

Product liability law in various legal systems

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Abstract

The article is devoted to the application of the product liability institution in different countries. Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The article analyses the conditions of responsibility of the manufacturer or seller to the consumer due to design or formula shortcomings of the goods. As a conclusion, the Russian product liability institution is based on the theory of strict tort liability. This creates reliable protection for the consumer in cases of harm to him due to defects in goods, works or services.

Key words: product, liability, strict liability, tort.

Ley de responsabilidad del producto en varios sistemas legales

Resumen

El artículo está dedicado a la aplicación de la institución de responsabilidad del producto en diferentes países. Varios métodos científicos generales y los métodos de cognición lógica se utilizan en el trabajo: análisis y síntesis, enfoques sistémicos, funcionales y lógicos formales. El artículo analiza las condiciones de responsabilidad del fabricante o vendedor ante el consumidor debido a deficiencias en el diseño o la fórmula de los productos. Como conclusión, la institución rusa de responsabilidad civil por productos se basa en la teoría de la responsabilidad por responsabilidad civil estricta. Esto crea una protección confiable para el consumidor en casos de daño a él debido a defectos en los bienes, obras o servicios.

Palabras clave: producto, responsabilidad, responsabilidad objetiva, agravio.

1. INTRODUCTION

The most important and interesting variety of obligations from the cause of harm, which is of vital importance to the majority of the population of different states, is the harm to the life, health and property of the consumer as a result of the purchase of defective products. Defective or dangerous products are the cause of thousands of injuries every year. When individuals are harmed by an unsafe product,

they may have a cause of action against the persons who designed, manufactured, sold, or furnished that product. Thereby product liability law is the legal rules concerning those who is responsible for defective or dangerous products. For the Russian legal science, the most interesting thing is the experience of the United States and the European Union in the field of consumer protection.

The law that governs the sale of goods in the USA is Article 2 of the Uniform Commercial Code or, as it is typically referred to, the UCC(The Uniform Commercial Code, n.d.). The UCC has been adopted in every state. Besides, in May 1995, the American Law Institute (A.L.I.) adopted Tentative Draft №2 of the Restatement (Third) of Torts: Products Liability(Restatement (Third) of Torts: Products Liability, n.d.).In the European Union, the main legal document defining general rules of the product liability is the Council directive № 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the member states concerning liability for defective products(Brussels, 25.VII.1985)(Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, n.d.).Approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary because the existing divergences may distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a

defective product to his health or property. Product liability in the Russian Federation is established by the Civil Code of the Russian Federation (2003) and Federal Act «The Consumer Protection Act»(1992) in the early 90-ies of the twentieth century. In this regard, a comparative analysis of Russian legislation in this area is necessary with the legislation of developed countries with a market economy.

2. METHODS

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of the conclusions was facilitated by the application of formal-legal and comparative-legal methods.

3. DISCUSSION AND RESULTS

Product liability is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. A typical product liability case will involve a claim for damages against the manufacturer or seller of a product by a person injured by a product. The injured party, or plaintiff, will seek to prove

that the injury was caused by some deficiency in the way that the product was made or marketed (i.e., that the product was defective). In most jurisdictions, a person injured by a product may base his or her recovery of damages on one (or more) of three different legal theories: (1) negligence, (2) breach of warranty, and (3) strict tort liability.

Each of these theories has its place in the system of ways to protect consumer rights in the US law. Consider their legal content.

Law within the United States comes mainly from two sources: common law created by the courts and legislative law created by the federal and State legislatures and government agencies.

A decisive contribution to the development of the special responsibility of producers of low-quality products (products liability) was made by the US judicial practice. The USA became the first state in which this institution got its development. Products liability is an important area of law in the USA. After the decision in the case of *McPherson* (1914) it was recognized that the commodity producer is subject to the duty to observe due diligence not only with respect to his contractual partner, but also against third parties that are not its participants if they are harmed by the use or consumption of bad products quality of this manufacturer.

Negligence is a relatively simple concept. In short, negligence is the failure to exercise ordinary care to avoid injuring someone to

whom you owe the duty of care. Ordinary care is the care that a reasonable person would take based on the circumstances known to him at the time (Stea).

Negligence, which has been in existence for hundreds of years, is judged on three varieties:

- (1) the probability that injury would result from the manufacturer's conduct;
- (2) the gravity of the harm that could be expected to result should injury occur; and
- (3) the burden of taking adequate precautions to avoid or minimize the injury.

In other words, if the probability of harm and the gravity of the harm are greater than the burden of taking precautions to reduce the risk, then the manufacturer is negligent if they do not minimize the risk.

Warranty claims are governed by contract law. A warranty is a promise, claim, or representation made about the quality, type, number, or performance of a product. In general, the law assumes that a seller always provides some kind of warranty concerning the product he sells and that he should be required to meet the obligation created by the

warranty. Warranties are created by operation of law under the Uniform Commercial Code. Under the UCC, there are two kinds of warranties: express and implied.

Express warranties are created by the following: (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain. (2) Any description of the goods which is made part of the basis of the bargain. (3) Any sample or model which is made part of the basis of the bargain. An express warranty can also be created by any written or oral statement or even by the appearance of the product.

The UCC also creates an implied warranty of merchantability and fitness for a particular purpose. These warranties are implied in every sale of a product that is subject to the UCC unless they have been disclaimed.

Strict liability is liability without privity and without negligence. Rather than focus on the behavior of the manufacturer (as in negligence), strict liability claims focus on the product itself. Under strict liability, the manufacturer is liable if the product is defective, even if the manufacturer is not negligent in making that product defective.

Under any theory of liability, a plaintiff in a product liability case must prove that the product that caused injury was defective, and

that the defect made the product unreasonably dangerous. There are three types of defects that might cause injury and give rise to manufacturer or supplier liability:

- 1) Design Defects - present in a product from the beginning, even before it is manufactured, in that something in the design of the product is inherently unsafe.
- 2) Manufacturing Defects - those that occur in the course of a product's manufacture or assembly.
- 3) Marketing Defects - flaws in the way a product is marketed, such as improper labeling, insufficient instructions, or inadequate safety warnings.

As above mentioned, the main act of the European Union in the sphere under consideration is the Directive 85/374/EEC. The Product Liability Directive 85/374/EEC is a directive of the Council of the European Union that created a regime of strict liability for defective products. The main objective of the adoption of this document is to remove significant discrepancies on the issue in the legislation of the participating countries that impede the development of competition and the free movement of goods within the Common Market(Ghestin, 1986).

Articles 1 to 12 create a scheme of strict product liability for damage arising from defective products. This liability is in addition to any existing rights that consumers enjoy under domestic law (article 13).

The directive does not extend to nuclear accidents, these being covered by existing international conventions (article 14). The original directive did not extend to the game or primary agricultural produce (article 2) but this exception was repealed by directive 1999/34/EC following concerns over bovine spongiform encephalopathy.

For the purpose of Directive, «product» means all movables even if incorporated into another movable or into an immovable. «Product» includes electricity.

A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:

- (a) the presentation of the product;
 - (b) the use to which it could reasonably be expected that the product would be put;
 - (c) the time when the product was put into circulation.
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«Producer» means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer. Any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.

The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage. Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally.

The liability of the producer shall not be reduced when the damage is caused both by a defect in the product and by the act or omission of a third party. The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.

The institution of product liability in the Russian Federation is regulated by the Civil Code. In accordance with article 1095 Civil Code of the Russian Federation harm caused to the life, health or to the property of an individual or damage done to the property of a legal entity in consequence of constructive, recipe or other defects of goods,

works or services, and also in consequence of untrustworthy or insufficient information about goods (works, services) shall be subject to redress by the seller or the manufacturer of goods, by the person who has fulfilled the work or rendered the service (executor), regardless of their fault and of the fact whether the victim has been in contractual relations with them or not.

This civil offense is a special delict in the system of Russian civil law. A consumer from such harm has several advantages.

First, the harm must be compensated by the seller or manufacturer at the choice of the victim. It can be noted that the possibility of bringing to product liability not only the manufacturer of the goods, but also the seller exists in Anglo-American law (Owen et al., 2008).

Secondly, the harm must be compensated regardless of the existence of a contractual relationship with the seller or the manufacturer. Independence from the existence of contractual relations testifies that this claim is based on the fact of causing harm, but not on the contract. This is a tort claim. Third, the harm must be compensated regardless of fault tortfeasor. Consequently, this type of non-contractual liability applies to cases of increased liability of the tortfeasor.

However, these advantages are available only in cases of acquiring the goods (or doing of the work/ rendering of services) for consumer purpose and not for their use in the entrepreneurial activity. Besides, non-property (moral) harm caused to the consumer as a result of the violation of his rights by the manufacturer (executor, seller) is compensable in the presence of the fault of the inflictor of harm.

In addition, the Civil Code provides for the time periods for the compensation for the harm. So, harm caused as a result of defects in good, work, or services shall be subject to compensation if it has arisen in the course of the established time period of suitability or time period of service of the goods (or work or services), or, if a time period suitability or time period of service has not been established, in the course of ten years from the day of production of the goods (or work or services).

In accordance with article 1098 Civil Code of the Russian Federation the seller or manufacturer of the goods or the performer of work or services shall be freed from liability in the case if he proves that the harm arose as the result of force majeure or violation by the consumer of the established rules for the use of the goods, the results of work, or services or their storage.

Similar provisions are contained in the Russian Federal Law «On the protection of consumers' rights». In addition, article 14 (paragraph 4) of this Federal Law contains a provision stating that the

manufacturer (performer) shall be liable for injury or damage caused to the consumer's life, health or property as a result of the use of materials, equipment, tools and other facilities necessary for the manufacture of products (performance of work, providing services) irrespective of whether the level of scientific and technical knowledge could help to reveal their special properties or not.

This further increases the conditions of product liability in Russia (Roman Halin, 2015).

4. CONCLUSION

Product liability is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. The USA became the first state in which this institution got its development. Products liability is an important area of law in the USA and the European Union. In most jurisdictions, a person injured by a product may base his or her recovery of damages on one (or more) of three different legal theories: (1) negligence, (2) breach of warranty, and (3) strict tort liability. The institution of product liability in the Russian Federation is regulated by the Civil Code.

The main features the Russian product liability are: 1) the harm must be compensated by the seller or manufacturer at the choice of the victim; 2) the harm must be compensated regardless of the existence of a contractual relationship with the seller or the manufacturer; 3) the harm must be compensated regardless of fault tortfeasor. This gives grounds to say that the Russian product liability institution is based on the theory of strict tort liability. This creates reliable protection for the consumer in cases of harm to him due to defects in goods, works or services.

5. CONFLICT OF INTEREST

The authors confirm that the information provided in the article does not contain a conflict of interest.

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