



ICLG

The International Comparative Legal Guide to:

Product Liability 2015

13th Edition

A practical cross-border insight into product liability work

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Cyprus

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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?

The legal framework in respect of product liability is robust and primarily consists of:

- (a) Law 105(I)/1995 – The Defective Products (Civil Liability) Laws of 1995 to 2002 (“Defective Products Law”) which implement European Directive 1999/34/EC into Cyprus law;
- (b) Law 41(I)/2004 – The General Safety of Products Law of 2004 (“Safety of Products Law”) which implements European Directive 2001/95/EC;
- (c) the Contract Law Cap 149; and
- (d) the Civil Wrongs Law Cap 148.

A consumer has a *prima facie* claim under the Defective Products Law if he can prove that the product was defective and that it caused damage. The full definitions of a ‘defective product’ and ‘damage’ are set out in the Defective Products Law. The law does not permit the producer to limit his liability via contract or other form of agreement with the purchaser. The Safety of Products Law imposes the legal requirements for product safety on all goods other than those for which specific legislation has been enacted. Specific legislation exists in respect of toys and electrical goods.

Cap 149 allows an injured purchaser to claim for breach of contract against the immediate supplier of a defective product only. Liability depends on both the express and the implied terms of the contract between them. The Sale of Goods Law 10(I)/94, as amended, implies several terms into contracts for the sale of goods to the consumer, including that the goods must be fit for purpose.

Cap 148 allows an injured person to bring a claim for negligence provided that he can prove that a duty of care was owed to him, that the defendant breached that duty of care and that damage was suffered as a result of that breach.

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

There are no such compensation schemes.

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

Under the Defective Products Law and the Safety of Products Law, the injured party may claim against:

- (a) the manufacturer of the defective product;
- (b) any person who has manufactured any component part of the defective product (including the supplier of raw materials);
- (c) any person who, by putting his name on a product or using a trade mark or other distinguishing mark in relation to a product, has held himself out to be the producer;
- (d) the importer of the product; and
- (e) a supplier who fails to disclose details of the producer within a reasonable time of being asked in writing to do so, provided that such a request is made within a reasonable time from the cause of damage.

Where more than one person is held liable for the damage suffered the liability is joint and several.

Cap 149 allows an injured purchaser to claim for breach of contract against the immediate supplier of a defective product only.

Under Cap 148 claims are usually made against the product manufacturer, but they can be brought against other parties in the supply chain if fault can be established.

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?

The provisions in the Safety of Products Law mirror those of Directive 2001/95/EC article 3. Product recall is viewed as an action to be taken as a last resort. A recall will be issued by a producer:

- (a) where other measures would not be sufficient to meet the risks involved – for example where the defect in the product cannot be made safe;
- (b) if the producer considers it necessary, for example if there is evidence to suggest that the product is dangerous despite it complying with criteria designed to ensure general safety; or
- (c) where the producer is obliged to do so further to a measure taken by the competent authority. In Cyprus this is the Competition and Consumer Protection Service (“the Service”) which is a division of the Ministry of Energy, Commerce, Industry and Tourism. Failure to recall in such circumstances is a criminal offence. Proceedings against the offender will be initiated by the Service.

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

The Safety of Products Law obliges producers only to place products on the market which under normal conditions of use do not present any danger to the health and safety of consumers. Breach of this obligation is a criminal offence.

2 Causation

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

Under the Defective Products Law the onus is on the claimant to prove that the product was unsafe, namely that its use, consumption or storage by any person exposes:

- (a) that person or any other person to a risk of personal injury of any kind, including any risk to health, which persons generally should not reasonably be expected to incur; or
- (b) any property (including immovable property) to a risk of loss or damage which property generally should not reasonably be expected to incur.

The claimant must also establish that the damage complained about was caused, either entirely or partly, by the unsafe product.

The burden of proof in claims under Cap 148 and 149 is also on the claimant.

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?

As stated in question 2.1, the claimant must prove that the injury was caused either entirely 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?

The position of the claimant is unaffected as the Defective Products Law will treat the supplier of the product as the producer unless the supplier identifies the producer to the claimant within a reasonable timescale. Where one or more parties may be responsible for the damage, the Defective Products Law provides that their liability is joint and several. The liability of a supplier cannot be diminished if the damage is caused both by the defective product and by the act or omission of a third person. However, liability under the Defective Products Law does not affect the supplier's right to claim indemnity or contribution from the third person.

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?

A failure on the part of a producer to give adequate product warnings may give rise to criminal liability under the Safety of Products Law. The Law specifically provides that within the limits of their respective activities, producers must provide consumers with the relevant information to enable them to assess the risks inherent in a product throughout the normal or reasonably foreseeable period of its use, where such risks are not immediately obvious without adequate warnings, and to take precautions against those risks. The presence of warnings does not exempt the producer from the general safety of goods requirement laid down in the law.

There is no principle of a "learned intermediary" in Cyprus product liability law.

3 Defences and Estoppel

3.1 What defences, if any, are available?

A number of defences are available to the producer under the Defective Products Law, namely that:

- (a) he neither manufactured or imported the product for sale or supply in the course of his business;
- (b) he did not put the product into circulation;
- (c) the product was used as a component in another product and that the defect was wholly attributable either to the design of the other product or to compliance on his part with instructions given by the producer of the other product;
- (d) the defect was wholly attributable to compliance on his part with requirements imposed on him by any provision of law;
- (e) the defect did not exist in the product at the time when it was under his control or that it came into existence at some later time;
- (f) not being the producer or importer of the product, he has made known the identity of the producer or of the person who supplied the product to him; or
- (g) when he put the product into circulation, the standard of the scientific and technical knowledge could not permit the determination of the existence of the defect.

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?

There is no state of the art or development risk defence available. As stated in question 3.1(g) there is a defence available if the product defect was not discoverable at the time of supply because of the standard of scientific and technical knowledge prevailing then. The onus is on the defendant to prove that this was indeed the case.

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 stated in question 3.1(d) compliance with regulatory or statutory requirements is a specific defence available to the manufacturer.

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?

There is no issue estoppel to prevent such proceedings. A final judgment in previous proceedings is conclusive only between the parties to those 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?

The liability of a producer (or those treated as producers) under the Defective Products Law cannot be diminished if the damage is caused both by the defective product and by the act or omission of a third person. This is without prejudice to the rights of the producer against the third person. Thus a defendant may either join the third party in the main proceedings within a month from the date of filing of the defence, or alternatively bring separate proceedings against the third party, in which case the time limit is governed by the normal limitations law (please see question 5.1).

The Law is silent on how any liability is apportioned between these parties and each case will be judged on its own merits but it may generally be assumed that all such persons will be jointly and severally liable towards a consumer for any damages which may have been caused by a defective product.

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

It is possible to make such an allegation.

Under the Defective Products Law (s7) and Cap 149, liability may be reduced or disallowed when the damage is caused both by a defective product and by the fault of the person damaged or of any person acting under his responsibility.

Cap 148 also acknowledges the possibility of contributory negligence on the part of the claimant.

4 Procedure

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

Both criminal trials and civil trials 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)?

The court does not have the power to appoint technical specialists. However, it is common practice for the parties to make use of such specialists as expert witnesses.

An expert witness testifying on behalf of one of the parties may be challenged by expert testimony introduced by the adversary. The court will form its own opinion as to the weight that should be attached to such testimony.

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 the Cyprus Civil Procedure Rules allow for class and representative body actions, such actions are not common.

Where many persons share the same interest a class action may be filed after one or more of them are authorised by the court to sue or defend in this class action for the benefit of or on behalf of all persons interested. Before the court grants the relevant authorisation, a power of attorney signed by the persons to be represented and certified by the Registrar or certifying officer and empowering the person or persons who are to sue or be sued on their behalf to represent them in the cause or matter specified must be lodged alongside the main action. This is not necessary in the case of any unincorporated religious, charitable, philanthropic, educational, social or athletic institution or association not established or conducted for profit.

Where a class action is allowed the persons represented are bound by the judgment of the court in the action, and any judgment may be enforced against them in all respects as if they were parties to the action.

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

Claims can be brought by a representative body as stated in question 4.3. As with a class action, the approval of the court must be obtained prior to filing the action.

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

The time taken to get to trial may normally be expected to exceed the Supreme Court's target average of a maximum three years. The time taken in a particular case depends on several factors, including the complexity of the claim and the tactics employed by the relevant

legal advisors. Attempts to reach an out-of-court settlement may also delay proceedings, as might requests for interim orders in respect of matters such as document disclosure.

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 both possible and common for the courts in Cyprus to try such preliminary issues, but only on points of law. The court will not consider issues of fact at a preliminary stage, since this can only happen at the hearing of the substance of the case and after the pleadings have been completed.

4.7 What appeal options are available?

Decisions issued by courts of first instance are subject to appeal to the Supreme Court of Cyprus. An appeal against an interlocutory decision must be filed within 14 days of the decision. Case precedent allows that only interlocutory judgments that have an imminent effect on the rights of the parties may be appealed.

Notice of an appeal against a final judgment must be filed no later than six weeks after the date of the judgment. The appellant may appeal against either the whole or a part of the final judgment.

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 stated in question 4.2, the court does not have the right to appoint expert witnesses but the parties to the hearing may present expert evidence. Such evidence is restricted only in the sense that:

- (a) it must be relevant to the case being heard; and
- (b) it must be admissible, that is, it must comply with Cyprus law of evidence.

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?

There is no requirement for factual or expert witnesses to present themselves for pre-trial deposition. As described in question 4.10 the judge may on application order the discovery of witness statements or expert reports at the pre-trial stage. Without the granting of such an application pre-trial exchange of such documents is not a legal requirement. Nevertheless, it has become common practice in recent years for the courts to issue directions for disclosure of documents pre-trial, without an application.

Furthermore, under a recent amendment to the Civil Procedure Rules, for actions commenced after 1 January 2015 in which the claim is under €3,000, the court issues directions for the exchange of written testimony between the parties, taking into account the number of witnesses to be summoned and the time needed to prepare the evidence of each party.

For claims in excess of €3,000 the court issues directions for the parties to submit a list of the witnesses to be called and a summary of each witness's evidence. If the parties agree, the court can issue directions to exchange written testimony even though the claim exceeds €3,000.

The written testimony in both instances takes the form of an affidavit and contains the documents which will be presented by each witness.

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

In general there is no obligation to disclose such evidence. A disclosure obligation will arise only if, following an application by either party to the action, the court orders the discovery of documents relevant to the action that are under the control of the other party. The court will make such an order only if the evidence in question is deemed material to the case in as much as:

- (a) its disclosure is necessary for disposing fairly of the action; or
- (b) its disclosure will result in significant cost savings.

The courts will not encourage so-called "fishing expeditions" and actual discovery only takes place after the completion of the pleadings and the particulars.

See question 4.9 above for recent practice and for actions submitted from 2015 onwards.

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

In most disputes the option of resolving a dispute via arbitration or mediation does exist although there is no single scheme in place which is specifically designed to deal with consumer product liability issues.

The Service and the two major consumer associations that exist in Cyprus will often mediate between consumers and suppliers to attempt to bring about an out-of-court settlement. This does not preclude legal action on the part of the consumer if no settlement is reached.

Domestic arbitration proceedings are governed by the Arbitration Law, Cap 4 of the codified laws of Cyprus, and international arbitration proceedings are governed by Law 101 of 1987 which adopts, with some minimal amendments, the UNCITRAL Model Law. In contrast to Cap 4, which allows for extensive intervention by the courts at all stages of domestic arbitration, Law 101 of 1987 minimises the court's involvement and ability to intervene in international arbitration proceedings.

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

Article 21 of the Courts of Justice Law No. 14/1960 gives the District Courts in Cyprus jurisdiction to hear cases at first instance if the foundation of the claim has arisen, either wholly or partly, within the boundaries of the district of the corresponding District Court. In accordance with Order 6(e) of the Civil Procedure Rules, the Cyprus courts will assume jurisdiction in cases involving contracts concluded in Cyprus (or made by or through an agent trading or residing in Cyprus on behalf of a principal who is trading or residing abroad). The Cyprus courts will also assume jurisdiction if the breach took place in Cyprus. Section 3 of Cap 148 gives the Cyprus courts jurisdiction over civil wrongs committed in Cyprus within three miles of its coastline. Cap 148 is not exhaustive in the sense that the courts may assume jurisdiction for torts committed abroad, following the common law rules of jurisdiction.

5 Time Limits

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

Time limits do exist and they are detailed in question 5.2.

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?

The law dealing with limitation periods generally is Law 66 (I) of 2012. Article 3 provides that the limitation period for a claim commences from the day of completion of the basis of the claim, which is defined in Article 2 as all events that give rise to an actionable right. Article 6 prescribes a general limitation period of six years for civil wrongs, but gives the court discretion to disapply the limitation provisions in the case of civil wrongs leading to bodily harm or death provided that not more than two years has elapsed passed from the expiry of the prescribed limitation period. In making its decision the court is required to consider:

- The length of the delay in issuing proceedings and the reasons for it.
- The duration of any inability on the part of the claimant to handle the case.
- The steps taken by the claimant to safeguard any relevant evidence.
- The behaviour of the defendant in relation to the application and the consequences of the delay in relation to the preservation and the reliability of the evidence.

Under a transitional arrangement, claims may be submitted until 31 December 2015, notwithstanding the fact that the limitation period has expired.

However, in any event the Defective Products Law requires proceedings for compensation of damage to be commenced within three years from when the claimant became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer of the defective product that caused the damage. It appears that this specific stipulation overrides any grace period provided by the general law on limitations.

No claim may be made under the Defective Products Law after the expiry of ten years from the time at which the actual defective product, by reason of whose defect the damage was suffered, was put into circulation, unless either:

- the producer or, as the case may be, the importer of the product has given an express warranty that the product can be used for a longer period; or
- the injury was caused within the ten-year period but could not be reasonably discovered until later.

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

Law 66 (I) of 2012 provides that in the case of any action in which either:

- the right of action is concealed by the fraud of the defendant; or
- the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the claimant or his

agent or any person whose actions bind him has discovered the fraud or mistake, or could, with reasonable diligence, have discovered it.

6 Remedies

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

In all cases the claimant has a right of action for damages. Additionally, the claimant may, under Cap 149, obtain equitable remedies such as a *quantum meruit*, specific performance, an injunction or rescission of the contract.

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

Under the Defective Product Law compensation for damage caused by a defective product is assessed in the same way as a claim for negligence. In accordance with common law principles the aim is to put the injured party into the position he or she would have been in if the negligent act had not occurred. Damages in contract claims will similarly aim to put the injured party into the position he or she would have been in if the breach had not occurred.

Damages can be recovered for death or personal injury including mental injuries and damage to property (subject to a *de minimis* lower limit of €427). There is no upper limit, and the right to claim compensation is without prejudice to the claimant's contractual rights or rights under any other law. No recovery may be made in respect of damage to the product itself.

Liability may be reduced or disallowed when the damage is caused both by a defective product and by the fault of the person so damaged or of any person acting under his or her responsibility.

Cyprus law does not generally limit the amount of damages awarded in tort claims. The courts have been reluctant to uphold contractual exclusion clauses which have been imposed on a weaker party by a stronger party. Furthermore, the court may find exclusion clauses abusive and consequently ineffective under the Abusive Clauses in Contracts Law 93(I)/1996. The Defective Products Law expressly provides that any contractual term or any notice or other provision that purports to limit or exclude liability under it is ineffective.

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. Damages are only available when actual harm occurs.

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

As stated in question 6.2 the intention in awarding damages is to put the injured person in the position that he or she would have been in had the injury not occurred, rather than to punish the defendant. Consequently, it is rare for punitive damages to be 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?

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?

In such instances the parties to the dispute declare before the court that they have reached a settlement of the claim. The court will then issue a consent order incorporating 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?

Such a claim is not permissible. The relevant authorities will need to either sue the defendant or join the claimant as a party to any existing litigation in order to attempt to obtain such reimbursement.

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 court will exercise its discretion when awarding costs. Generally both types of costs will be awarded against the unsuccessful party to the action. Occasionally, costs may be allocated between the parties or may be referred by the court to the Registrar of the court for assessment.

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

The Law on Legal Aid 165(I)/2002 does not provide for legal aid in product liability claims.

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?

Contingency fee arrangements are not permitted in Cyprus. Outside this restriction advocates are free to negotiate their payment terms with a client subject to compliance with the rules of the court and the Cyprus Bar Association.

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

Third party funding of claims is permitted. There are no regulations governing the basis of funding.

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.

There have been no significant cases or developments in the law in recent years. A “Law on the Out of Court Settlement of Consumer Disputes by Arbitration” which would provide for an alternative dispute resolution scheme in line with EU Commission recommendation 98/257/EC remains under discussion but there is no agreed timetable for its introduction.

As described in question 4.9 above, the courts have amended their procedures in order to eliminate delays, to reduce the time needed to hear actions and to encourage out-of-court settlements, and this trend is expected to continue.

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Marios Aristou was born in London. He graduated in law from the University of Birmingham in 2010 and was awarded an LL.M. in Criminal Litigation by City Law School in 2011. Marios joined Andreas Neocleous & Co LLC in 2011 as a trainee and since completing his legal training and being admitted to the Cyprus Bar in 2012 he has continued his career with the firm as an associate in the litigation department, specialising in personal injury, medical negligence and insurance law, criminal litigation and contractual disputes.

Marios speaks English and Greek.



Established in 1965, Andreas Neocleous & Co LLC has developed into the largest law firm in Cyprus and is generally recognised as the premier firm in the South-East Mediterranean region. In addition to its principal office in Limassol, Cyprus's main commercial and shipping centre, the firm has offices in Nicosia and in Paphos in Cyprus, as well as in Moscow, Budapest, Prague, Kiev, Sevastopol and Brussels.

With more than 140 fee-earners, all of whom are English speaking, Andreas Neocleous & Co LLC focuses on providing international clients with world-class service and advice on all aspects of Cyprus and European law, handling the largest and most demanding cross-border assignments. Having pioneered the development of business ties between Cyprus and Russia and having played a leading role in Cyprus's development as an international financial centre, the firm has now widened its market focus to include China, India and South America.

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