
THE PRODUCT REGULATION AND LIABILITY REVIEW

EDITORS
CHILTON DAVIS VARNER
AND BRADLEY W PRATT

LAW BUSINESS RESEARCH

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EDITORS' PREFACE

In today's global economy, product manufacturers and distributors face a dizzying array of overlapping and sometimes contradictory laws and regulations around the world. A basic familiarity with international product liability is essential to doing business in this environment. An understanding of the international framework will provide thoughtful manufacturers and distributors with a strategic advantage in this increasingly competitive area. This treatise sets out a general overview of product liability in key jurisdictions around the world, giving manufacturers a place to start in assessing their potential liability and exposure.

Readers of this publication will see that each country's product liability laws reflect a delicate balance between protecting consumers and encouraging risk-taking and innovation. This balance is constantly shifting through new legislation, regulations, treaties, administrative oversight and court decisions. But the overall trajectory seems clear: as global wealth, technological innovation and consumer knowledge continue to increase, so will the cost of product liability actions.

This edition reflects some of these trends. For example, Turkey has recently enacted a new consumer protection law aimed at protecting consumers in commercial transactions and expanding available remedies. In South Korea, new legislation has been proposed to permit consumer class actions and to lower a plaintiff's burden of proof in product liability cases. Australia has experienced a renaissance in product liability litigation due to a relatively plaintiff-friendly class-action regime and the emergence of litigation funding companies. And, in the United States – traditionally a consumer-friendly nation – private lawsuits show no signs of abating, while state and federal governments take an increasingly aggressive role in enforcing strict safety and manufacturing standards. Although these changes and trends may be valuable in their own right, they also create a greater need for vigilance on the part of manufacturers, distributors and retailers.

(describing the country's regulatory authorities or administrative bodies that oversee some aspect of product liability); Causes of Action (identifying the specific causes of action under which manufacturers, distributors or sellers of a product may be held liable for injury caused by that product); Litigation (providing a broad overview of all aspects of litigation in a given country, including the forum, burden of proof, potential defences to liability, personal jurisdiction, discovery, whether mass tort actions or class actions are available, and what damages may be expected); and the Year in Review (describing recent, current and pending developments affecting various aspects of product liability, such as regulatory or policy changes, significant cases or settlements, and any notable trends).

Whether the reader is a company executive or a private practitioner, we hope that this edition will prove useful in navigating the complex world of product liability and alerting you to important developments that may affect your business.

We wish to thank all of the contributors who have been so generous with their time and expertise. They have made this publication possible. We also wish to thank our colleague Dmitry Epstein, who has been invaluable in assisting us in our editorial duties.

Chilton Davis Varner and Bradley W Pratt

King & Spalding

United States

April 2014

Chapter 1

AUSTRALIA

Colin Loveday, Larissa Cook and David Birch¹

I INTRODUCTION TO THE PRODUCT LIABILITY FRAMEWORK

Australia's product liability laws are a mixture of the common law and legislation.

A person who claims to have been injured or who has otherwise suffered loss or damage caused by a product may commence an action for compensation on the following bases:

- a* the common law tort of negligence;
- b* contract; and
- c* breach of a number of consumer protection legislative provisions, the main one being the Australian Consumer Law (ACL).

The ACL is a federal (also known as Commonwealth) law which came into effect on 1 January 2011. It applies to transactions occurring on or after that date. The ACL replaces a collection of federal and state consumer protection legislation with a single law that applies in all jurisdictions. The ACL is found in Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA), which is itself the renamed Trade Practices Act 1974 (TPA). The consumer protection regime formerly found in the TPA has been transferred to the ACL and, in doing so, has been substantially modified.

The ACL imposes statutory obligations including a strict liability regime for products that are said to have a 'safety defect' and statutory guarantees imposed on manufacturers. State fair trading legislation exists to provide for the application of the ACL in each of the states and territories, as well as covering some additional areas such as industry-specific regulation.