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Legal Concept of Product Liability

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Abstract

Product liability imposes liability for products on manufacturers, sellers, importers and other in the distribution chain. Product liability is a general right to recover for injuries caused by the use of defective products based solely upon theories of negligence, breach of warranty and strict liability. Product liability law protects not only consumer rights but also limits the liability of manufacturer. In international level as product liability, there are legal instruments like the Convention on the Law Applicable to Products Liability (Hague Convention, 1972), European Convention on Products Liability in regard to Personal Injury and Death, 1977 and Product Liability Directive of EEC, 1985. But in ASEAN level, there is no specific legal instrument relating to product liability. ASEAN should regulate Agreement on defect products because ASEAN is embarking on building an ASEAN Economic Community (AEC) by 2015, which will be a single market and production base. If it has no implement legal instrument as product liability in the ASEAN region, it is to hinder the free flow of goods. Therefore, ASEAN is necessary to adopt regional agreement as product liability.

Key words: Product Liability, Defective Products, Product liability Law

Introduction

Product Liability Law (*Defective Products Law*) falls under personal injury/tort law and is closely related to litigation law. It refers to the claims against any parties along the chain of manufacture (designers, manufacturers, distributors and retailers) of products which have defects that harm consumers causing injury or loss. More than most areas of the law, an understanding of the theory and practice of products liability law requires an understanding of its history and development. A claim for damages may be based upon one or more of a number of complex theories: express warranty; implied warranty; misrepresentation; negligence; strict liability. Products liability has two functions-compensating injured persons and acting as a gate-keeper and deterrent to ensure producers only market safe products. The rise of product liability standards means that manufacturers and retailers must pay attention to quality, product safety and product liability. In international and regional level, legal Instruments in respect with product safety and product liability have adopted. The goal of these instruments is to harmonize between States for effective protection of consumers and legitimate interests of producers.

Materials and Methods

A review and analysis was made of the legal concepts and terminology of product liability and also international and regional legal instruments relating to product liability.

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Findings

Product Liability is a general area of law that addresses responsibility for product-related injuries. Industrial development and technological progress have increasingly involved cases of producers' liability and the growth of inter-state has resulted in the problem of producers' liability acquiring in certain cases, an international aspect. So, it has been adopted legal instruments regard with product liability in international and regional level. But there is no specific legal agreement relating to product liability in ASEAN region. Therefore ASAEN should regulate legal instrument as product liability.

Discussion

Legal Concept of Product Liability

When a person is injured by a defective product that is unreasonably dangerous or unsafe, the injured person may have a claim or cause of action against the company that designed, manufactured, sold, distributed, leased, or furnished the product. In other words, the company may be liable to the person for his injuries and, as a result, may be required to pay for his damages. That is product liability; and the law that governs this kind of liability is referred to as product liability law.

Historical Development of the Product Liability

When the theory and practice of product liability law is studied, it is need to understand its history and development. The history of the law of product liability is largely a history of the erosion of the doctrine of privity, which states that an injured person can sue the negligent person only if he or she was a party to the transaction with the injured person.

The origin of the privity rule in products liability cases was the 1842 English decision in **Winterbottom v. Wright, 152 Eng .Rep.402 (Ex.1842)** in which Winterbottom, a coachman, suffered permanent injuries when the mail-coach he was driving collapsed. The coach had been built by Wright, who had contracted with the Postmaster General to supply coaches for the delivery of mail and to keep those coaches in good repair. The Postmaster-General then contracted with Atkinson to supply horses and drivers for the coaches to deliver the mail. Winterbottom was, in turn, one of the coachmen hired by Atkinson under that contract. Although not a party to the contract between Wright and the Postmaster-General, Winterbottom's declaration stated that, "by virtue of the said contract," Wright undertook a duty "to keep the carriage in a safe condition." Winterbottom alleged that his right to recover was based upon his knowledge of, and reliance upon, the contract and that Wright's

"omission" resulted in his injuries. In what one of the judges, Lord Abinger, termed "an action of first impression," the Court of Exchequer dismissed Winterbottom's suit against Wright because there was no privity of contract between the parties.

Although it became a general rule of common law that a manufacturer or seller of a product was not liable, regardless of its negligence, to third persons with whom it had no contractual relations, courts developed a number of exceptions to the privity requirement. These exceptions, which led to the development of the modern rules of negligence, strict liability, and misrepresentation, fell into four broad categories. First, privity did not protect a manufacturer or seller's negligence where the product was "imminently" or "inherently" dangerous to human life or health. The second exception to the privity rule arose when a property owner's negligence injured a person who was invited by the property owner to use his defective product on his property. The third exception to the privity rule involved persons who sold products which they knew were imminently dangerous to life or health but concealed the dangers from the buyers. The final exception to the requirement of privity arose in cases where the seller was guilty of fraud.

In 1916, came the historic decision in **MacPherson v. Buick Motor Co.**, **111 N.E. 1050, 1053 (N.Y.1916)** a decision in which Justice Benjamin Cardozo enlarged the -inherent danger- exception so that it swallowed the general rule of privity. From 1930 to 1960, various legal writers and a few judges discussed the creation of strict liability in tort for defective products. The best-known judicial exposition of this view was California Supreme Court Justice Roger John Traynor's concurring opinion in **Escola v. Coca Cola Bottling Co. of Fresno**, **24 Cal. 2d 453, 150 P.2d 436 (1944).** Finally, in 1963, in **Greenman v. Yuba Power Products, Inc. 59 Cal. 2d 57, 377 P.2d 897,** the California Supreme Court adopted strict tort liability for defective products.

In trace the development of product liability, firstly-product liability case is only applied the privity rule. In 1916, a person injured has the right to sue for negligence relating to defective product. Lastly, if manufacturing product is defective, manufacturer has absolute liability for that product.

Definitions relating to Product Liability

'Product' is something that is distributed commercially for use or consumption and that is usually (1)tangible personal property, (2)the result of fabrication or processing, and (3)an item that has passed through a chain of commercial distribution before ultimate use or consumption.

‘Defective product’ means a product that is unreasonably dangerous for normal use, as when it is not fit for its intended purpose, inadequate instructions are provided for its use, or it is inherently dangerous in its design or manufacture.

‘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.

‘Product Liability’ means a manufacture’s or seller’s tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product.

‘Product Liability claim’ defines as any claim or action brought for harm caused by the manufacture, production, making, construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage, or labeling of the relevant product.

Types of Product Liability

Products Liability distinguishes between three major types of product liability claims:

- manufacturing defect,
- design defect,
- a failure to warn (also known as marketing defects).

A product has a manufacturing defect when the product does not conform to the designer's or manufacturer's own specifications. An example would be the material used for the brake assembly was inferior to the design specifications of the manufacturer and failed because of that inferiority.

A design defect is some flaw in the intentional design of a product that makes it unreasonably dangerous. Thus, a design defect exists in a product from its inception. For example, a chair that is designed with only three legs might be considered defectively designed because it tips over too easily.

Marketing defects include improper labeling of products, insufficient instructions, or the failure to warn consumers of a product's hidden dangers. For example, a household cleaner that is highly flammable should have a warning label notifying consumers of the potential dangers of the product.

In product liability action, injured consumer can sue on the basis of three types of defect. Manufacturing defect and design defect are linked but marketing defect is unlike other defects. Because marketing defect is more difficult than others as the conducting part of the manufacturer.

Theories of Product Liability

Liability in product cases is usually based on the application of the legal doctrines of negligence, breach of warranty or strict liability in tort also known as product liability law. Product liability suits based on the negligence theory usually allege that the seller or manufacturer breached a duty to the plaintiff by failing to eliminate a reasonably foreseeable risk of harm associated with the product.

In **Donoghue v Stevenson (1932) AC 562 case**, Ms Donoghue purchased and drank a bottle of ginger-beer which was manufactured by Stevenson. Ms Donoghue poured some ginger-beer into her glass. She drank some before her friend poured the remainder of the drink into her glass and found a decomposing snail. Ms Donoghue suffered shock and severe gastroenteritis. She argued that as ginger-beer was manufactured by Stevenson, and thus he had a duty to enforce a system to prevent snails from ending up in bottles. It was also his duty to provide an efficient system of inspecting the bottles prior to use. Stevenson did not believe that he owed such a duty to Ms Donoghue. The judges found that there was a duty of owed to Ms Donoghue as Stevenson should have foreseen that his actions would impact the consumer of his products.

A warranty is a guarantee or promise by the seller or manufacturer about the product to induce the buyer to buy the product as part of pre-sale bargain. For example, a product may be guaranteed against defects in material and workmanship for 1 year.

Strict liability is liability without privity and without negligence. As a result, it did not matter whether the person injured by the defective food had been the person who purchased it; all that mattered was that the food was defective. Neither was necessary to prove that the maker of the food had been negligent in its preparation; the fact that the food was defective was conclusive proof of negligence.

In product liability claims, there are three theories, namely –negligence, breach of warranty and strict liability. Among them, strict liability gives effectively recovery for consumer because it is no need to prove fault and negligence.

Defenses to Product Liability

In product liability cases, there are five kinds of defenses, namely-(1)assumption of risk (2)product misuse (3)comparative negligence (4) unavoidable dangers and (5) limitations.

Assumption of the risk: This is the voluntary and knowing decision to place oneself in a dangerous situation, or to use a product with full knowledge and appreciation of the danger.

Product misuse: The misuse of a product is a complete defense. a manufacturer is not necessarily protected from liability because a person is injured by failing to follow directions if the failure was reasonably foreseeable and could have been guard against through a better design or an adequate warning.

Comparative negligence: In this defense, previously, the plaintiff's conduct was not a defense to strict liability. There is much dispute about whether, in a comparative negligence jurisdiction, the plaintiff's contributory negligence should result in a proportionate reduction in his strict liability recovery.

Unavoidable dangers: Although manufacturers and sellers have a duty to take precautions and provide adequate warnings and instructions, the public can still obtain products that are unavoidably unsafe. A seller is not held strictly liable for providing the public with a product that is needed and wanted in spite of the potential risk of danger. Prescription drugs illustrate this principle because all of them have the potential to cause serious harm if used unreasonably.

Limitations: The statute of limitations is a defense that avoids liability by requiring an injured person to file her lawsuit within a specified period of times. If the lawsuit is not filed within the specified period of time it is dismissed, even if the claim is otherwise valid.

In product liability cases, manufacturers have legal liability to injured persons for defective products whereas they also have a chance to defense their liabilities by showing that their product met generally acceptable safety standards when made.

International and Regional Legal Instruments Relating to Product Liability

A central and paramount purpose of products liability law is the protection of legitimate consumer safety expectations. The legitimate products liability goals are promoted by international and regional legal instruments. As International Legal Instruments relating to Product Liability, Convention on the law applicable to products liability, 1977 was adopted. This Convention was entered force in 1977 and consists of 22 Articles. The object of the Convention is the uniform determination of the law applicable to the products liability of certain suppliers of the products for damage caused by a product.

European Convention on products liability in regard to personal injury and death, 1977 constitutes a major element to ensure better protection of the public and, at the same time, to take producers' legitimate interests into account. The aim of this Convention is to assist the development of case law in the majority of member States by giving priority to compensation for personal injury and death in introducing special rules on the liability of

producers at European level. This convention contains 19 Articles and signed on January 27, 1977.

The Product Liability Directive, formally 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 is a directive of the Council of the European Union that created a regime of strict liability for defective products. This Directive establishes the principle of liability without fault applicable to European producers. Where a defective product causes damage to a consumer, the producer may be liable. This directive was signed in 1985 and imposed an August 1, 1988, implementation deadline. The final 1985 directive consists of 22 articles.

These Conventions are recognized as an important measure aimed at harmonization of the internal market and ensuring the health and safety person.

Conclusion

Product Liability is the area of law in which manufacturers, distributors, suppliers, retailers, and other who make products available to the public are held responsible for the injuries those products cause. In product liability cases, injured person can claim with three types of defect: manufacturing defect, design defect and marketing defect. Among them, marketing defect is specifically conduct for manufacturer. Product liability suits can sue based on three theories (1) negligence (2) breach of warranty and (3) strict liability.

Product Liability Law has become increasingly significant as we consume more products than ever before. As the twenty-first century unfolds and commerce becomes more and more globalized, there is a need to harmonize the law of products liability across nations, although it have international and regional legal instruments as product liability. ASEAN should regulate Agreement on defect products because ASEAN is embarking on building an ASEAN Economic Community (AEC) by 2015, which will be a single market and production base. Moreover, consumers of the ASEAN would find it is difficult to obtain compensation for defect products without strict liability law. If national legislation is inconsistent with the provisions of legal instruments, it is to hinder the free flow of goods. And also, it is deterrence the economic growth in international and regional level.

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References

Black's Law Dictionary, seventh edition, 2000

Denis W.Stearms, Introduction to product liability, 2001

Kenneth Ross and Matthew W. Adams, Legally Adequate warning Label: A Conundrum for Every Manufacturer, October 1998

Steven Emanual, Emanual law outlines,First edition,1978

Zurich Services Corporation, Product liability-legal concepts, 2006

Convention on the Law Applicable to Products Liability, 1973

European Convention on Products Liability in Regard to Personal Injury and Death, 1977

Product Liability Directive of EEC, 1985

http://app.thefreedictionary.com/product+liability

http://en.wikipedia.org/wiki/Talk:product liability

http://files.findlaw.com / pdf /injury.findlaw.com

http://www.avvo.com/attorney

http://www.lexisnexis.com/lawschool/study

www.csun.edu/~b z513 61gateway/product.pdf