette Collignon-Smit Sibinga & Carolien van Weering

138 **Norway**
Kluge Advokatfirma AS: Ole André Oftebro, Hanne Olsen Kjellevold & Matias Apelseth

145 **Portugal**
Campos Ferreira, Sá Carneiro – CS Associados: João Maria Pimentel & Joana Arnaud

153 **Singapore**
Allen & Gledhill LLP: Dr. Stanley Lai, SC & Amanda Soon

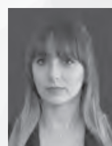
163 **Spain**
Faus & Moliner Abogados: Xavier Moliner & Juan Martínez

173 **Switzerland**
Kellerhals Carrard: Dr. Claudia Götz Staehelin, Laura Manz & Dr. Eliane Haas

182 **Taiwan**
Lee and Li, Attorneys-at-Law: Patrick Marros Chu & David Tien

191 **USA**
Faegre Drinker Biddle & Reath LLP: Teresa Griffin, Christine Kain & Michael C. Zogby

Cyprus



Ioanna Leonidou

Harris Kyriakides

Charis Andreou

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?

The main legislative tool for product liability is the Defective Products (Civil Liability) Law of 1995, Law 105(I)/1995 (the "DPL"), as amended by subsequent legislation. The DPL transposes the Product Liability Directive, 85/374/EEC in the Cyprus legal system. Under the abovementioned legislation, liability is strict.

Pursuant to section 41 of the General Safety of Products Law of 2004, Law 41(I)/2004 (the "GSPL"), anyone who suffers any loss as a result of a violation of any general safety requirement under the GSPL can have a cause of action under the Law of Torts. In addition, section 4(2) provides that a cause of action based on breach of statutory duty might arise, subject to the legal principles regarding liability as a result of breach of statutory duty. However, we should note that, in practice, actions based on section 41 of the GSPL rarely, if ever, happen. The GSPL transposes the provisions of the General Product Safety Directive, 2001/95/EC, into the Cyprus legal system.

Article 52 of the Civil Wrongs Law, Caption 148 ("Cap.148"), combined with the precedent of the well-known case *Donoghue v Stevenson*, provide for an alternative cause of action based on the tort of negligence. In negligence, liability is fault-based.

Moreover, the provisions of the Law of Contracts, Caption 149 ("Cap.149"), combined with the provisions of the Sale of Goods Law, Law 10(I)/1994 (the "Sale of Goods Law"), can provide for a cause of action against retail suppliers, based on breach of contract. The Sale of Goods Law provides for several implied terms in a contract of sale of goods, which, among others, include acceptable quality and safety of use.

1.2 Does the state operate any special liability regimes or compensation schemes for particular products e.g. medicinal products or vaccines?

There are no special liability regimes or compensation schemes for particular products in Cyprus.

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

Under section 5 of the DPL, the producer/manufacturer bears liability for a defective product.

Under section 6 of the DPL, importers, distributors and retail suppliers can be held liable as well, as if they were manufacturers. Distributors and suppliers can only be held liable if they fail to disclose the identity of the manufacturer or of the person who supplied them with the product within reasonable time, provided that such a request is made in writing within reasonable time.

Cap.148 allows for a fault-based suit, usually against the manufacturer, where duty of care can be established.

Also, a combination of the provisions of Cap.149 and the Sale of Goods Law can establish a cause of action only against the direct retail supplier with whom the consumer entered into a contract.

Furthermore, a cause of action under section 41 of the GSPL for violation of the provisions set out in the GSPL may be established against all of the above.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

Under Part III of the GSPL, the regulatory authority has a general obligation to ensure the safety of the products in the market. Theoretically, it could be possible to sue the regulatory authority for negligence and breach of statutory duty if it fails to comply with its duties. Such an action, however, would be unlikely to succeed since, under common law, governmental organisations are not usually held liable for omissions (e.g. failure to supervise) due to public policy issues.

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

The GSPL provides that producers have an obligation to place only safe products in the market that are in conformity with GSPL requirements. In addition, distributors have an obligation not to distribute products if they know or ought to know that they present dangers for the consumer.

Under section 6 of the GSPL, the competent authority can require a recall of a product where there is evidence that, despite conformity with GSPL requirements, it is still dangerous.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Under section 11 of the GSPL, the competent authority can order the recall of any products that are considered to be dangerous.

Under section 7 of the GSPL, product recall is an action that should be taken as a last resort, in cases where other measures would not suffice to prevent the risks involved, and where the producers or the regulatory authority consider it necessary.

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

Yes. The GSPL provides that supply of defective products in the market is a criminal offence. Offenders are liable to imprisonment for up two years and/or a fine of up to €8,543.

2 Causation

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

Under section 5 of the DPL, the claimant has the burden of proving that he sustained a loss, partly or entirely, due to a product that was defective.

Likewise, if the cause of action is based on breach of contract, breach of statutory duty, negligence or any other civil wrong, the general rule of the burden of proof applies and the claimant has to prove his case on the balance of probabilities. However, in an action based on negligence, depending on the circumstances of the case, the doctrine of *res ipsa loquitur*, which reverses the evidential burden of proof, might be applicable.

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? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

Under the DPL provisions, the claimant has to prove that he suffered a damage partially or entirely from the defective product. Therefore, the claimant has to establish a link of causation between his exposure to the defective product and the damage he suffered. Section 7 of the DPL provides that liability may be reduced or even eliminated in the case that the damage is caused by a defective product combined with fault of the claimant or fault by a person who is accountable to the claimant.

In the joined cases C 503/13 and C 504/13 of the Court of Justice of the European Union, it was decided that the Product Liability Directive, 85/374/EEC, must be interpreted as meaning that where it is found that products belonging to the same group or forming part of the same production series have a potential defect, such a product may be classified as defective without there being any need to establish that that product has such a defect. Cyprus Courts have an obligation to construe the provisions of the DPL in accordance with the provisions of the Directive.

Where the cause of action is based outside the scope of the DPL, the claimant has to prove that the product actually malfunctioned, and that malfunction was the cause of injury. The Cypriot Courts will apply the so-called "but-for test", which provides that no damages will be awarded if the defective product did not materially contribute to the injury.

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?

No form of market-share liability has been recognised by Cypriot Courts and therefore an action against merely possible producers will inevitably be dismissed if it cannot be established that they actually manufactured the defective product.

Section 6 of the DPL provides that if the supplier/distributor fails to provide the claimant with the identity of the producer, the claimant can sue the supplier/distributor as if he were the producer. Section 8 of the DPL provides that where two or more persons are responsible for the damage of the claimant, their liability is joint and several.

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?

Failure to warn may give rise to liability under the provisions of the DPL, section 41 of the GSPL and in negligence. It also constitutes a criminal offence under the GSPL.

Section 7 of the GSPL provides that the producer must provide the consumer with adequate and proper warning. Section 4 of the DPL provides that, in order to decide whether or not a product is defective, the Court may take into account all the relevant circumstances of the case, including any warnings given about the product. Although in Cyprus there is no recognised principle of "learned intermediary", there is a possibility that the Cyprus Courts will recognise such a principle as it is applied in other common law jurisdictions.

Likewise, as far as negligence is concerned, providing a learned or responsible intermediary with adequate information about the product in question may be enough to discharge the producer's duty of care.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Under the DPL regime, the following constitute defences:

(a) The defendant did not manufacture the product with the intention to sell it or to distribute it for profit, and he did not manufacture or distribute it in the course of his business.

(b) The defendant did not put the product into circulation.

(c) The product was part of another product and the defect was wholly attributable to the design of the other product or due to compliance with directions given by the manufacturer of the other product.

(d) The defect was wholly attributable to compliance with requirements imposed by legislation.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

(e) Taking into account all the circumstances, it is possible that the defect causing the damage did not exist when the producer placed the product on the market but presented itself later on.
(f) The defendant not being the producer or the importer of the product disclosed the identity of the manufacturer or of the person who supplied him with the product.
(g) When the product was placed on the market, the standard of scientific and technical knowledge did not allow for the discovery of the defect.

As far as the tort of negligence is concerned, the main defences of tort are applicable. In cases of this nature, the defence of *volenti non fit injuria* and the quasi-defences of contributory negligence and lack of causation may be invoked by the defendant. Furthermore, since negligence requires fault on behalf of the defendant, many of the abovementioned defences of the DPL could be invoked by the defendant to establish that he did not act in breach of his duty of care.

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?

Yes, such a defence is available to the defendant. See point (g) at question 3.1.

As far as negligence is concerned, the Court would examine whether the defendant acted with reasonable care or in breach of his duty by applying the criterion of "the reasonable man". To this end, the technical and scientific knowledge at the time of supply will, inevitably, have to be taken into consideration.

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?

Compliance with statutory or regulatory requirements does not constitute an absolute defence under the DPA or in negligence. However, such compliance will be of evidential value in establishing breach of duty in negligence or in establishing that the product was defective under the provisions of the DPL.

However, in an action under the DPA regime, if it can be proved that the defect is wholly attributable to compliance with requirements imposed by regulatory and/or statutory requirements, there is no liability (see point (g) at question 3.1).

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?

No issue of estoppel arises. In general, a final judgment is conclusive only between the parties to the 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, the defendant can either issue a Third-Party Notice to a third person, under Order 10 of the Civil Procedure Rules (the "CPR") and make him a party to the ongoing proceedings or initiate a new action after the adjudication of the first case and claim contribution from any third party. The Cyprus Limitation Law of 2012, Law 66(I)/2012, provides that the limitation period for an action related to a judgment is 15 years from the date the judgment becomes final.

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

Yes, the amount of compensation under the DPA or the tort of negligence can be reduced or eliminated if the defendant can establish that the claimant's losses resulted from his own negligent behaviour.

4 Procedure

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

Trial is by a judge. There is no jury system in Cyprus.

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)?

In Cyprus, the litigation system is adversarial, not inquisitorial. The Court does not have the authority to appoint an expert. Experts can be appointed by the parties.

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?

Yes, Order 9 of the CPR provides that 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.

In order for the Court to give leave for a class action, the writ of summons must be filed, accompanied by a properly certified power of attorney, signed by all the persons to be represented, and empowering the person or persons, who are to sue or defend on their behalf, to represent them in the cause or matter specified in the power of attorney, except in the case of any unincorporated religious, charitable, philanthropic, educational, social or athletic institution or association not established or conducted for profit.

Where an order for a class action is made, the persons represented shall be bound by the judgment of the Court in the action, and the judgment may be enforced against them in all respects as if they were parties to the action.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Class actions are not common in practice. No judgment in any class action has been published by the Cyprus Courts yet.

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

Claims by representative bodies can be brought, as described at question 4.3.

4.5 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

Advertising for a claim is considered "client-fishing" in Cyprus and it is against the Lawyers' Code of Ethics. Other representative bodies outside the legal profession could theoretically advertise for claims, but this does not happen in practice in any official way.

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

It normally takes five to eight years to get to trial. However, fast-track cases, which include claims below €3,000, and where only written evidence is given, are usually adjudicated within two to three years.

4.7 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?

Pursuant to Order 27 of the CPR, the Court can preliminarily try only legal issues which substantially affect the final outcome of the action. As explained at question 4.1, there is no jury system in Cyprus.

4.8 What appeal options are available?

An appeal may be against the whole or part of the judgment.

In Cyprus, all appeals are heard by the Supreme Court. Its decisions as an Appellate Court are final and not subject to further appeal.

Under section 25 of the Courts of Justice Law of 1960, Law 14/1960, as amended, any party can appeal before the Supreme Court in relation to:

(a) Any final judgment.
(b) Any order of a prohibitory or imperative nature.
(c) Interlocutory judgments, in the case that they have a determinative effect on the rights of the parties.

Order 45 of the CPR provides that no appeal from any interlocutory order shall be brought after the expiration of 14 days, and no other appeal shall be brought after the expiration of six weeks.

4.9 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?

The Court does not appoint experts. Nevertheless, the parties themselves can appoint a technical specialist and call him to testify as an expert witness and the Court will assess his testimony.

The general rule is that evidence has to be relevant to the facts of the case and admissible under Cypriot law (e.g. the evidence must not violate any constitutional rights). Expert witnesses, in contrast with ordinary witnesses, are allowed to express their personal opinion on subjects within their expertise.

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

No pre-trial depositions are conducted in Cyprus.

In general, there is no obligation to exchange statements or expert reports prior to trial. However, in practice, at the pre-trial procedural stage of directions, the parties usually agree to disclose and exchange the documents that they have in their possession, custody or power.

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

There is no obligation to disclose any documents prior to the commencement of Court proceedings.

After the commencement of the Court proceedings, under Order 28 of the CPR, the Court can order the discovery and inspection of documents, if satisfied that at that stage of the proceedings such order is necessary for dealing fairly with the cause or matter or for saving costs. In practice, the parties usually agree to disclose and exchange the documents that they have in their possession, custody or power during the pre-trial procedural stage of directions.

4.12 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

No, currently there is no official obligatory or optional method for alternative dispute resolution related to product liability. The Law on Alternative Dispute Resolution for Consumer Disputes of 2017, Law 85(I)/2017, which establishes an optional dispute resolution mechanism and implements into Cypriot law the provisions of the respective Directive 2013/11/EU, is limited to the resolution of contractual disputes and does not cover disputes related to damage caused by defective products.

4.13 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

In Cyprus, jurisdiction on cross-border litigation is subject to the provision of the Brussels regime under Regulation (EU) 1215/2012 (the "Regulation"), which has been in effect since 15th January 2015. Previously, the relevant jurisdiction rules were governed by Regulation (EU) 44/2001.

The general rule under article 4 of the Regulation provides that persons domiciled in a Member State shall, whatever their nationality, be sued in the Courts of that Member State.

Under article 7 of the Regulation, further jurisdiction rules apply in cases of contracts and torts. In sale of goods contracts, jurisdiction is granted to the Courts of the place of the Member State

© Published and reproduced with kind permission by Global Legal Group Ltd, London

where, under the contract, the goods were delivered. In tort, jurisdiction is granted to the Courts where the harmful event occurred.

Under article 25 of the Regulation, the parties have the freedom to agree that a Court or the Courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship to that jurisdiction. However, in the case of consumer contracts, only limited autonomy to determine the Courts having jurisdiction is allowed in order to protect the consumers. In addition, jurisdiction clauses are subject to rules regarding exclusive jurisdiction under the provisions of the Regulation.

The special jurisdiction rules in relation to disputes regarding consumer contracts are set out in articles 17–19 of the Regulation. Under article 18 of the Regulation, a consumer may bring proceedings against the other party to a contract either in the Courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the Courts of the place where the consumer is domiciled.

5 Time Limits

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

Yes, certain time limits apply.

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?

Limitation periods in Cyprus are set out by the Limitation Law of 2012, Law 66(I)/2012.

For an action related to contract, the limitation period is six years after the completion of the cause of action.

For an action related to a civil wrong, the general limitation period is six years. If the cause of action is based on negligence, the limitation period is three years after the completion of the cause of action.

However, if a claim is based on a civil wrong related to physical injury or death, the Court has discretion to decide not to apply the limitation period and, for that purpose, may take into account the period of the delay on issuing the proceedings, the duration of any inability of the claimant to handle his claim and obtain the necessary evidence to establish his case, the attitude of the defendant towards the claimant's effort to obtain those pieces of evidence, and the consequences of the delay in relation to the reliability of the evidence. The abovementioned discretion should not be exercised after the lapse of two years from the expiry of the prescribed limitation period.

The DPL provides distinct limitation periods for proceedings brought under its provisions. Section 11(a) of the DPL provides that proceedings under the DPL should be brought within three years from when the claimant acquired or should have acquired knowledge of the damage, the defect of the product and the identity of the producer. Section 11(b) provides that any right to bring proceedings is extinguished after the lapse of 10 years after the product was put on the market unless:

(i) the producer or the importer of the product provided the consumer with a guarantee for a longer period; or
(ii) the damage occurred within a period of 10 years, but it could only be reasonably discovered at a later time.

Notwithstanding the above, under article 31(e)(bb) of the Interpretation Act, Caption 1, which was specifically amended due to the coronavirus pandemic, any limitation period expiring within the period of 15th January 2021 to 31st May 2021 is extended until 30th June 2021.

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

Section 14 of the Cyprus Limitation Law of 2012, Law 66(I)/2012, provides that the relevant period of limitation does not begin to run, if the action is based on the defendant's fraud or if the defendant has deliberately concealed a fact relevant to the claimant's cause of action, or in the case that the action is related to any remedy for consequences of a mistake, until the claimant discovers or could have discovered with reasonable care the fraud, the concealment or the mistake.

6 Remedies

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

Monetary compensation and injunctive or declaratory relief are available in Cyprus.

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

Pursuant to section 13 of the DPA, the remedies under the DPA are identical to the remedies in negligence.

In negligence, the claimant can recover damages for bodily and mental injury, death and damage to property. Pure economic loss, such as the price of the defective product itself, is not recoverable.

In contract, the claimant can recover all the damages he suffered as a result of the breach of contract. These include monetary loss and even bodily and mental injury, death and damage to property, if it can be established that they were not unlikely to occur as a result of the breach of contract.

Regarding the damages for mental injury that are not a consequence of physical injury, the Court will only permit recovery for a recognised psychiatric disease. Mere anxiety, distress and sorrow are not deemed to be sufficient damage to institute proceedings.

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?

No; actual damage must occur in order for a cause of action to be established.

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

As far as the contract is concerned, damages are intended to put the innocent party into the position he would have been in if the contract had been performed.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

In negligence, damages are intended to put the innocent party into the position he would have been in if the negligent act or omission had not taken place.

Punitive damages are seldom, if ever, awarded.

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?

No, there is no such limit.

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?

No special rules apply to the settlement of claims. In practice, when the parties reach an agreement, they will declare it before the Court and the Court will issue a by-consent order that incorporates the content of the settlement.

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?

There is no recognised legal principle that allows governmental authorities to claim any amounts of money spent by them in the context of health and/or social security programmes.

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?

Yes, it is established practice that the winning party is entitled to recover all relevant legal and administrative costs. However, the Court has discretion to decide otherwise if it considers this fair and reasonable.

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

Under the Legal Aid Law of 2002, Law 165(I)/2002, no legal aid is provided in cases of product liability claims.

However, in the case of cross-border disputes (when an applicant is not a Cypriot citizen and has his domicile or habitual residence abroad), the law provides for legal aid.

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

If the requirement of cross-border dispute is satisfied, the Court, in order to decide whether or not to grant legal aid, will take into account the financial situation of the applicant and the nature of the case itself, especially its importance for the applicant.

If, after granting legal aid, the financial situation of the applicant changes or it is discovered that legal aid was granted based on misrepresentations of the applicant, the Court has the authority to revoke the legal aid provided to the applicant.

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

Even though some scholars and lawyers in Cyprus hold the view that conditional or contingency fees are not permissible, the latter are not explicitly prohibited by legislation or the Lawyers' Code of Ethics.

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

There are no laws enacted prohibiting or regulating funding by third parties.

7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

The Court cannot set a cap on the costs of the case in order to be proportionate to the value of the claim. Nonetheless, the parties are free to come to an agreement regarding their costs.

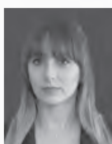
8 Updates

8.1 Please provide a summary of any new cases, trends and developments in product liability law in your jurisdiction, including how the courts are approaching any issues arising in relation to new technologies and artificial intelligence.

No significant cases or developments in the legislation related to product liability law have been observed in recent years.

However, in relation to procedural law, it should be noted that a project for the reform of the Civil Procedure Rules in Cyprus, undertaken by the Supreme Court of Cyprus, is currently in its final stages. The proposed Rules of Civil Procedure are expected to come into force within the next year or two.

© Published and reproduced with kind permission by Global Legal Group Ltd, London



Ioanna Leonidou is a Senior Associate in the Insurance Law and Personal Injury Department at Harris Kyriakides. Ioanna's main areas of practice include drivers' negligence, medical negligence and public liability. She has experience in representing local clients before Cyprus courts on multi-injury claims. She has represented both claimants and defendants in a wide range of insurance disputes, specifically for traffic and workplace accidents, professional liability lawsuits and claims for medical negligence.

Harris Kyriakides
115 Faneromenis Avenue
Antouanettas Building
Larnaca, 6031
Cyprus

Tel: +357 24 201 639
Email: i.leonidou@harriskyriakides.law
URL: www.harriskyriakides.law

Charis Andreou is an Associate in the Insurance Law and Personal Injury Department at Harris Kyriakides. He has experience in appearing in court and working on multifaceted and complex legal cases. He has a clear, logical, and practical approach when dealing with each case, and he is best known for building a great rapport with his clients.

Harris Kyriakides
115 Faneromenis Avenue
Antouanettas Building
Larnaca, 6031
Cyprus

Tel: +357 24 021 732
Email: c.andreou@harriskyriakides.law
URL: www.harriskyriakides.law

Harris Kyriakides was established in 1976 and offers the full range of corporate and commercial legal services. The firm has a substantial transactional and corporate practice with an extensive international reach and client base. It has consistently advised national and multinational corporations, financial institutions and governmental organisations, and it maintains leading clients from several industries and business sectors, including banking, insurance, real estate, telecommunications, shipping, oil, construction, motor, tourism & leisure and advertising, among others. The firm is highly ranked by various independent researchers and legal professionals, and acknowledged in prestigious national and international directories and publications, including *The Legal 500*, *Who's Who Legal* and *Chambers and Partners*.

www.harriskyriakides.law

© Published and reproduced with kind permission by Global Legal Group Ltd, London

ICLG.com

Other titles in the ICLG series

Alternative Investment Funds
Anti-Money Laundering
Aviation Finance & Leasing
Aviation Law
Business Crime
Cartels & Leniency
Class & Group Actions
Competition Litigation
Construction & Engineering Law
Consumer Protection
Copyright
Corporate Governance
Corporate Immigration
Corporate Investigations
Corporate Tax
Cybersecurity
Data Protection
Derivatives
Designs
Digital Business
Digital Health
Drug & Medical Device Litigation
Employment & Labour Law
Enforcement of Foreign Judgments
Environment & Climate Change Law
Environmental, Social & Governance Law
Family Law
Fintech
Foreign Direct Investment Regimes
Franchise
Gambling
Insurance & Reinsurance
International Arbitration
Investor-State Arbitration
Lending & Secured Finance
Litigation & Dispute Resolution
Merger Control
Mergers & Acquisitions
Mining Law
Oil & Gas Regulation
Patents
Pharmaceutical Advertising
Private Client
Private Equity
Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Technology Sourcing
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

@ICLG_GLG

The International Comparative Legal Guides are published by: glg global legal group