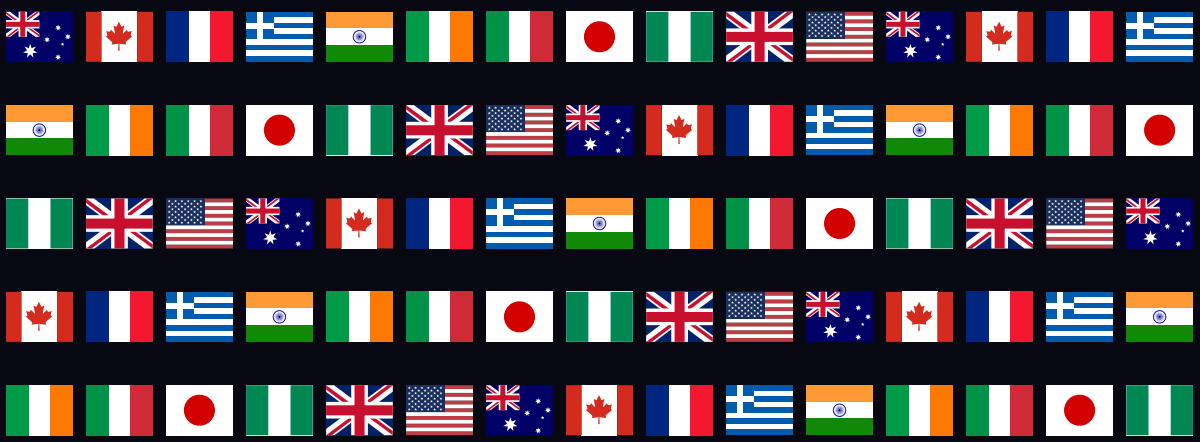
PRODUCT LIABILITY

Japan



LEXOLOGY
Getting The Deal Through

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Product Liability

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Quick reference guide enabling side-by-side comparison of local insights into the civil litigation system; evidentiary issues and damages; litigation funding, fees and costs; sources of legal framework; limitations and defences; settlement and alternative dispute resolution; jurisdiction analysis; and recent trends.

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CIVIL LITIGATION SYSTEM

The court system

What is the structure of the civil court system?

The Japanese judicial system is a three-tiered court system comprising one Supreme Court, eight high courts (and six branches and one special branch for intellectual property) and 50 district courts (and 203 branches). Apart from these, there are 438 summary courts. Pursuant to constitutional restrictions, Japan has no special courts in principle.

In civil actions, the amount to be claimed determines which court has jurisdiction. The district courts have jurisdiction of first instance over proceedings where the amount claimed exceeds ¥1.4 million. Proceedings in respect of lesser amounts claimed are conducted by the summary courts as the courts of first instance in principle.

The losing party in the first instance can appeal to a high court (if the first instance court was a district court) or a district court (if the first instance court was a summary court). In the second instance court, the appellant can make factual allegations.

The losing party in the second instance can file a final appeal (with very limited grounds for final appeal) or a petition for acceptance of a final appeal to the Supreme Court (if the first instance court was a district court) or a high court (if the first instance court was a summary court). The final appellate court may render judgment only in respect of legal questions and not questions of fact.

Law stated - 15 July 2022

Judges and juries

What is the role of the judge in civil proceedings and what is the role of the jury?

In civil actions, the court system is adversarial, wherein, fundamentally, judges render judgment based on claims and evidence that are prepared and submitted by the parties. However, certain requirements for suits, such as capacity to be a party in a civil action and legal capacity, which entail a high degree of public interest, are ascertained by judges exercising their own authority. For all other issues, judges can take into consideration all evidence and any other matters submitted to, and recognised by, the court and have the freedom to make findings of fact. In addition, judges lead the court proceedings and marshal the issues. Under these conditions, judges who make the final judgment in the case can encourage the parties to settle the case at any stage of the proceedings, and sometimes make a settlement proposal themselves.

Most judges in Japan are career judges, who choose to become a judge shortly after the mandatory vocational legal training, with the exception of some Supreme Court judges (who are selected from among other legal experts such as professionals or bureaucrats) and other recent cases where people who passed the bar exam and have worked as attorneys elect to become judges in the middle of their careers.

In civil actions of first instance, generally a single judge hears and determines a case, but in complicated cases or for other reasons, judges can decide that the case should be heard and determined by a panel consisting of three judges. This decision can be made even in the middle of the proceedings.

There is no jury system for civil actions.

Law stated - 15 July 2022

Pleadings and timing

What are the basic pleadings filed with the court to institute, prosecute and defend the product liability action and what is the sequence and timing for filing them?

The plaintiff submits its complaint to the court. A complaint must indicate the name of the parties, the object of claim and the cause of action. It is also required that the plaintiff stipulate the fundamental facts that support its claim and important ancillary facts relevant to the fundamental facts and evidence. Copies of important evidence are to be attached to the complaint. The plaintiff must also identify the amount of claim in the complaint (although increasing or decreasing the amount of the claim in the later stages of the proceeding is possible) and pay the court fees corresponding to the amount of claim (generally, the court fees are paid by attaching a documentary stamp to the complaint). The court fees are prescribed by law and are nationally uniform; for example, for a claim of ¥10 million, the court fee to bring a lawsuit at first instance is ¥53,000 and for a claim of ¥100 million, the court fee to bring a lawsuit at first instance is ¥320,000.

After reviewing the complaint for conformity with court requirements, the court will serve the defendant with a copy of the complaint and the evidence, and a summons to appear before the court on a prescribed day.

The defendant on whom the complaint is served must in principle submit its answer to the complaint, in which the defendant states whether it admits or denies each of the plaintiff's allegations and states its rebuttals. Generally, the answer should be submitted one week prior to the first hearing date designated by the court; however, in practical terms, because of time constraints for preparation, especially in the case where the defendant retains attorneys after the service of complaints, it is usual for the defendant to submit a brief answer with a statement of general denial and later to submit a supplemental brief with substantial arguments prior to the second hearing date.

Law stated - 15 July 2022

Pre-filing requirements

Are there any pre-filing requirements that must be satisfied before a formal lawsuit may be commenced by the product liability claimant?

No. While certain kinds of actions, such as divorce, require mandatory mediation, there are no pre-filing requirements with respect to ordinary civil actions, including product liability actions.

Law stated - 15 July 2022

Summary dispositions

Are mechanisms available to the parties to seek resolution of a case before a full hearing on the merits?

There is no mechanism similar to a summary judgment motion or a motion to dismiss.

The parties can seek dismissal over non-fulfilment of the requirements for bringing a valid civil action, such as jurisdiction, standing to sue or to be sued, or an enforceable legal interest; however, generally, these are not motions that are made separately; rather, they are discussed in the same briefs that argue the merits. Courts may dismiss a case because of the non-fulfilment of such requirements without determination on the merits, but such determination is also generally made in a regular judgment, without special proceedings. On the other hand, the court may render its decision on issues during the course of litigation (prior to the final judgment) at its discretion (interlocutory judgment).

While interlocutory judgments may be given not only with respect to the aforementioned requirements for actions but also on part of the merits, the use of such judgments is not frequent.

Law stated - 15 July 2022

Trials

What is the basic trial structure?

Oral proceedings usually begin within a month or so of filing complaints.

Usually, a party files a brief setting forth its factual and legal arguments and the facts pertinent to those arguments, together with supporting evidence, with the court one week prior to the hearing date. The court reviews the arguments and may ask questions to be clarified at a hearing or a preparatory hearing (which is non-public). The other party then files its rebuttal or supplemental arguments in writing. These proceedings are usually held at intervals of about one month or more.

When the court is satisfied that the allegations made by the parties and the proof presented are exhaustive and the issues have been clarified, the court may hold examinations of witnesses or the parties themselves, or both, in open court, upon request from the parties. Then the parties exchange final briefs and the court declares the proceedings complete and renders judgment. The judgment is usually rendered within a few months after the declaration of the proceedings.

As such, there is no distinction between trial and pretrial phases of a lawsuit.

Further, the judge may encourage the parties to settle the case at any stage of those proceedings; usually, such encouragement is made following disclosure, to some extent, of the judge's impression, before or after the examination. It is often the case that the judge holds such encouragement sessions several times throughout the entire proceeding.

Law stated - 15 July 2022

Group actions

Are there class, group or other collective action mechanisms available to product liability claimants? Can such actions be brought by representative bodies?

The collective action scheme under the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers (Act No. 96 of 2013) (the Collective Action Act), which came into force on 1 October 2016, may be available for certain cases. The Collective Action Act introduced opt-in consumer collective actions, which can only be brought by specific consumer organisations certified by the prime minister and may not be brought by individual consumers. The proceedings consist of two stages: the first stage is to confirm the common liabilities and the second stage is to determine the claim of each opt-in consumer. Since the introduction in 2016, it has been publicly announced that four lawsuits, against five business entities, using these proceedings have been brought to date. Among the four lawsuits, three have completed the first stage with judgments upholding the claims and have also completed the second stage whereby opt-in consumers have obtained compensation.

However, while the Act was amended this year to expand the relief available, including the compensation that can be claimed under the collective action scheme, nevertheless, as the system itself severely limits the scope of claims that may be subject to lawsuits, compensatory claims based on the Product Liability Act (Act No. 85 of 1994) (the PL Act) are still out of scope. Therefore, if product liability claimants want to seek compensation based on the PL Act, there is no special group action system available, and civil actions can be conducted by the counsel team method, in

which a team of lawyers collectively represents a group of plaintiffs.

Law stated - 15 July 2022

Timing

How long does it typically take a product liability action to get to the trial stage and what is the duration of a trial?

According to a public report, the average length at first instance, from the acceptance of the case by the court to the final judgment or settlement, is ordinarily nine months, and 11.2 months for compensation actions, which include product liability claims ('Report regarding Review of the Expediting of Trials', No. 8 2020); however, as the Japanese system does not distinguish between trial and pretrial stages, these averages include many cases where there was no trial, and it is difficult to tell how long it will take to arrive at the trial stage.

However, the conduct of cases varies widely in length because the parties are generally allowed to make arguments as exhaustively as they wish, while settlement proceedings can be conducted several times and prolong the overall timing. Product liability actions often require technical knowledge, involving complexity, and therefore can take longer than average. Accordingly, in practice, recent product liability cases have often taken two years or more.

Law stated - 15 July 2022

EVIDENTIARY ISSUES AND DAMAGES

Pretrial discovery and disclosure

What is the nature and extent of pretrial preservation and disclosure of documents and other evidence? Are there any avenues for pretrial discovery?

There is no procedure similar to pretrial discovery or disclosure procedures pursuant to which each party is required to disclose documents and witnesses per the other party's requests, for the purpose of properly preparing for trial. Therefore, parties generally need to prepare for litigation based on the evidence at hand. However, there are several methods to obtain evidence, as follows.

Before the commencement of litigation

Preservation of evidence

Each party can make a motion for preservation of evidence and the courts may grant the motion in circumstances where it would be difficult to examine evidence unless preservation of evidence prior to the litigation is conducted (eg, where it is likely that the custodians of the evidence would falsify it) (article 234 of the Code of Civil Procedure (Act No. 109 of 1996, the CCP)). The court may take and preserve evidence, documentary or otherwise (eg, testimony of witnesses, expert opinion). Although this procedure is utilised for the preservation of medical records in medical cases, it is not frequently used in other areas, including product liability actions.

Request for information via a bar association

An attorney may request a bar association to request public offices or public or private organisations to provide information to the bar association based on article 23.2 of the Attorney Act (Act No. 205 of 1949) . This procedure is often used for collecting evidence; however, the requested organisations sometimes refuse to disclose information

that may contain personal information.

Measures prior to bringing a lawsuit

A party who sends advance notice of filing an action can make enquiries to the person who is to be the defendant with regard to issues to be raised in the future lawsuit within four months of the advance notice (article 132-2 of the CCP). The recipient of the advance notice can make enquiries to the sender for the purpose of preparation for the possible lawsuit. This is not often used. In addition, the sender or the receiver of the advance notice may, if it is difficult to collect evidence, file a petition with the court to request public officials or public or private organisations to report about certain facts, provide an expert evaluation, submit documents, send items of property, etc, and the court may rule in favour of the petitioner after hearing the opposite party's opinion.

After the commencement of litigation

In addition to the above, the following methods are available.

Enquiry to opponent

A party makes enquiries in writing to the opponent with regard to the issues to be raised in preparing its claims or in supporting its arguments (article 163 of the CCP). However, this procedure is currently not often used because there is ample scope for the opponent to refuse to respond and there is no sanction in the case of refusal, even if the opposing party is obliged to respond.

Commissioning the sending of a document

A party may file a petition to the court to request public officials or public or private organisations to report about certain facts, provide expert evaluation, submit documents, send items of property, and so on (article 226 of the CCCP). Notwithstanding the absence of any obligation to submit, the court may grant the petition if it considers that the petition is reasonable, and the target organisation will generally comply with the decision on a voluntary basis.

Motion to produce documents

Where a party makes a motion to produce documents, the court may order the other party or a third party to produce such documents or a part of the documents (including drawings, photos and videotapes) (article 221 of the CCP). The other party or the third party may be sanctioned if refusing to comply with the order. The petitioner must prove:

1. that the party that is the object of the production or the third party has custody of the requested documents;
2. the necessity of examining the evidence; and
3. that the custodian has a legal obligation to submit the evidence (eg, the documents were not prepared mainly for internal use).

With regard to (1), the petitioner must identify specific documents, rather than broader categories of documents.

Law stated - 15 July 2022

Evidence

How is evidence presented in the courtroom and how is the evidence cross-examined by the opposing party?

Evidence is categorised as written documents, witness and party testimony, observation and expert evaluation.

In principle, written documents are submitted by each party. In addition, certain documents may be collected and examined by the court through various methods.

Witness and party testimonies are given in a public courtroom in the presence of the presiding judges in charge and each party and its counsel. In principle, first, the party who called the witness or parties themselves conducts direct examination; then the other side conducts cross-examination; and then the former party conducts redirect examination. The other side may conduct further cross-examination when permitted by the judges. After the parties conduct the examination, the judges can put questions to the witnesses or the parties themselves. The examination is generally concluded in less than one day unless the case is complex. Prior to the examination, the parties must file a motion to call a witness or for party examination, which states the main topics of the testimony, and in practice, the witness or the party to be examined submits his or her written testimony.

Law stated - 15 July 2022

Expert evidence

May the court appoint experts? May the parties influence the appointment and may they present the evidence of experts they selected?

Judges may appoint a third party with expertise to supplement their knowledge or decision and have the expert report its opinion or judgment in writing or orally. The expert is appointed by the judges only after a party files a motion for evaluation by an expert, and the judges may not exercise discretion to appoint an expert, with certain exceptions.

In addition, the judge may appoint an expert commissioner upon hearing the parties' opinions as to the appointment. The expert commissioners play the role of adviser to the judges and explain issues requiring expertise to the judges. However, in contrast to the expert mentioned, the expert commissioner only helps the judges to understand the arguments or the evidence, and their explanation is not to be considered as evidence. Expert commissioners are used mainly in technical cases such as IP cases, medical cases and construction cases and are not often used in product liability cases.

Law stated - 15 July 2022

Compensatory damages

What types of compensatory damages are available to product liability claimants and what limitations apply?

Generally, damages flowing from a causal relationship under tort, breach of contract or defective product are available. In other words, damages are only available if there is a causal relationship, regardless of the type of the damage (eg, actual damage, lost profits, damages for mental distress and possible future damage). However, actions based on the Product Liability Act (the PL Act) are to be brought only when the consequential loss (ie, damage other than that damage to the defective product itself) is caused.

Law stated - 15 July 2022

Non-compensatory damages

Are punitive, exemplary, moral or other non-compensatory damages available to product liability claimants?

No punitive, exemplary, moral or other non-compensatory damages are available.

Law stated - 15 July 2022

Other forms of relief

May a court issue interim and permanent injunctions in product liability cases? What other forms of non-monetary relief are available?

The PL Act provides only for monetary compensation and does not stipulate injunctions or other non-monetary remedies.

Under Japanese law, generally, claims for injunction based on the right of personality and environmental rights may be admitted upon interpretation, but it is not very likely that such claims will be granted unless provided in individual laws. Therefore, it is not very likely that an injunction or other non-monetary remedies will be available in individual lawsuits even in product liability lawsuits.

There are several statutes that provide for administrative regulations prohibiting and punishing unjust conduct by a company. Such administrative remedies are not applicable in individual cases, but to seek an injunction those administrative actions would be practical.

Notably, in 2006, the Consumer Contract Act (Act No. 61 of 2000) introduced a system in which qualified consumer organisations certified by the prime minister can seek an injunction to protect the interests of a large number of unspecified consumers in cases where businesses engage in or are likely to engage in unjust acts that violate laws. However, such collective action injunction claims only target unlawful acts stipulated in the Consumer Contract Act, the Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962) , the Act on Specified Commercial Transactions (Act No. 57 of 1976), the the Food Labelling Act (Act No. 70 of 2013) and the PL Act is not subject to such injunction.

Law stated - 15 July 2022

LITIGATION FUNDING, FEES AND COSTS

Legal aid

Is public funding such as legal aid available? If so, may potential defendants make submissions or otherwise contest the grant of such aid?

Claimants suffering economic hardship, whose earnings are less than a certain amount and who can prove that it is ‘not impossible’ to win the case, may receive public legal aid from the Japan Legal Support Centre.

In addition, when a consumer may suffer damage from the business activities of businesses and the consumer brings a lawsuit against the business or the business brings a lawsuit against the consumer, under certain requirements, the consumer may receive a financial accommodation and other legal aid from local government (eg, Ordinance of Consumer Affairs of Tokyo, article 31).

A party in receipt of legal aid is not required to notify its opponent of that fact.

Law stated - 15 July 2022

Third-party litigation funding

Is third-party litigation funding permissible?

While there is a discussion as to whether third-party litigation funding for lawsuits is acceptable from an ethical viewpoint and some people argue that such third-party funding, especially as profit-making activities, may violate certain provisions of the Lawyers Act (prohibition against non-registered lawyers acting as intermediaries in legal services) or Trust Act (prohibition on trusts for suits), there is no law that explicitly regulates funding from a third party nor any court decision holding that third-party funding is illegal under Japanese law.

As a related issue, recently, there have been media reports concerning certain claimants who are apparently aiming to evoke public opinion and get relief by seeking the litigation fee through cloud funding.

If a party is in receipt of third-party litigation funding, such a fee arrangement is not required to be notified to the other party.

Law stated - 15 July 2022

Contingency fees

Are contingency or conditional fee arrangements permissible?

Currently, attorneys' fees are not regulated by law. Therefore, Japanese lawyers are not prohibited from receiving contingency fees and many firms have fee systems that are a mixture of both engagement fees and contingency fees, although pure contingency fee arrangements are rarely used.

No fee arrangement is required to be notified to the other party.

Law stated - 15 July 2022

'Loser pays' rule

Can the successful party recover its legal fees and expenses from the unsuccessful party?

Generally, legal fees, including attorneys' fees are not borne by the losing party and each party bears its own attorneys' fees. However, in tort cases, in practice, the court grants a certain portion of attorneys' fees in the form of damages, which is an additional amount equivalent to about 10 per cent of the damages awarded.

On the other hand, expenses such as court fees, postal costs for service and such like, and per diem allowances, travel expenses and accommodation expenses for witnesses and experts are generally to be borne by the losing party. The portion of expenses to be borne by each party is stipulated in the judgment. However, to determine the specific amount, the winning party must file a separate petition, which is rarely done in practice.

Law stated - 15 July 2022

SOURCES OF LAW

Product liability statutes

Is there a statute that governs product liability litigation?

The Product Liability Act (the PL Act), which is a special law of the Civil Code , came into force on 1 July 1995.

Under the Civil Code, a person who has suffered harm must establish that the manufacturer intentionally or negligently caused the harm or manufactured or sold a defective product. On the other hand, under the PL Act, if the injured person establishes that 'Manufacturers Manufactured Defective Products (except for land, buildings or services) and such Products caused the harm' (each capitalised word is defined in the PL Act), and such products caused the harm, without establishing intention or negligence of the manufacturers, the party will be awarded damages. However, there is no reduction in or transfer of the burden of proof in respect of the other factors, such as a causal relationship between the defect in the product and the harm, and the existence of the harm; these must be established by the injured party. In addition, the PL Act is not applicable if damage was caused only to the product itself; it is only applicable if there is other resulting harm (eg, bodily injury or loss of life, or damage to other property). The statutory limitation period is three years from the time of knowledge of the defect and 10 years from delivery of the product (with respect to liability in tort, three years from the time of knowledge of the tortious act and 20 years from the occurrence of the act).

Law stated - 15 July 2022

Traditional theories of liability

What other theories of liability are available to product liability claimants?

General tort liability, liability in respect of contractual obligations, if any, defect liability and liability in breach of contract are available.

Law stated - 15 July 2022

Consumer legislation

Is there a consumer protection statute that provides remedies, imposes duties or otherwise affects product liability litigants?

Other than the compensatory damages, no other special remedies directly applicable to the persons who have suffered harm are available.

Several administrative regulations are applicable depending on the type of product, such as the Food Sanitation Act (Act No. 233 of 1947) , the Road Transport Vehicle Act (Act No. 185 of 1951), the Act on Securing Quality, Efficacy and Safety of Pharmaceuticals, Medical Devices, Regenerative and Cellular Therapy Products, Gene Therapy Products, and Cosmetics (Act No. 145 of 1960, as amended) , the Electrical Appliances and Material Safety Act (Act No. 234 of 1961) and the Consumer Products Safety Act (Act No. 31 of 1973) . The kind of duties that may be imposed varies under each act. Taking as an example the Consumer Products Safety Act, which covers many products that consumers can purchase in the market, in situations where a manufacturer acknowledges that a serious accident such as death, serious injury, carbon monoxide poisoning or fire accident resulting from a defect in a consumer product occurs, the manufacturer shall notify the Secretary General of the Consumer Affairs Agency within 10 days of the manufacturer becoming aware of the matter. The Consumer Affairs Agency then announces the name of the manufacturer and gives an outline of the accident and other information. If the manufacturer fails to report or makes a false report, the Secretary General of the Consumer Affairs Agency orders the manufacturer to establish a system to collect accident information and suchlike, and if the manufacturer violates such order, the manufacturer may be sanctioned by way of no more than one year's imprisonment or a fine of less than ¥1 million. In addition, the Secretary General of the Consumer Affairs Agency may order the manufacturer to report the facts and may enter its offices to investigate. Pursuant to the applicable laws, manufacturers may be ordered to recall products.

A manufacturer's failure to take these measures does not necessarily lead to liability or make it answerable in civil actions, including product liability cases; however, there is a precedent that recognises that a seller's failure to take necessary measures within the appropriate timing may constitute a tort. In this regard, it is possible that a manufacturer who fails to take necessary measures at the appropriate time can owe liability under tort or breach of contract.

Law stated - 15 July 2022

Criminal law

Can criminal sanctions be imposed for the sale or distribution of defective products?

In relation to regulations, manufacturers may have criminal sanctions imposed on them in the event they do not comply with the orders of authorities.

Other than that, if a company manufactures or sells defective products that cause serious injury or loss of life, the person in charge of manufacturing or selling or the directors of the company, rather than the company itself, may face criminal charges upon death or injury caused by negligence in the conduct of business (the punishment for which is imprisonment for up to five years or a fine of up to ¥1 million). There have been several examples where such criminal liability was actually imposed on directors or employees; however, generally, prosecutors prosecute only malicious cases, such as where there was grave harm and the company left the problem unsolved while being aware of the defect.

Law stated - 15 July 2022

Novel theories

Are any novel theories available or emerging for product liability claimants?

There is no novel theory available or emerging.

Law stated - 15 July 2022

Product defect

What breaches of duties or other theories can be used to establish product defect?

Products are defined as defective when they 'lack the safety that the products ordinarily should provide'. While not clearly stipulated in law, it is generally categorised as defect in product design, defect in manufacturing and defect in instruction and warning.

Law stated - 15 July 2022

Defect standard and burden of proof

By what standards may a product be deemed defective and who bears the burden of proof? May that burden be shifted to the opposing party? What is the standard of proof?

A product may be deemed defective when the product lacks the safety that the product ordinarily should provide, taking into account the nature of the product, the ordinarily foreseeable manner of use of the product, the time when the manufacturer (or equivalent) delivered the product and other circumstances concerning the product.

The claimant or the injured party bears the burden of proof; however, in practice, there have been several cases that indicate that the burden of proof of the plaintiffs was, as a matter of fact, reduced in those cases.

Law stated - 15 July 2022

Possible respondents

Who may be found liable for injuries and damages caused by defective products? Is it possible for respondents to limit or exclude their liability?

There are three types of defendants stipulated in the PL Act (article 2, item 3):

- any persons who manufactured, processed or imported the product in the course of trade;
- any persons who place their name, trade name, trademark or other indication on the product as the manufacturer of such product, or any persons who place their name, etc, on the product such that it misleads others into believing that the aforementioned person is the manufacturer; and
- any persons who place their name, etc, on the product, and by doing so, in light of the manner of the manufacture, processing, importation or sale of the product, and other circumstances, hold themselves out as the substantial manufacturer of the product.

Law stated - 15 July 2022

Causation

What is the standard by which causation between defect and injury or damages must be established? Who bears the burden and may it be shifted to the opposing party?

The plaintiff must establish a 'causal relationship' between the alleged defects and the alleged damage, which is the same as the standard for general tort liability and that for breach of contractual obligations.

Law stated - 15 July 2022

Post-sale duties

What post-sale duties may be imposed on potentially responsible parties and how might liability be imposed upon their breach?

Manufacturers are obliged to report to the competent authorities or recall products under the applicable law, each of which varies depending on the type of product.

Law stated - 15 July 2022

LIMITATIONS AND DEFENCES

Limitation periods

What are the applicable limitation periods?

Under the Product Liability Act (the PL Act), the limitation period is three years from knowledge of the defect or 10 years from delivery.

Under the Civil Code, as amended and effective as of 1 April 2020, the limitation period is as follows:

- three years from when the victims or their legal representatives gain knowledge of the damage and the person who has the obligation to compensate for the damage, or five years from the death or physical injury of a person; or
- 10 years from the delivery of the product. This period shall be calculated from the time of the occurrence of the damage if such damage is caused by substances that become harmful to human health when they accumulate in the body, or where the symptoms that represent such damage appear after a certain period of latency.

If the right to claim for damages arose, or the act constituting the cause of a claim was committed, on or before March 2020, or in the case of a general tort liability case where the statute of limitations has not expired completed yet, the following pre-revision limitation period rules apply:

- general tort liability: three years from knowledge of the tortious act or 20 years from the commission of the tortious act;
- defect liability: one year from knowledge of the defect or 10 years from delivery (this latter limitation period is shortened to five years in the case of commercial trading); or
- breach of contractual obligation theory: 10 years (or five years, for commercial trading) from entering into the contract. If the purchase is made between business enterprises, the buyer is obliged to examine the goods within as short a period as is practicable in the circumstances and notify the seller of the defect. If the buyer fails to perform this obligation, the buyer loses its right to remedies. In addition, even if the defect is latent and not discoverable within a short period of time, the buyer may not bring claims in relation to the seller if the buyer does not discover and notify the defect within six months, regardless of the negligence of the buyer.

Law stated - 15 July 2022

State-of-the-art and development risk defence

Is it a defence to a product liability action that the product defect was not discoverable within the limitations of science and technology at the time of distribution? If so, who bears the burden and what is the standard of proof?

The PL Act stipulates two defences for manufacturers, which are to be established by the defendant. These are:

- when the defect in the product could not have been discovered given the state of scientific or technical knowledge at the time when the manufacturer, etc, delivered the product (defence of development risks). This requirement is considered difficult to meet and it has never been upheld; and
- if the product is used as a component or raw material of another product, and the defect occurred primarily because of compliance with the instructions concerning the design given by the manufacturer of such other product, and the manufacturer, etc, is not negligent with respect to the occurrence of such defect.

Law stated - 15 July 2022

Compliance with standards or requirements

Is it a defence that the product complied with mandatory (or voluntary) standards or requirements with respect to the alleged defect?

Compliance with mandatory or industrial standards or requirements is considered to be a factor in adjudging whether the products were defective. However, such compliance will not necessarily lead to a finding that no defect exists, and there are several precedents whereby the alleged defect was recognised as such in spite of compliance with a certain standard.

Law stated - 15 July 2022

Other defences

What other defences may be available to a product liability defendant?

A user's misuse of the products or a third party's intervening act or other events, for example, can be defences to the alleged defect or causal relationship.

In addition, the claimant's fault may be taken into account in terms of comparative fault and lead to a reduction in the amount of damages awarded. Insurance benefits or a pre-existing condition of the claimant that contributes to the damage may also be taken into account.

Law stated - 15 July 2022

Appeals

What appeals are available to the unsuccessful party in the trial court?

The Japanese judicial system comprises a three-tiered court system. Therefore, the losing party at first instance can appeal to the high court (if the first instance court is the district court) or the district court (if the first instance court is the summary court). In the second instance court, the appellant can make factual allegations.

The party who loses at second instance can make a final appeal or a petition for acceptance of a final appeal to the Supreme Court (if the first instance court was the district court) or the high court (if the first instance court was a summary court). The grounds for final appeal are very limited, such as that the ruling at second instance contains a misinterpretation of the Constitution, or other violations of the Constitution and such like. However, the Supreme Court can, even if there is no valid final appeal ground, accept a petition of final appeal if it considers that the appeal concerns important issues such as interpretation of other laws; therefore, in practice, losing parties file a petition for acceptance of a final appeal together with the petition of final appeal. The final appellate court shall make judgment only in respect of legal arguments and legal issues, and not on factual issues. This means that the final appellate court shall pass legal judgment based on the facts that were found by the previous courts or remand the case for reconsideration of the factual matters.

Law stated - 15 July 2022

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

Settlement

What rules and procedures govern the settlement of product liability cases?

There are no special settlement procedures for product liability cases. Like other ordinary civil proceedings, judges who render the final judgment in the case can encourage the parties to settle the case at any stage of the proceedings, and in some cases, make a settlement proposal themselves. Usually, judges encourage settlement following the disclosure, to a certain extent, of the judge's impressions, before or after examining the case. It is often the case that the judge holds such encouragement sessions several times throughout the entire proceeding, and in practice, judges encourage

the parties to settle in most cases.

Law stated - 15 July 2022

Alternative dispute resolution

Is alternative dispute resolution required or advisable before or instead of proceeding with litigation? How commonly is ADR and arbitration used to resolve claims?

As in ordinary civil proceedings, alternative dispute resolution (ADR) is not required. For some specific products, such as drugs, consumer electronics, vehicles and consumer products, general incorporated foundations or other private associations for each product provide an ADR platform for product liability claims for such products. It is reasonable to consider utilising such ADR; however, it seems that there have been not many cases that have done so.

Law stated - 15 July 2022

JURISDICTION ANALYSIS

Status of product liability law and development

Can you characterise the maturity of product liability law in terms of its legal development and utilisation to redress perceived wrongs?

Although more than 20 years have passed since the Product Liability Act (the PL Act) came into force and the PL Act itself seems widely known to the public and the judiciary seems familiar with this area of law, there have not been many product liability actions nor has there been an increase in the number of actions. However, the PL Act has had a significant impact on business activities, as the establishment and enforcement of the PL Act has encouraged manufacturers to take out product liability insurance or to enhance labelling.

Law stated - 15 July 2022

Product liability litigation milestones and trends

Have there been any recent noteworthy events or cases that have particularly shaped product liability law? Has there been any change in the frequency or nature of product liability cases launched in the past 12 months?

Unfortunately, there is no official database that is regularly updated with newly launched product liability cases. On the other hand, once a judgment is rendered, some cases (not all) are publicised on some private online databases, one of which shows more than a dozen product liability cases for which judgments were rendered in the past 12 months. The Consumer Affairs Agency (CAA) also collects information on product liability cases together with cases that were settled, and officially publishes those cases online. As of March 2022, on the CAA database the number of cases for which judgments have been rendered is 472 and the number of settled cases is 105. There do not seem to have been any significant changes in the frequency or nature of product liability cases.

It has been publicised that the Ministry of Justice has just commenced studies to establish a database to disclose all court decisions.

Law stated - 15 July 2022

Climate for litigation

Describe the level of 'consumerism' in your country and consumers' knowledge of, and propensity to use, product liability litigation to redress perceived wrongs.

The Consumer Affairs Agency issues a white paper every year. The consumer white paper of 2022 states that there has been an increase in proactive consumers who are inclined to take action such as complaining to businesses if products or services are problematic. Specifically, it is said that about 40% of consumers who experienced consumer troubles took certain action.

Law stated - 15 July 2022

Efforts to expand product liability or ease claimants' burdens

Describe any developments regarding 'access to justice' that would make product liability more claimant-friendly.

Other than bringing a lawsuit, alternative dispute resolution (ADR) and consulting desks provided by public organisations, such as ADR held by the NCAC and other business associations such as the PL Centre for Electrical Home Appliances, have been expanding as dispute resolution methods. In addition, legal aid provided by the Japan Legal Support Centre has started to become applicable to ADR. Those measures enable consumers to have easy access to dispute resolution. The group action system under the Collective Action Act is not available for product liability cases.

In addition, while the PL Act itself has not been amended, there have been several precedents that can be interpreted as being an authority for the proposition that the burden of proof of plaintiffs has, as a matter of fact, been reduced.

Law stated - 15 July 2022

UPDATE AND TRENDS

Emerging trends

Are there any emerging trends or hot topics in product liability litigation in your jurisdiction?

There is nothing in particular to note.

Law stated - 15 July 2022

LAW STATED DATE

Correct on

Give the date on which the above content was accurate.

14 July 2022

Law stated - 15 July 2022

Jurisdictions

Australia	Clayton Utz
Canada	Cassels
France	Kennedys Law LLP
Greece	Moussas and Partners Law Firm
India	I.L.A. Pasrich & Company
Ireland	Mason Hayes & Curran LLP
Italy	Gianni & Origoni
Japan	Nagashima Ohno & Tsunematsu
Nigeria	Ajumogobia & Okeke
United Kingdom - England & Wales	Kennedys Law LLP
USA	Dechert LLP