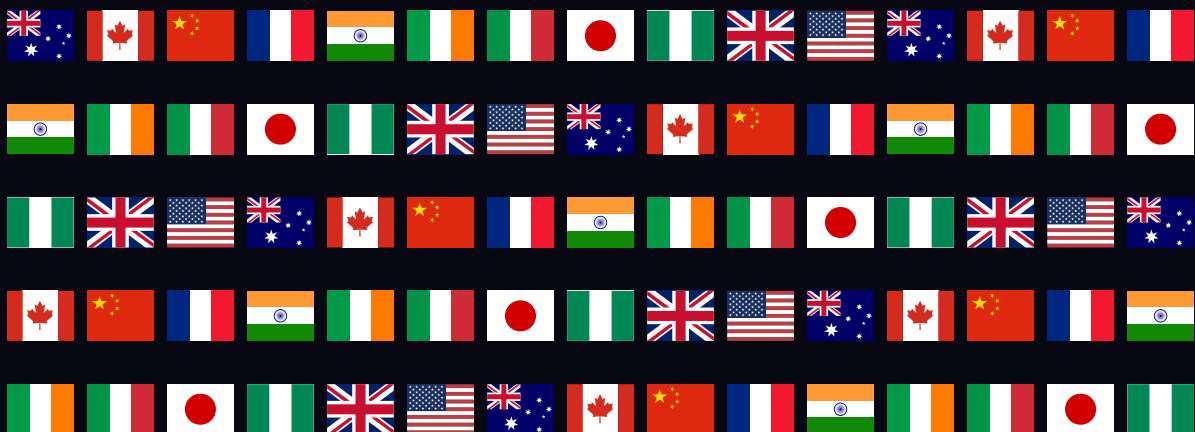


PRODUCT LIABILITY

Japan



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 at 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 at 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 - 20 July 2023

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 judges 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 - 20 July 2023

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 supporting the claim, and important ancillary facts. Copies of important evidence are to be attached to the complaint. The plaintiff must also identify an 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 relevant requirements, the court will serve the defendant with a copy of the complaint and the evidence, together with a summons to appear before the court on a set date.

After the complaint is served, the defendant must submit its answer thereto. In this answer, the defendant must state whether it admits or denies each of the plaintiff's allegations and must also put forward rebuttals. Generally, the answer should be submitted one week prior to the first hearing date designated by the court; however, in practice, because of time constraints for preparation, especially in the case where the defendant retains attorneys after the service of complaints, it is typical 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, which is generally one to two months after the first hearing date.

Law stated - 20 July 2023

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?

There are no pre-filing requirements that must be satisfied before the commencement of a formal lawsuit. 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 - 20 July 2023

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 owing to the non-fulfilment of such requirements without determination on the merits, but such determinations are also generally made in regular judgments, and do not involve special proceedings. On the other hand, the court may

render decisions on issues during the course of litigation (prior to the final judgments) 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 - 20 July 2023

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 - 20 July 2023

Group actions

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

For certain cases, 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.

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 scope of claims subject to collective action is very limited; in particular, collective action is not available for claims for compensatory damages under the Product Liability Act. Therefore, if product liability claimants wish to seek compensation under the Product Liability Act, there is no special collective action system available. On the other hand (even prior to 2016) it is common in certain cases for lawyers to represent multiple claimants who have the same interest; however, this is merely an aggregation of individual lawsuits and the court adjudicates each claim on its own merits.

The proceedings consist of two stages: the first stage is to seek a declaratory judgment on common liabilities. In this stage, the court's role is to determine whether any monetary obligations are owed by the defendant to a considerable

number of consumers, based on existing facts and legal causation common to those consumers. The consumers who are subject to specific relief have not yet been specifically identified at this stage.

The second stage is held only when (1) the court has declared, in the first stage, that there are common obligations among the defendants or (2) the defendant acknowledges the claim and reaches a settlement.

In the second stage, the court adjudicates the substance of the relevant claim pertaining to the confirmed common obligations and determines whether the defendant owes any monetary obligations and the monetary amount in respect of damage incurred by each consumer.

At this stage, consumers may opt-in via delegation to the plaintiff's representative. The first and second-stage judgments do not bind consumers who have not opted in. If the court confirms that the consumers have the right to monetary relief from the defendant, the plaintiff's representative receives payment from the defendant and distributes it to each consumer who has opted in.

As of April 2023, only five lawsuits against six business entities have been brought under these collective action proceedings since 2016. Among those lawsuits, four have concluded; specifically, at the first stage, judgments were issued upholding the claims; and at the second stage, opt-in consumers obtained compensation.

Law stated - 20 July 2023

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 of court proceedings at first instance, from acceptance of the case by the court to the final judgment or settlement, is ordinarily approximately 10 months; and more than one year and three months for compensation actions, which include product liability claims ('Report regarding Review of the Expediting of Trials', No. 9, 2021); 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 takes to arrive at the trial stage.

The amount of time required for cases to reach a conclusion varies widely, because the parties are generally allowed to make arguments as exhaustively as they wish, and settlement proceedings can be conducted several times, which extends the overall time needed. Product liability actions often require explanation of complex technical information and therefore can take longer than average. Accordingly, in practice, recent product liability cases have often taken two years or more.

Law stated - 20 July 2023

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, in preparation for trial, each party is required to disclose documents and witnesses in response to the other party's requests. Therefore, parties generally need to prepare for litigation based on the evidence at hand. However, there are several methods, under the Code of Civil Procedure or other relevant laws, to obtain evidence, as below. These methods are not as broad as discovery procedures, and the petitioner is generally required to identify the specific information or documents it is

seeking.

Before the commencement of litigation

Motion for 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.

A 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, with regard to issues to be raised in the future lawsuit, make enquiries to the person who is to be the defendant, 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 enquiries scheme is not often used. In addition, the sender or the receiver of the advance notice may, if it is difficult to collect evidence, inter alia, 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, and send items of property, 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 by a (potential) claimant to a (potential) defendant in writing

The 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.

Petition to the court to request public officials or public or private organisations to provide specific information or documents

A party may, inter alia, 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 and send items of property (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 - 20 July 2023

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 and each party and its counsel. In principle, first, the party that called the witness (which may itself be a party) conducts direct examination; the other side then conducts cross-examination; and finally the party that called the witness 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 to the parties themselves. The entire witness examination process 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 in advance. Typically, the witness and party examinations occur later in the proceedings, after both parties have exchanged their arguments and just before the judge issues a final ruling in the case.

Law stated - 20 July 2023

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 may cause the expert to 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, with certain exceptions, the judges may not exercise discretion to appoint an expert.

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 to the judges issues requiring expertise. However, in contrast to the expert mentioned in the previous paragraph, the expert commissioner only helps the judges to understand the arguments or the evidence, and their explanation will not constitute 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.

In some cases where technical expertise or knowledge is required, the court may retain technical advisers in order for them to provide an objective explanation based on their expertise (article 92-2 of the Code of Civil Procedure). Different from experts, technical advisers can be involved in the entire litigation in order to provide advice to the judge; however, their advice will not constitute evidence.

Law stated - 20 July 2023

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 damage (eg, actual damage, lost profits, mental distress and possible future damage). However, claims based on the Product Liability Act are to be brought only when consequential damage is caused (ie, damage other than damage to the defective product itself, such as harm to the human body or damage to other property). If the damage caused by the defective product was limited to the product itself, the victim may only make a claim under other legal avenues such as tort liability or contract liability under the Civil Code.

Law stated - 20 July 2023

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.

Punitive damages are generally viewed as contravening the public policy of Japan; therefore, even if punitive damages are available under the governing law applied to the case, the Japanese court will not consider or award punitive damages if the case is litigated in Japan (see article 42 of the Act on General Rules for Application of Laws).

Law stated - 20 July 2023

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 - 20 July 2023

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 their 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, the consumer may receive financial assistance and other legal aid from local government upon fulfilling certain requirements, including demonstrating that (1) it is difficult to seek damages in a lawsuit instituted individually because the cost of the lawsuit would exceed or is likely to exceed the amount of damages; (2) there are many consumers who have suffered, or are likely to suffer, damage due to the same or similar causes; (3) the settlement of the dispute pertaining to the damage has been submitted for deliberation by the Tokyo Consumer Damage Relief Commission; and (4) the victim has been domiciled in Tokyo for three or more months consecutively prior to the date of application for the financial assistance (eg, Ordinance of Consumer Affairs of Tokyo, article 31).

A party who receives legal aid is not required to notify its opponent of that fact.

Law stated - 20 July 2023

Third-party litigation funding

Is third-party litigation funding permissible?

There has been a discussion as to whether third-party litigation funding for lawsuits is acceptable from an ethical viewpoint. Some people argue that such third-party funding, especially when conducted as a profit-making activity, may violate certain provisions of the Lawyers Act (prohibition against non-registered lawyers acting as intermediaries in legal services) or the Trust Act (prohibition on trusts for suits for the primary purpose of having another person conduct litigation). However, 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.

Recently, a crowdfunding website for litigation of a public nature, such as litigation regarding same-sex marriage, was made available to the public. At least 50 lawsuits have been funded through this crowdfunding site.

Law stated - 20 July 2023

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 rare.

Fee arrangement need not be notified to the other party.

Law stated - 20 July 2023

'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 tends to grant 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 the 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, if the winning party wishes to cause the losing party to pay the costs incurred by the winning party, the winning party must file a separate petition to receive approval for a specific amount of costs, which is rarely done in practice.

Law stated - 20 July 2023

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 PL Act, if a claimant establishes that the manufacturer manufactured the defective products and that the defective products caused the harm, the claimant will be awarded damages without having to establish that the manufacturer's actions were intentional or negligent, as is required for other tort claims or for liability under a contract.

However, only 'manufactured products' are subject to the claims under the PL Act. In other words, claimants may not claim for compensation for defects in non-manufactured objects such as assets (buildings or houses), unprocessed personal property (unprocessed agricultural, forestry, livestock or marine products); or electricity or software (which are intangible).

Where a claimant wishes to seek compensation in relation to such objects, he or she must bring a lawsuit using other legal theories, such as tort liability or contractual liability under the Civil Code.

However, there is no reduction in or shift 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 or the products were defective; these must be established by the injured party.

In addition, claims based on the PL Act are to be brought only when consequential damage is caused (ie, damage other than damage to the defective product itself, such as damage to the human body or to other property). If the damage caused by the defective product was limited to the product itself, the victim may only make a claim under other legal avenues such as tort liability or contract liability under the Civil Code.

The statutory limitation period under the PL Act is five years from the time of knowledge of the defect and 10 years from delivery of the product. With respect to liability in tort under the Civil Code, the statutory limitation period is five years from the time of knowledge of the tortious act and 20 years from the occurrence of the act. With respect to contractual liability, the statutory limitation period is five years from the time the injured person becomes aware that he or she can exercise the right to a claim and 10 years (or 20 years in the case of harm to the human body or death) from the time the injured person can actually exercise such right (Articles 166 and 167 of the Civil Code).

Law stated - 20 July 2023

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 - 20 July 2023

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) for food, the Road Transport Vehicle Act (Act No. 185 of 1951) for vehicles, 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) for medicine and other medical products, the Electrical Appliances and Material Safety Act (Act No. 234 of 1961) for electrical appliances and the Consumer Products Safety Act (Act No. 31 of 1973).

The kind of obligations that may be imposed vary under each act. For example, under 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 has occurred, it must notify the Secretary General of the Consumer Affairs Agency within 10 days of becoming aware of the matter. The Consumer Affairs Agency will then announce the name of the manufacturer and provide an outline of the incident and other information.

If a 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 incident information and the like, and if the manufacturer violates such order, it may be sanctioned by up to one year's imprisonment and/or a fine of up to ¥1 million in the case of an individual or a fine of up to ¥100 million in the case of a corporation. 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 at 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 - 20 July 2023

Criminal law

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

In relation to regulations, criminal sanctions may be imposed on manufacturers 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 - 20 July 2023

Novel theories

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

There is no novel theory available or emerging.

Law stated - 20 July 2023

Product defect

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

Products are deemed defective when they lack the safety that they ordinarily should provide. While not clearly stipulated in law, defective products are generally categorised into three types:

- defects in manufacturing, meaning that the product lacks safety because it was not manufactured in accordance with the required design and specifications, such as:
 - infiltration of extraneous materials during the manufacturing process; or
 - incorrect assembly of the components;
- defects in product design, meaning that the product lacks safety due to insufficient safety considerations at the design stage of the product; and
- defects in instructions and warnings, meaning that the product lacks safety because the manufacturer failed to provide appropriate information for the consumer to prevent or avoid accidents caused by the inherent danger of the product, which danger cannot be eliminated in design considering the utility or benefit of the product.

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?

Products are deemed defective when they lack the safety that they 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 are several precedents in relation to which it can be interpreted that the alleged defect was found to exist considering the facts surrounding the case.

Law stated - 20 July 2023

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?

Under the PL Act, the following business entities can be held liable (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 who take any action that causes others to believe that the aforementioned person is the manufacturer; and
- any persons who use indications, including a name on the product, which can be recognised by others as that of the real manufacturer, taking into consideration of the manner of the manufacturing, processing, importation or sale of the product, and other circumstances.

Law stated - 20 July 2023

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?

In the course of enacting the PL Act, there were discussions as to whether a causal link in a case should be presumed and the defendant should bear the burden of proving that there is no causal link; however, this presumption was not incorporated into the enacted PL Act. Therefore, the claimant bears the burden of proving that an ordinary person usually would not suspect that a causal link exists in the relevant case. However, judges sometimes exercise a presumption de facto and there are several precedents whereby a causal link was found to exist, while the judge acknowledged that it was not fully proved. For example, one precedent found that there was a causal link even though the evidence did not fully establish a specific causal link, on the grounds that it would be difficult to conceive that causes other than the defective product at issue could have led to the accident.

Law stated - 20 July 2023

Post-sale duties

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

The minister of economy, trade and industry may issue an order to prevent hazards, which may include a recall order, where the minister confirms that:

- with respect to a certain category of products which typically can cause a serious product accident, there is a risk of danger to the life or body of general consumers, arising from the import or sale of products with inappropriate representations and/or non-conformity with the applicable standards; or
- with respect to other products, there is:
 - a risk of a serious product accident due to a defective product; or
 - serious risk to the life or body of general consumers (article 39 of the Consumer Products Safety Act).

However, such orders are rarely issued. If harmful substances are detected in health foods (the Act on Securing Quality, Efficacy and Safety of Pharmaceuticals, Medical Devices, Regenerative and Cellular Therapy Products, Gene Therapy Products, and Cosmetics), or food additives or pesticides other than those specified in the Food Sanitation Law are detected in foods, a recall order may be issued by a public health centre.

According to the Recall Handbook issued by the Ministry of Economy, Trade and Industry, manufacturers and importers are encouraged to implement voluntary recalls in the case of safety incidents in order to minimise the occurrence or possible occurrence of accidents caused by consumer products. There are no specific requirements or regulations regarding recalls and in practice most recalls are voluntary.

There is an obligation to report to the authority upon the occurrence of a product safety accident. Under the Consumer Product Safety Act, when a person who manufactures or imports a consumer product becomes aware of the occurrence of a product safety accident (an accident in which a hazard to the life or body of general consumers has occurred or may occur), the result of which may be serious (eg, death, serious injury, sequela injury, carbon monoxide poisoning, fire hazard), the person must, within 10 days of learning of the accident, report the occurrence of the accident and other relevant information to the competent minister. If a product safety accident has occurred that is not very serious, the manufacturer is encouraged to report to the National Institute of Technology and Evaluation (NITE).

Law stated - 20 July 2023

LIMITATIONS AND DEFENCES

Limitation periods

What are the applicable limitation periods?

Under the Product Liability Act (PL Act), the statutory limitation period is:

- five years from the time of knowledge of the defect; and
- 10 years from delivery of the product (paragraph 1, article 5).

With respect to liability in tort under the Civil Code, the statutory limitation period is:

- five years from the time of knowledge of the tortious act; and
- 20 years from the occurrence of the act (article 724 of the Civil Code).

With respect to contractual liability, the statutory limitation period is:

- five years from the time the injured person becomes aware that he or she can exercise the right to a claim; and
- 10 years (or 20 years in the case of harm to the human body or death) from the time the injured person can actually exercise such right (articles 166 and 167 of the Civil Code).

Law stated - 20 July 2023

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?

There are two defences that defendants may assert under the PL Act:

- the defect in the product could not have been discovered given the state of scientific or technical knowledge at the time when the manufacturer (or equivalent), delivered the product (defence of development risks). This requirement is considered difficult to meet and it has never been upheld by a Japanese court to our knowledge; 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 defendant is not negligent with respect to the occurrence of the defect in the component product.

Law stated - 20 July 2023

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 will not necessarily lead to a finding of no defect or liability; while such compliance can be considered to be a factor in determining whether the products were defective. There are several precedents whereby the alleged defect was recognised as such even though the product complied with a certain standard.

Law stated - 20 July 2023

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 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.

Appeals

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

The Japanese judicial system comprises a three-tiered court system and there are no exceptions for product liability suits. Therefore, a party that loses a case in whole or in part and is dissatisfied with the judgment may challenge it by submitting a written appeal to a high court (if the first-instance court is a district court) or the district court (if the first-instance court is a summary court) within two weeks of delivery of the judgment. In the second instance court, the appellant can make factual allegations and the court will conduct fact-finding in the same manner as at first instance.

The party who loses at second instance may submit a final appeal or a petition for acceptance of a final appeal to the Supreme Court (if the first-instance court is a district court) or the high court (if the first-instance court is a summary court). The grounds for final appeal are very limited and include grounds such as misinterpretation of the Constitution or other violations of the Constitution. However, even if there are no valid grounds for a final appeal, the Supreme Court may accept a final appeal if it believes that the appeal involves important issues such as the interpretation of other laws. Therefore, in practice, the losing party often files a petition for a final appeal with the Supreme Court as well. 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 - 20 July 2023

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 may 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 - 20 July 2023

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 but available. ADR proceedings are conducted by various organisations, such as the National Consumer Affairs Centre of Japan and business associations such as the Product Liability Centre for Electrical Home Appliances. 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. It is reasonable to consider utilising such ADR; in practice, however, these forms of ADR are not used frequently.

Law stated - 20 July 2023

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?

There are no particular prevailing trends. There has been no particular increase or decrease in the number of product liability cases over the past few years.

Law stated - 20 July 2023

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 at 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 - 20 July 2023

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 white papers. The consumer white paper of 2023 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 per cent of consumers who experienced consumer troubles took certain action.

Law stated - 20 July 2023

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 - 20 July 2023

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 - 20 July 2023

Jurisdictions

	Australia	Clayton Utz
	Canada	Cassels
	China	BUREN NV
	France	Kennedys Law LLP
	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