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Armenia

PRODUCT LIABILITY

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This country-specific Q&A provides an overview of product liability laws and regulations applicable in Armenia.

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ARMENIA

PRODUCT LIABILITY



1. Please summarise the main legal bases for product liability

Product liability in Armenia is regulated by the Civil Code of the Republic of Armenia (the Civil Code) and the Law on Consumer Protection dated 26 June 2001 (the Consumer Protection Law).

The Civil Code and the Consumer Protection Law contain a number of provisions by which manufacturers (sellers, importers, service providers) may incur liability for loss or damage suffered by the consumers of their products, regardless of whether a direct contractual relationship exists.

As Armenia belongs to the continental system of law, court rulings (precedents) are not considered to be an official source of law. However, the legal interpretation provided by higher courts is of great importance to the lower courts. Legal doctrine is also not recognised as a source of law.

2. How is "product" defined? In particular, does it cover software provided by way of a download only?

Under Armenian law the "product" is defined as a good or service that can be offered to a market to satisfy the desire or need of a customer. As a matter of general rule, the "product" stands for every good/asset which means to be subject of sale with no rule to prohibit or limit its free circulation.

There is no separate definition for the electronic goods or products and no special indication that products also include electronic products, for instance a software. Nonetheless, based on the concepts of Armenian law, the existing definition of the "product", evidently, includes the "software". As a consequence of lack of specification of the software under the Armenian consumer protection law, there is no specific rule on using software from merely consumer perspective. The use of the software is subject to the regulation of IP laws

and hence, the download-only use is the matter of limited license, i.e. providing the IP for the use of the customer.

3. What are the main elements which a claimant must prove to succeed in a strict liability type claim for damage caused by a defective product?

The Civil Code as well as the Consumer Protection Law imposes strict liability if goods, work or services obtained by a consumer have caused damage to health, life or property as a result of:

1. A defective design or formula or other defect in the goods; or
2. Failure to provide a consumer with complete and reliable information concerning the goods, works or services.

Strict liability is applied regardless of whether or not contractual relations exist. Consequently, to succeed in a strict liability type claim a claimant has to prove that

1. A product had a defect
2. The defect has caused a damage (calculation of damage) as defined above and
3. There is a nexus between the defect and the damage caused.

Burden of proof of the facts additional to those of listed above may be the case subject to factual grounds of the claim and the defendant's objections.

4. With whom does liability sit? If there is more than one entity liable, is liability joint and several?

A claim for damage caused to the life, health or property of a citizen or damage to the property of a legal entity due to the constructive, ingredient or other defects of goods, works or services, as well as due to the provision of unreliable or insufficiently reliable

information on goods, works or services may be brought against the seller or the manufacturer of the goods, the person who has performed the works or provided the services, regardless of their fault and of the fact of the injured person being in contractual relations therewith.

The damage caused due to the defects in goods or failure to provide complete or reliable information on the goods shall be subject to compensation either by the seller or the manufacturer of goods, at the option of the injured person.

The damage caused due to the defects in works or services or failure to provide complete or reliable information on the works or services respectively shall be subject to compensation by the person who has performed the works or provided the services (the executor).

If more than one entity is liable, such liability is joint and several.

5. Are any defences available? If so, please summarise them.

Common product liability defence strategies are as follows:

Contributory negligence: damage caused by intentional acts of the consumer will not be compensated (Article 1076, Civil Code). If the consumer by its acts aggravated the damage, the amount of damages payable can be reduced by the court or the court at its discretion can refuse to order payment of such damages. However, the court cannot refuse to compensate in full if the claim is due to damage caused by the product to the consumer's life or health. Manufacturers (sellers, importers) will be released from liability if they prove that the damage caused to the consumer was caused by the consumer's breach of the manufacturer's instructions on product use, storage or transportation.

Force majeure: manufacturers, sellers, importers will be released from liability to consumers if the damage was caused in force majeure circumstances (Article 14, Consumer Rights Law and Article 1091, Civil Code).

The Civil Code defines force majeure as extraordinary circumstances unavoidable in a given situation, for example, natural disasters, war and other major events that are clearly outside a party's control and cannot be avoided by the exercise of due care by that party. The Civil Code expressly provides that the failure of third parties, such as suppliers and subcontractors, to perform their obligations to the contracting party does not constitute force majeure.

Misuse: manufacturers, sellers will be released from liability if they prove that the damage is a result of a misuse of a product.

6. What is the limitation period for bringing a claim?

Article 1090 of the Civil Code states that in product liability cases the damage shall only be compensated if the damage was caused within either

1. the established lifetime or shelf life of the product, or
2. if the lifetime or shelf life is not established, within 10 years of the date of manufacture of the product.

However, the latter defence may only be used when the manufacturer or seller is not required to specify a lifetime or shelf life for the product. Where the manufacturer or seller is required, but simply fails to specify the lifetime or shelf life, a consumer incurring loss may make a claim for compensation regardless of the time the damage was caused. The "established lifetime or shelf life" of a product is defined as the period during which the product should be able to be used by consumers without danger to health or property (this is different from the "warranty period", during which a manufacturer warrants, for example, to restore, repair or replace a product if the buyer is not satisfied with its quality).

7. To what extent can liability be excluded (if at all)?

As a matter of general rule damage caused is subject to full recovery should the damages be real, compensation is necessary, and amount requested is reasonable.

Damage caused by intentional acts of the consumer will not be compensated (Article 1076, Civil Code).

A seller or manufacturer of goods, an executor of works or a provider of services will be released from liability to consumers if the damage was caused in force majeure circumstances or misuse of the product (Article 14, Consumer Rights Law and Article 1091, Civil Code).

If a party tries to bring the action after the statute of limitations has expired.

8. What are the main elements which a claimant must prove to succeed in a non-

contractual (eg tort) claim for damage caused by a defective product?

To succeed in a non-contractual claim for damage caused by a defective product the plaintiff must prove that

1. the product was defective when it left the defendant's possession,
2. the defect in the product caused damage and
3. nexus between the defect and the damage caused.

9. What types of damage/loss can be compensated and what is the measure of damages? Are punitive damages available?

Armenian law provides for compensatory damages that intend to compensate the injured party for loss or injury. Punitive damages are not allowed under Armenian law.

The definition of damage includes expenses actually incurred or to be incurred to restore the right breached, property loss or damage and lost profits. In the case of bodily injury, the compensation may include regular payments based on the loss or earnings of the injured party and payments for medical treatment and medicine; in the case of wrongful death, payments shall be made to dependants. However, a court may take any contributory negligence or intent of the victim into account and lessen the amount of compensation if necessary.

Apart from the right to claim for damages caused by a product of improper quality, the consumer has the right, at his or her own discretion, to choose to:

1. Demand its replacement with a product of the same brand (model, type)
2. Demand its replacement with a product of another brand (model, type) with the relevant recalculation of the purchase price
3. Demand a proportional decrease of the price for the product
4. Demand immediate and free-of-charge remediation of the defects of the product or reimbursement of the expenses of their remediation by the consumer; or
5. Refuse to perform the sale-purchase agreement and demand the return of the price paid for the product.

Additionally, the Consumer Protection Law provides that the seller (manufacturer, etc.) must pay a penalty to the

consumer, of 1 percent of the price of the goods for every day of delay in failing to abide by the time limits for satisfying the aforementioned remedies.

10. How are multiple tortfeasors dealt with? Is liability joint and several? Can contribution proceedings be brought?

Where two or more persons are subject to tort based claims, they are jointly and severally liable to the person suffering damage. As each infringers are entirely liable for the damages claim brought by the claimant, if one of them has paid more than their share of the fault attributed to them, this defendant has the right of recourse against the other infringers for the excess amount paid. If it is impossible to determine the extent of the fault, the shares are recognised as equal.

11. Are any defences available? If so, please summarise them.

The defences available in tort liability include (1) self-defence (unless the requirements of justifiable defence are exceeded), (2) consent, (3) necessity, (4) contributory negligence, and (5) force majeure.

1. Self-defence is defined as the right to prevent suffering force or violence through the use of a sufficient level of counteracting force or violence.
2. Consent asserts that the person affected by the tort gave permission to the tortfeasor to engage in the otherwise wrongful conduct.
3. The defence of necessity may apply when the defendant is asserting that taking or using another's property is necessary to prevent greater harm to the defendant, the defendant's property or others. These cases are generally initiated when the plaintiff seeks compensation for damages to property. To succeed, the defendant must show that the damage to the property was less than the value of the damage that would have been had the plaintiff's property not been used.
4. Damage caused by intentional acts of the plaintiff will not be compensated (Article 1076, Civil Code). If the plaintiff by its acts aggravated the damage, the amount of damages payable can be reduced by the court or the court at its discretion can refuse to order payment of such damages. However, the court cannot refuse compensation for harm caused to the life or health of citizens. The fault of the injured person shall not be

taken into consideration in compensation for additional expenses (Article 1078(1), Civil Code), for the damage arising from the death of the breadwinner (Article 1082, Civil Code), as well as for funeral expenses (Article 1087, Civil Code).

5. Force majeure (an act of God): the defendant will be released from liability if the damage was caused in force majeure circumstances (Article 1091, Civil Code).

12. What is the limitation period for bringing a claim?

Tort claims must be brought within three years, counting from the day the injured party became aware of the loss. The statute of limitations does not apply to claims for compensation of the damage caused to a person's life or health. However, claims filed three years after the time of arising of the right for compensation of such damage for the past period shall be satisfied for not more than three years preceding the bringing of the action.

13. To what extent can liability be excluded (if at all)?

The same exclusions discussed above (Question 11) are extended to this question as well.

14. Does the law imply any terms into B2B or B2C contracts which could impose liability in a situation where a product has caused damage? If so, please summarise.

According to the Civil Code should the natural person enter into the adhesion or another contract as a customer the agreement or limitation the amount of liability of the debtor (manufacturer, seller, executor, constructor) is a null and void if the law determines the amount of liability for violation the given type of obligation or for the given violation as well as if the agreement has been settled before the emergence of the circumstances resulting in the liability for the failure to fulfil or improper fulfilment of the obligation.

15. What types of damage/loss can be compensated and what is the measure of damages?

Under Armenian law when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, full

compensation for actual loss as well as for loss of profit plus payment of interest from the time the harm occurred until compensation is paid.

Article 410 of the Civil Code states that where a penalty is prescribed for the failure to fulfil or improper fulfilment of an obligation, the damages shall be compensated for the portion not covered by the penalty.

However, cases may be prescribed by law or contract, where:

1. It is permitted to collect only the penalty, but not damages;
2. Damages may be recovered in full, with the exception of the penalty;
3. Either the penalty or damages may be collected by creditor's discretion.

16. To what extent can liability be excluded for contract liability (if at all)?

Under Armenian law liability can to some extent be excluded and/or limited on a contractual basis. However, the terms of a contract cannot exclude or limit liability for death or personal injury.

17. Are there any recent key court judgements which have had a significant impact on the approach to product liability?

There are no recent key court judgments which have had a significant impact on the approach to product liability. However, in recent years courts have rendered a number of decisions in the product liability field which have been pro-plaintiff. Moreover, the Court of Cassation (supreme court) of RA has stated that in case the plaintiff proves that the product was defective and the impact of external influences on product quality was denied, the defendant should be held liable unless he or she proves that the product was not defective when the defendant sold it.

18. What are the initial litigation related steps you should take if you are facing a product liability claim or threatened claim?

When facing a product liability claim, the defendant should take the necessary steps to preserve all relevant evidence, including the product itself. The defendant should also assess the procedural aspects: was the claim properly filed, does the court have jurisdiction, is the claim time-barred, etc. The defendant should also

understand the scope of the damage. If there were many defective products defendant should contact retailers, wholesalers, or distributors that sell the product and develop a plan to fix the defect, which could entail a product recall and reimbursing affected consumers.

19. Are the courts adept at handling complex product liability claims? Are cases heard by a judge or jury?

Armenian courts frequently hear complex cases, including product liability claims. As there is no jury system in Armenia, all cases are heard by a judge in first instance court and by several judges in the courts of appeal and the court of cassation.

20. Is it possible to bring a product liability related group action? If so, please summarise the types of procedure(s) available

A class action is not recognized under the Armenian legislation. At the same time, the Civil Procedure code recognizes so-called Group Action. Twenty or more claimants may initiate a private group action. Such claims may be brought on behalf of a specified group of claimants (with the indication of each group member) by a group representative.

21. How are cases typically funded? Can lawyers charge success fees? Is third party funding permissible?

Generally, cases are funded by the clients. Some plaintiffs' attorneys work under a contingency fee arrangement. Under this type of arrangement, the attorney is paid a percentage of any financial recovery at the end of the case. If the claimant loses the case, the attorney receives no legal fees. Third party funding is

permissible.

22. How common are product liability claims and what factors influence their frequency?

Product liability cases are less common in Armenia and most of them are warranty cases.

Many factors may influence the frequency of product liability cases such as globalisation (over the last two centuries trade has grown remarkably), the level of media coverage related to the product, the growth of online shopping etc.

23. What are the likely future developments in product liability law and practice? To what extent is the suitability of the law being challenged by advances in technology?

Future developments in product liability law and practice will probably address the challenges posed by advanced technology, in particular artificial intelligence and the Internet of things. Currently, neither Armenian legislation nor practice answers directly the question of whether artificial intelligence or the internet of things is a product and hence not specification on how the product liability regime should be applied to new technologies.

24. Please provide an update of any interesting developments which have taken place in your jurisdiction over the last 12 months.

Within the last 12 months there have been no substantial changes within legislation nor have there been any leading cases published in regard to product liability.

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