



The Legal 500 Country Comparative Guides

Japan

PRODUCT LIABILITY

Contributor

Nagashima Ohno & Tsunematsu



Junichi Ikeda

Partner | junichi_ikeda@noandt.com

Takayuki Fujii

Partner | takayuki_fujii@noandt.com

Mai Nishigori

Associate | mai_nishigori@noandt.com

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

For a full list of jurisdictional Q&As visit legal500.com/guides

JAPAN

PRODUCT LIABILITY



1. What are the main causes of action upon which a product liability claim can be brought in your jurisdiction, for example, breach of a statutory regime, breach of contract and/or tort? Please explain whether, for each cause of action, liability for a defective product is fault-based or strict (i.e. if the product is defective, the producer (or another party in the supply chain) is liable even if they were not individually negligent).

The main causes of action for product liability claim in Japan are tort and contract.

Tort

Article 709 of the Civil Code, which establishes the general rule of tort, provides that *a person that has intentionally or negligently infringed the rights or legally protected interests of another person is liable to compensate for damage resulting in consequence.*

The Product Liability Act

The Product Liability Act, which establishes the special rule of tort, provides that *the manufacturers and other relevant parties are liable to compensate for loss or damage, if death or bodily injury to others or infringement of property of others are caused by a defect in the delivered product.*

Contract law

A buyer who has bought a defective product can exercise the right to cancel the contract (including reimbursement of the purchase price) and/or can demand that the seller provide the following contractual remedies under the Civil Code:

- Compensation.
- Reduction of the purchase price.
- Repair of the defective product.
- Replacement of the product with one that is

not defective.

2. What is a 'product' for the purpose of the relevant laws where a cause of action exists? Is 'product' defined in legislation and, if so, does the definition include tangible products only? Is there a distinction between products sold to, or intended to be used by consumers, and those sold for use by businesses?

"Products" under the Product Liability Act means movables which are manufactured or processed. Intangible objects such as electricity and software itself do not fall under the category of products (please note, however, manufactured goods incorporating software can be considered to be products). Products are not limited to consumer products, and those sold for use by businesses are also considered products as long as they meet the above conditions.

3. Who or what entities can bring a claim and for what type(s) of damage? Can a claim be brought on behalf of a deceased person whose death was caused by an allegedly defective product?

A party who has been physically injured because of the defect in the product, or (ii) a party whose property, excluding the defective product itself, has been damaged because of the defect is entitled to bring the damage claims under the Product Liability Act. Not only consumers or natural persons but also business operators, legal persons, and third parties including bystanders who have suffered losses or injury due to the defective product can bring the claim. If a person dies because of the defect in the product, the heirs of the deceased person can bring the claim.

4. What remedies are available against a defendant found liable for a defective product? Are there any restrictions on the types of loss or damage that can be claimed?

There is no regulation that limit the amount of damages manufacturers or other relevant parties must compensate for below a certain amount.

The manufacturers or other relevant parties found liable must compensate for damages that ordinarily arise from defects and damages which has arisen from any special circumstances if the party did foresee, or should have foreseen, the circumstances. The damages to be compensated include mental damages and lost earnings as long as they are considered to be the damages causally related to the defect in the products. Punitive or exemplary damages are not available in Japan.

5. When is a product defective? What must be shown in order to prove defect?

Under the Product Liability Act, the term “defect” means a lack of safety which a product should normally have, taking into account the characteristics of the product, the normally foreseeable usage manner, the time at which the manufacturers and other relevant parties delivered the product, and other circumstances of the product. The defect must exist at the time the manufacturers and other relevant parties delivers the product.

6. Which party bears the burden of proof? Can it be reversed?

A plaintiff in product liability cases, who asserts the accrual of the right to claim compensation for loss or damage, bears the burden of proving the following facts that give rise to the plaintiff’s right. Under product liability law, the intentionality or negligence of the manufactures or other relevant parties is not a requirement for the accrual of the right to claim compensation.

- the delivery of products by manufactures or other relevant parties
- the existence of a defect in the delivered product
- the occurrence of damage and the amount of damages
- a causal relationship between the defect and the damage

A defendant, who asserts the exemption from liability, bears the burden of proving the facts that extinguish, or impede the exercise of, the right to claim compensation for loss or damage including:

- the defect in the product could not have been detected given the state of scientific or technical knowledge at the time when the manufacturers and other relevant parties delivered the product; or
- where the product of the defendant is used as a component or raw material of other products, the defect occurred solely because of the compliance with the instructions on the design given by the manufacturer of other relevant products, and that the manufacturers and other relevant parties, are not negligent with respect to the occurrence of that defect.

There is no provision in the Product Liability Act to reverse the burden of proof. However, in finding the existence of a defect and the causal relationship between a defect and the damage, the court may, depending on the specific circumstances of each case, reduce the burden of proof on the victim by using a factual presumption.

7. What factors might the court consider when assessing whether a product is defective? To what extent might the court account for a breach of regulatory duty, such as a breach of a product safety regulation?

See Q5 for factors.

Whether the manufactures and other relevant parties conform with product safety regulations is usually considered to be one of the factors to be taken into account in product liability cases, since the purpose and objective of these regulations is only to establish minimum safety standards and not always consistent with the purpose and objective of the Product Liability Act, which is to establish rules for remedying damage in the event of a product accident. Furthermore, it is also commonly understood that conformity or nonconformity with voluntary regulations concerning the safety of products will similarly be regarded as merely one of the factors to be taken into account in determining whether a product is defective.

8. Who can be held liable for damage caused by a defective product? If there is

more than one entity liable, how is liability apportioned?

Under the Product Liability Act, the manufactures or other relevant parties, which are defined below, can be held liable for damages caused by a defective product.

- Any person who manufactured, processed, or imported the product in the course of business.
- Any person who uses a name, trade name, trademark, or other kinds of indications on the product as the manufacturer of the product, or any person who uses indications which may mislead others into believing that the person is the manufacturer.
- Any person who uses indications including a name on the product which can be recognized by others as that of the real manufacturer, taking the manner of the manufacturing, processing, importation or sale of the product, and other circumstances into consideration.

If more than one entity are liable for the damage caused by the defect in the product, each of them must jointly and severally compensate for the damage. If an entity who has compensated a victim for damages in excess of its own portion, the entity may exercise the right to recourse against other entities for the excess portion. The portion of damages borne by each responsible entity is determined from the viewpoint of fair burden of damages, taking into consideration various circumstances such as the manner of the offending act and the relationship between the offending act and the damages.

9. What defences are available?

The manufactures and other relevant parties are not liable where a defect in the product could not have been detected given the state of scientific or technical knowledge at the time when the manufacture and other relevant parties delivered the product.

Furthermore, the manufacturer and other relevant parties are not liable where the product is used as a component or raw material of other products, and a defect occurred solely because of compliance with the instructions concerning the design given by the manufacturer of that relevant products, and the manufacturers, etc. are not negligent with respect to the occurrence of the defect.

10. What is the relevant limitation

period(s) for bringing a claim? Does a different limitation period apply to claims brought on behalf of deceased persons?

The right to claim compensation for loss or damage is extinguished (i) when the victim or legal representative does not exercise the right for three years (in the case of death or bodily injury to persons, the term is extended to five years) from the date on which they came to know the damage and the person that was liable for compensation or (ii) when ten years have passed from the date on which the manufacturers or other relevant parties delivered the defect product. With respect to the period referred to in (ii), in case of damage caused by a substance that becomes harmful to human health if it accumulates in the body or in case of damage that causes symptoms to appear after a certain incubation period, the period is calculated from the date on which the damage occurred.

11. To what extent can liability be excluded, if at all?

The manufacturers or other relevant parties can include a disclaimer of liability clause in contracts, but such a clause can be effective only against the other party to the contract. In addition, such a clause may be void under the public policy principle in the Civil Code or under the Consumer Contract Act. Under the Consumer Contract Act, consumer contracts are defined as contracts entered into between consumers and traders.

Clauses to exempt or reduce trader's liability in a consumer contract can be void if they either:

- Wholly exclude the business operator's liability for damages.
- Partially exclude the business operator's liability for damages caused by an intentional act or gross negligence on the part of the business operator.
- Partially exclude the business operator's liability for damages but do not clearly specify that they apply only to negligent act excluding gross negligence on the part of the business operator.

12. Are there any limitations on the territorial scope of claims brought under a strict liability statutory regime?

According to the Act on General Rules for Application of Laws, the Japanese Product Liability Act applies to the product liability cases in which the victim received the

delivery of the product in Japan. However, if the delivery of the product in Japan was ordinarily unforeseeable, the law of the principal place of business of the manufacturers or other relevant parties applies.

13. What does a claimant need to prove to successfully bring a claim in negligence?

A claimant seeking compensation is required to prove the following facts:

- Infringement of the claimant's right or legally protected interest.
- Intentional or negligent act.
- Occurrence of damage.
- Causal relationship between the infringement and the damage.

14. In what circumstances might a claimant bring a claim in negligence?

A claimant might bring a product liability claim in negligence when, for example, it can be said that the manufacture, design or warning of the product was defective due to negligence and the defect caused the damage of the claimant.

15. What remedies are available? Are punitive damages available?

The tort remedy is monetary compensation. Punitive damages are not available in Japan.

16. If there are multiple tortfeasors, how is liability apportioned? Can a claimant bring contribution proceedings?

The liability of multiple defendants in a case involving a joint tort or product liability claim is joint and several. A claimant can seek recovery of the full amount of damages from any or all defendants. If an entity who has compensated a victim for damages in excess of its own portion, the entity may exercise the right to recourse against other entities for the excess portion. The portion of damages borne by each responsible entity is determined from the viewpoint of fair burden of damages, taking into consideration various circumstances such as the manner of the offending act and the relationship between the offending act and the damages.

17. Are there any defences available?

General defences, such as comparative negligence and extinguished prescription (time barring), are available.

18. What is the relevant limitation period(s) for bringing a claim?

The claim for compensation for loss or damage caused by tort is extinguished at the earlier of (i) when the right is not exercised within three years from the time when the victim or legal representative thereof comes to know the damage and the identity of the perpetrator (the time limit is extended to five years in the case of death or physical injury) and (ii) when the right is not exercised within 20 years from the time of the tortious act.

19. To what extent can liability be excluded, if at all?

See Q 11.

20. Do the laws governing contractual liability provide for any implied terms that could impose liability where the product that is the subject of the contract is defective or does not comply with the terms of sale?

If the product delivered to the buyer does not conform to the terms of the contract with respect to the kind, quality or quantity, the buyer can demand in accordance with explicit provisions of the Civil Code that the seller cure the non-conformity by repairing the products, delivering the substitute or reducing the price in proportion to the degree of non-conformity.

The following requirements must be met for such a claim by the buyer to be allowed;

- the conclusion of the contract
- the non-conformity to the terms of the contract with respect to the kind, quality or quantity of the products
- the non-conformity being not attributable to the buyer

If buyers suffer damages due to the non-conformity to the terms of the contract, they can also claim compensation for loss or damages and/or exercise the right of the contract cancellation. If the non-conformity is not attributable to the sellers, the sellers are not liable to compensate for damages.

21. What remedies are available, and from whom?

A buyer who has bought a defective product can seek a remedy from the seller under the Civil Code, including:

- Contract cancellation (including reimbursement of the purchase price).
- Compensation.
- Reduction of the purchase price.
- Repair of the defect.
- Replacement of the product with one that is not defective.

22. What damages are available to consumers and businesses in the event of a contractual breach? Are punitive damages available?

If the sellers provide the products which do not conform to the terms of the contract, they must compensate for the following damages. Punitive or exemplary damages are not available in Japan.

- Damages that ordinarily arise from defects damages
- Damages which has arisen from any special circumstances if the party did foresee, or should have foreseen, the circumstances

23. To what extent can liability be excluded, if at all?

See Q 11.

24. Are there any defences available?

If the buyer fails to notify the seller of the non-conformity within one year from the time when the buyer becomes aware of it, the sellers can assert that they are not liable for non-conformity to the terms of the contract.

Commercial Code establishes a special rule on this point that in sales transaction between merchants, upon receiving the object of the sales transaction the buyer must inspect it without delay and if the buyer does not immediately issue notice of the nonconformity to the seller as a result of the inspection, the buyer cannot seek contractual remedy. The same applies if the buyer does not issue notice of the nonconformity within six months when it is impossible to immediately discover the non-conformity of the object.

25. Please summarise the rules governing the disclosure of documents in product liability claims and outline the types of documents that are typically disclosed.

Enquiry Prior to Filing of Action

If a person has provided notice of an action to the would-be defendant of the action in advance, that notifying person may make an enquiry in writing to the would-be defendant who received the notice, regarding particular matters that are obviously necessary for the preparation of the allegations or proof if the action is filed.

Preservation of Evidence

If the court finds circumstances to be such that, unless the examination of evidence is conducted in advance, it will be difficult to use the evidence, the court, upon petition, may conduct an examination of the evidence.

Commissioning Sending of Document

After filing an action, the parties may petition the court to commission a person holding a document to send the document to the court although the holder of the document is not obliged to do so.

Order to Submit Documents

If the court finds there to be grounds for a petition for an order to submit a document, it issues a ruling ordering the person in possession of the document to submit the document.

Request for Information through the Bar Association

An attorney registered in Japan may request the bar association to make enquiries to public offices or public or private organisations for information necessary for their case.

In product liability actions, the documents relating to existence of a defect relating to manufacture, design and warning, and intent and negligence are typically subject of the disclosure.

26. How are product liability claims usually funded? Is third party litigation funding permitted in your jurisdiction and, if so, is it regulated?

There is no explicit provision relating to permission or prohibition of litigation funding. There are some provisions that relate to the litigation funding. The Trust Act prohibits the creation of trusts for the primary

purpose of litigating. Under the Attorney Act, no person other than an attorney or a legal professional corporation may, for the purpose of obtaining compensation, engage in the legal service.

Whether litigation funding is allowed in light of this prohibition has not been legally tested and it is not clear whether or not litigation funding is permitted under Japanese law.

27. Can a successful party recover its costs from a losing party? Can lawyers charge a percentage uplift on their costs?

Court Costs

In principle, court costs are borne by the losing party. In the case of partial defeat, the court will determine, at its discretion, the court costs to be borne by each party. However, under certain circumstances, the court may require either party to bear the entire cost of the case.

Legal Costs

In principle, each party bears its own legal costs. However, in practice, part (generally 10% of damages) of the prevailing party's legal costs can be incorporated into the damages, for claims under the Product Liability Act and tort claims based on the Civil Code. For breach of contract claims, the legal costs cannot be included as part of the damages awarded to the prevailing party.

28. Can product liability claims be brought by way of a group or class action procedure? If so, please outline the mechanisms available and whether they provide for an 'opt-in' or 'opt-out' procedure. Which mechanism(s) is most commonly used for product liability claims?

The Act on Special Measures Concerning Civil Proceedings for the Collective Redress for Property Damage Incurred by Consumers adopts opt-in type collective action. A collective action can only be brought by a specified qualified consumer organisation, and not by a consumer.

A specified qualified consumer organisation may file an action with regard to monetary payment obligations which pertain to the following claims:

- a claim for performance of a contractual obligation;
- a claim pertaining to unjust enrichment;

- a claim for damages based on non-performance of a contractual obligation; and
- a claim for damages based on a tort (limited to a claim based on the provisions of the Civil Code).

Though, the action may not be filed when the damage incurred is any of the following:

- (i) damage due to the loss or damage of property other than goods, rights, or any other object of a consumer contract resulting from the non-performance of a contractual obligation or a tort;
- (ii) damage due to the loss of profit which would have been gained through the disposition or use of the object of a consumer contract if that object had been provided;
- (iii) damage due to the loss or damage of property other than goods pertaining to manufacturing, processing, repair, transport, or retention under a consumer contract or any other subject of the service which was the object of a consumer contract, resulting from the non-performance of a contractual obligation or a tort;
- (iv) damage due to the loss of profit which would have been gained through the use of the service that is the object of a consumer contract or through the disposition or use of the subject of the service if the service had been provided;
- (v) damage due to harm done to the life or body of a person; or
- (vi) damage due to mental suffering (please note, however, if a claim for mental damages are accompanied by a property claim based on a common cause of action with the property claim, or if mental damages are caused intentionally by the company, they are compensable).

The Act involves a two-phased procedure.

In the first phase, a special qualified consumer organisation brings an action for a declaratory judgment regarding common obligations. In this action, a declaratory judgment that a company owes monetary obligations to a considerable number of consumers is sought, based on factual and legal causes common to these consumers when property damage is incurred by considerable number of consumers in connection with consumer contracts.

In the second phase, simplified proceedings to determine the presence or absence, and the contents, of a claim of each opt-in consumer for the payment of money are carried out by the district court that rendered

the final judgment at first phase.

29. Please provide details of any new significant product liability cases in your jurisdiction in the last 12 months.

We are not aware of any significant product liability cases in the last 12 months.

Regarding the notable product liability cases in recent years, we are aware of a case in which a court has determined how to prove a defect under the Product Liability Act in the event of a fire from an engine of a large commercial vehicle.

The Osaka High Court held on April 28, 2021 that considering the complexity of the engine structure and the difficulty in identifying the cause of vehicle fires, if the purchaser claims and proves that the vehicle was normally used in an anticipated manner and that there was no deficiency in the inspection and maintenance of the vehicle, it is presumed that the vehicle had a defect under the Product Liability Act, and it is not necessary to assert and prove the scientific mechanism that led to the occurrence of the fire accident. This framework for determining the existence of a defect is similar to that of many other recent court decisions, and has become largely established in practice.

30. Are there any policy proposals and/or regulatory and legal developments that could impact the current product liability framework, particularly given the advancements in new technologies and increasing focus on the circular economy?

The Ministry of Economy, Trade and Industry (METI) issued a guideline on how to ensure the safety of the internet of things (IoT) products such as electrical appliances and materials or gas equipment.

In this guideline, the METI recommends that IoT products be designed so that safety functions are separated from communication lines in order to ensure safety even in the event of a communication interruption or cyber-attack. The METI also requires IoT products to be equipped with preventive safety features to prevent harm to people who are near or in the area around the appliance.

31. What trends are likely to impact upon product liability litigation in the future?

There is a discussion over how product liability law applies in the event of an accident caused by an automated vehicle in Japan.

The "Outline of System Development Related to Automatic Driving" (the 'Outline'), released on April 17, 2018, by the Strategic Headquarters for the Promotion of an Advanced Information and Telecommunications Network Society (IT Strategic Headquarters), provides that if an automated vehicle causes an accident due to a defect in the incorporated software, the automated vehicle manufacturer or relevant parties will be liable for product liability as long as the autonomous vehicle itself is defective, and the software developer may be liable to the victim for tort liability. The Outline also states that it is necessary to discuss whether the point of delivery of an automated vehicle should be the criterion for determining defects when the software incorporated in the vehicle is updated after the vehicle is delivered.

Contributors

Junichi Ikeda
Partner

junichi_ikeda@noandt.com

Takayuki Fujii
Partner

takayuki_fujii@noandt.com

Mai Nishigori
Associate

mai_nishigori@noandt.com

