PRODUCT LIABILITY LAWS

Product liability laws all over the world generally include a wide range of legislative documents and case laws applicable to any corporation or individual manufacturing and trading in goods and services. These corporations are liable to ensure that these products meet safety standards and do no harm to consumers. These corporations may assume responsibility in case the goods and services manufactured and traded by them cause damage or harm to users.

According to Article 102 (2) of the US Uniform Product Liability Act, product liability includes "all complaints and claims seeking for damages related to human losses, including death and property, caused by any manufacturing, design, formulation, preparation, installation, testing, warning, instructions, ordering, packaging and labelling of any goods and service". Goods manufacturers and service providers are becoming more aware of product liability issues in the world, as a result of the widespread adoption of "strict liability" theory and the emergence of new theories allowing for compensation in the case of delayed manifestation.

In most circumstances, the small and medium enterprises should be fully aware of their statutory obligations on product liability, since they have limited resources. In addition to the duty to ensure safety for the goods and services manufactured and provided by them, they are also responsible for giving explicit (and even) and noticeable warning about potential dangers in the product itself and packaging. Toward this purpose, the SMEs worldwide, as a rule, require advisory services from law firms because the constantly developing product liability law systems are becoming more sophisticated and huge. In many cases, they even choose to buy product liability insurance. However, the cases are increasing in number, which leads to highly expensive premium for insurance package and as a matter of fact, the affordable product coverage is reduced. In many cases, product liability even becomes a market entry barrier for these small and medium enterprises.

The development of product liability laws

The term "product liability" originally appeared in mid 19th century in the US, when American courts, for the first time, recognised that the good sellers have a duty of reasonable care during manufacturing process. The sellers are obliged to be liable to the third party for their negligence during their process of manufacturing or selling goods which are inherently dangerous (the danger comes from the product itself, not from defects) to human safety, including all products like food, drinks, medicines, weapons and explosive substances. In early 1960s, these fault-based rules were first used in the product liability field. At that time, though the concept of "inherently dangerous" products retained their significant effects, the legal trends were moving towards rules based on negligence or tort, forcing manufacturers to apply standard of care in promoting products to users.

Since then, enterprises have stuck to these rules as they are fully aware that the products offered by them affect consumers' benefits and they owe consumers a legal duty of reasonable care. As manufacturers can foresee the adverse effects of products, they are liable to minimize the risks. It is the statutory obligations between manufacturers and consumers

that make plaintiffs entitled to claims for negligence during their performance of obligations. These rules are publicly applied, in replacement of the principle of "inherently dangerous" products and are becoming the basis for the whole legal system of product liability. The principle of negligence is also applicable, not only in manufacturing but also packaging, labelling, installation, testing and design.

In Europe, two decades after the enactment of the European Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products[1] by the Council of the European Communities, "strict liability" has prevailed over other causes of action in the field of manufacturers' liability and replaced fault-based conceptions of manufacturers' liability in Europe and on a global scale.

Elements of Product Liability

For a product liability case to be considered under negligent tort principle, there are at least four conditions to be proved:

- The defendant owed a legal duty of care to the plaintiff in the same case or similar cases.
- The defendant breached its legal duty of care – that means, failing to act with reasonable care
- The injuries occur, including injuries to human and property.
- The plaintiff suffered damage as a result of the defendant's breach of duty.

The concept of negligence can be applied to all activities prior to the products' presence on the market. This means that negligence can exist in all stages such as product design, material inspection and testing, fabrication and installation, packaging, accompanying instructions and warnings, final product testing stage. Negligence can be due to errors of omission or commission. This also means that the producers, if failing to recognise defects, are deemed to cause those defects. In the same way, manufacturers, if failing to give adequate warnings about potential dangers in product usage, are deemed to have breached their duty.

Obviously, negligence in product liability claims are not easy to prove. The defendants are only required to meet the common standard of reasonable care, in comparison with an act of competitor with reasonable care, who may represent standard skills and common qualifications of the whole industry. In fact, manufacturers should only prove that they have applied "reasonable care in specific cases" as a defense against negligence. Consumers face greater difficulties in proving vice versa.

Even most common items still possess a definite extent of risk, and it is legally admitted that there is nothing such as accident-proof product. However, the manufacturers have a duty to warn the consumers of any dangers of which they are aware. Negligence would be alleged against the manufacturers if:

- They fail to warn the consumers of the dangers they are aware of

[1] OJ 1985 L 210/29.

- The warning is too vague, so insufficient
- The warning does not reach consumers' attention

A duty to warn means manufacturers not only have to warn the consumers of the dangers but also represent their warning in such a way that a reasonable consumer can find and comprehend them. There are cases that a warning in users' instructions and on temporary labelling is still considered as insufficient.

Strict Product Liability

Strict liability, the latest development in tort law, has dramatically changed the nature of the whole product liability law system because it precludes negligent issue. Strict liability only requires the plaintiff to prove that the product causing injuries is defective, and the cause of the defect is irrelevant. In that case any inspection should focus on the product itself, not how the defendants use the product.

Strict liability theory provides that a manufacturer will take responsibility when having a defective product put onto commerce. This issue has become a part of public policy and not regarding negligence or unreasonable act of the manufacturer. The act of putting a defective product into commerce binds all participants in the distribution channel to liability for negligence. Strict liability theory assumes that the manufacturers have the decision-making power related to their product quality; they are able to allocate their costs by increasing the price and therefore would assume special liability when acting as sellers.

Several arguments say that although "strict liability" theory lessen the burden of proof on plaintiffs and raise the possibility of being compensated, it does not provide a common principle applicable in all cases. Instead, this principle is based on a so-called "consumer's expectation" test: sellers of unreasonably dangerous products will be responsible for material damage to users if: (i) sellers engage themselves in selling, (ii) the product as a rule and in reality reaches users without substantial change in use. "Unreasonably dangerous" is defined as dangerous beyond the expectation of an ordinary consumer who buys the product.

Product liability has developed into a separate legal system, in addition to consumer protection laws in the world, hence it means a lot not only to consumers but corporations manufacturing and trading in goods and services. Besides being aware of consumers' less advantageous position, especially due to lack of information, this legal system needs to ensure the legal science and equality, so as not to cause unreasonable obstacles to market participation (the case is when the costs of market entry may be too high as a result of abiding by State regulations). In Vietnam, product liability is a new field and its integration into the Consumer Protection Law to be submitted to the Government and National Assembly this year, is currently under consideration. Hence, there should be more careful research and consideration from the policy-making circle so as to avoid these two adverse results: consumers are not fully protected and the liability bound to corporations are too strict.