Israel

Norman Menachem Feder

Gad Ticho

Caspi & Co.

1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?

The Torts Ordinance [New Version] (the "**Torts Ordinance**") is the basis for product liability claims based on negligence or breach of statutory duty. With chief regard to negligence, a defendant may be held liable if the claimant demonstrates that the defendant had a duty of care toward the claimant, the defendant breached this duty of care and, as a result of the breach, the claimant incurred damage. Generally, a party is considered to owe a duty of care to another if that other may foreseeably be damaged by such party's negligence. With regard to breach of statutory duty, the defendant may be held liable if the claimant shows that the defendant breached a statutory (or sometimes regulatory) duty, the breached duty was designed to protect the type of claimant, as a result of the breach the claimant incurred damage and the damage was of the sort against which the statute was designed to protect.

The Contract Law (General Part), 1973 (the "**Contract Law**") is the basis for product liability claims based on breach of contract. A seller of a defective product has contractual obligations to the buyer, such as an obligation not to deceive and an implied obligation to perform in a customary manner and in good faith, and a breach of these obligations can allow the injured party certain contract law remedies.

The Sale Law, 1968 (the "**Sale Law**") can also be a basis for product liability claims. Under this law, warranties, such as satisfactory quality, fitness for intended use and description compliance are generally implied in a transaction between a seller and buyer of goods and the seller breaches its obligations to the buyer if the goods do not conform to the agreement between the parties.

Finally, certain consumer protection laws can also form the basis of product liability claims. The Consumer Protection Law, 1981 (the "**Consumer Protection Law**") prohibits customer deception and allows a breach of an essential duty thereunder to be treated as a tort under the Torts Ordinance. Additionally, the Defective Products Liability Law, 1980 (the "**Defective Products Law**") imposes strict liability on a manufacturer that manufactures a defective product which causes personal injury to the product user.

1.2 Does the state operate any schemes of compensation for particular products?

Under the Insurance for Injured by Vaccination Law, 1989, the State compensates persons disabled as a result of certain vaccinations.

Under the Compensation for Victims of Ringworm Law, 1994, (the "**Ringworm Law**") the State compensates persons who suffer from various types of cancer (detailed in the addendum to the Ringworm Law) resulting from exposure to ringworm treatment provided by the State.

Under the Compensation of Road Accidents Law, 1975, a no-fault insurance scheme applies in motorised vehicle accidents.

Under the Compensation for Blood Transfusion Victims (AIDS) 1992, certain carriers of the AIDS virus as a result of a blood transfusion or blood products received from a public health service are entitled to state compensation.

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the "retail" supplier or all of these?

For liability under the Torts Ordinance, case law establishes that any manufacturer, distributor and retailer of a product owes a separate duty of care towards the end user, meaning each is responsible for its own acts or omissions. For liability under the Contracts Law, however, it is not yet settled whether privity between the claimant and the defendant is a necessary element of a successful product liability claim.

The Sale Law addresses only the relation between a buyer and a seller of goods.

The Consumer Protection Law applies to the manufacturer of a product, as well as to its seller and importer. For example, the statute obligates either entity not to mislead a consumer regarding the nature of the relevant product and to disclose to the consumer defects that significantly diminish the product's worth.

Under the Defective Products Law, it is the manufacturer that bears the liability for a defective product. However, this law defines a manufacturer widely. For example, a person representing itself as a manufacturer by providing its name or trademark, an importer that imports to Israel for commercial purposes products manufactured outside of Israel, or a supplier of a product, the manufacturer or importer of which cannot be *prima facie* identified, is considered a manufacturer under the Defective Products Law. A supplier will be

exempt from liability if it provides the claimant with information within a reasonable time after the claimant's request, pursuant to which information, the name and address of the manufacturer or importer of the product, or the details of a prior supplier that supplied the product to the information-providing supplier, could be located or found. In the event that a product with a defective component causes bodily injury, the Defective Products Law provides that both the manufacturer of the product and the manufacturer of the component can be liable.

Some specific rules regarding distribution of liabilities may apply, for example under the Pharmacists Regulations (Medical Products) 1986.

1.4 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

Claims for a failure to recall could presumably be brought as a tort or breach of contract claim. Moreover, the Defective Products Law arguably implies a duty to recall unsafe products, as it imposes strict liability for a defective product that causes personal injury.

Additionally, certain regulatory procedures for recall can apply to commercial actors. For example, the Procedure of Recall and/or Prohibition on the Use of Medical Devices promulgated by the Pharmaceutical Administration of the Ministry of Health requires certain recalls by a drug manufacturer, owner of a drug registration or drug importer under certain circumstances. Similarly, the Control on Commodities and Services (vehicle import and vehicle maintenance) Order, 1978, requires importer recalls in certain discovered defects in imported vehicles.

1.5 Do criminal sanctions apply to the supply of defective products?

As a general matter, Israel's Penal Law, 1977 (the "**Penal Law**") criminalises various types of improper behaviour that may apply in a product liability setting, such as negligent manslaughter. Additionally, breach of the Consumer Protection Law can be considered a criminal action under certain circumstances.

Section 219 of the Penal Law specifically criminalises, under certain circumstances, the sale of, or intent to sell, spoiled or tainted food or drinks.

2 Causation

2.1 Who has the burden of proving fault/defect and damage?

Generally, in civil matters, including product liability claims, the burden of proof falls on the claimant. The Torts Ordinance, however, shifts this burden from claimant to defendant in several situations. One of these is when the claimant alleges that a dangerous object of the defendant caused the damage. When the burden of proof is shifted, the defendant will need to show absence of negligence to avoid liability.

The Torts Ordinance also shifts the burden of proof to the defendant under the doctrine of "*res ipsa loquitur*". Pursuant to this codified doctrine, aspects of duty of care can be inferred from the facts of the tort. For this doctrine to apply, it must be found that: (i) the claimant neither knew nor could have known about the circumstances that caused the event that led to the damage; (ii) the defendant fully controlled the object that caused the damage; and (iii) it is more likely than not that the damage was caused by the defendants' failure to take reasonable precaution.

If the defendant destroys documents or fails to document certain matters required by law, and as a result, impairs the claimant's ability to prove its claim, the court can apply the evidential damage doctrine. Generally, when a court applies this doctrine, it shifts the burden of proof for the cause of action to which the destroyed evidence relates from the claimant to the defendant.

Additionally, the Defective Products Law provides for strict liability in the event that a defective product causes certain personal injury to the defendant.

When asserting statutory defences, the defendant has the burden of proving those defences.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

Generally, the test applied for proof of causation by a claimant in Tort Law is "*conditio sine qua non*", meaning literally, condition without which it could not. This means direct causation and, if the damage would not have been caused but for the claimant's act or omission, causation will not have been shown. To show causation, the claimant will need to show at least that on the balance of probabilities the damage would not have been caused absent the act or omission of the defendant. Foreseeability of the damage must also be shown to establish fault. The Supreme Court defined foreseeability to mean foreseeability of damage generally, not of a particular type of damage

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

Under the Torts Ordinance, joint tortfeasors are jointly and severally liable to the claimant. The principles of allocation of responsibility between joint tortfeasors are not well established and, accordingly, courts have wide discretion in this area.

In principle, Israeli courts to date have not adopted a concept of "market-share" liability, whereby liability is apportioned to a given defendant according to its share of the market.

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

In tort, manufacturers and suppliers who fail to provide adequate warnings and instructions with their products may be negligent or in breach of a statutory duty. Case law teaches that a manufacturer may be required to warn consumers of the danger of the manufacturer's product and the manufacturer may be negligent if it does not so warn.

Precedent establishes manufacturer liability for failure to provide sufficient instructions for maintenance or use of a product under certain circumstances. Furthermore, the duty to warn runs not only toward the consumer, but also toward any person that can be expected to use the product. When the product has a label with instructions or warnings and the user did not abide by the instructions and, as a result, was damaged, the manufacturer will generally have a good defence.

Failure to warn can also give rise to liability under a breach of contract claim.

Under the Defective Products Liability Law, a defective product that can create strict liability includes a product that requires warning or maintenance and use instructions and such warning or instructions are not or are inappropriately given.

In Israel, the learned intermediary doctrine, by which warnings provided by a drug manufacturer to prescribing physicians discharge the manufacturer's duty of care in negligence, is not an explicit exception to the duty to warn in negligence actions.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Under the Torts Law, the defendant may argue that the claimant has failed to establish a required element of the claim. Additionally, Israel is a pure comparative negligence jurisdiction, allowing the claimant who is contributorily negligent to recover in the event of the defendant's negligence, but the damages awarded will reflect a proportionate reduction from the claimant's losses equal to the claimant's proportionate negligence.

Also, assumption of the risk by the claimant is available as a defence. To show this, the defendant will need to establish that the claimant freely and voluntarily agreed to run the risk of damage in full knowledge of the nature and extent of the risk. This defence defeats liability completely.

In contract, the defendant will not be liable if the claimant fails to establish a contract, a breach of contract or damage due to a breach of contract. The claimant does have a duty to mitigate damage post-breach. Additionally, the Supreme Court has recognised the possibility of using the doctrine of contributory fault as a defence in a contractual action.

Under the Consumer Protection Law, a defendant can defeat civil liability if it shows no causal connection between the defendant's act or omission and the damage the claimant sustained and can defeat criminal liability if it shows that it did not know and should not have known that the sale or the service breached the law.

Under the Defective Product Law, the manufacturer's defences are limited to the following: (i) the defect that caused the damage occurred after the product was released from the manufacturer's control. If the manufacturer shows that the product in question was reasonably checked for safety before it left his control, the presumption will be that the defect incurred thereafter. Courts require, however, that the specific product have been checked – sample checks will not relieve liability; (ii) under the state of the art at the time when the product left the manufacturer's control, the manufacturer could not have known that the product was unsafe; (iii) the product departed the manufacturer's control unintentionally and the manufacturer used reasonable means to prevent his departure and to caution the public about the danger in the product; and (iv) the claimant knew about the defect in the product and the risk inherent to it and willingly exposed himself to the risk (this last defence is not available to the defendant if the claimant was under the age of twelve when exposed to the risk).

It is not yet settled whether the defences of contributory negligence and assumption of the risk can be employed under the Consumer Protection Law.

Period of limitations defences are available. Please see our answers in section 5.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

Generally, in negligence, the defendant's acts or omissions in design, development, manufacture, supply and marketing the product, will be judged under a reasonableness standard. This essentially makes the state of art at the time of a relevant defence.

In breach of contract, state of the art is not pertinent except where, for example, the contract provides for a certain standard of behaviour, such as a "good faith effort".

As noted in question 3.1, the Defective Products Law specifically provides for a state of the art defence. Under this statutory defence, the defendant's conduct is essentially irrelevant as the defendant will not be held liable if there was no technology at the time to identify the defect.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

In negligence, the tortfeasor is not automatically absolved of liability if it shows it complied with laws or regulations applying a standard. Nevertheless, a regulatory standard is often used by defendants as evidence that they met a reasonable standard of care.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

Generally, litigants are estopped from litigating again certain matters that have already been resolved by final judgment or order.

Generally, this type of estoppel comprises two forms: (i) cause of action estoppel, which prevents a litigant from relitigating a cause of action that has already been decided between essentially the same parties; and (ii) issue (or collateral) estoppel, which prevents a litigant from relitigating an issue of fact that has already been resolved between essentially the same parties.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings is there a time limit on commencing such proceedings?

The Civil Procedure Regulations, 1984 (the "Civil Procedure Regulations") allow for impleader of a third party where: (i) the defendant seeks participation or indemnification from the third party regarding a prospective award or remedy; (ii) the defendant claims that it is entitled to a remedy that is connected to the subject of the claim and the remedy is, in principle, the same remedy sought by the plaintiff; or (iii) the dispute between the defendant and third party connected to the claimant's claim is, in principle, the same as the dispute between the claimant and the defendant as well and it is appropriate that the disputes be resolved together.

An impleader action must be filed within the time limits imposed on the submission of the statement of defence.

Subsequent proceedings against third parties can be brought (subject to the applicable periods of limitations).

3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?

A defendant may allege contributory negligence and assumption of the risk in a tort action and contributory fault and failure to mitigate damages in a contract action. Please see our answer to question 3.1.

4 Procedure

4.1 In the case of court proceedings is the trial by a judge or a jury?

The trial is by a single judge. Jury trials are not available in Israel.

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

A court cannot delegate its power to judge a trial and assess the evidence, but it can appoint experts. Please see our answer to question 4.8.

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?

The Class Actions Law, 2006 ("**Class Actions Law**"), replaced specific provisions that appeared in various individual Israeli laws, and today, the only way for a claimant to file a class action is pursuant to the Class Actions Law.

Under the Class Actions Law, the claimant must establish that: (i) there is a reasonable possibility that substantial questions of fact and law that are common to the represented class will be adjudicated in favour of the class; (ii) a class action is the most efficient and fairest way to decide the dispute due to the facts involved; (iii) there exist reasonable grounds to assume that the interests of the class members will be represented and handled in good faith, i.e. the representative claimant has no conflict of interest, or is not concealing facts from the court; and (iv) there exist reasonable grounds to assume that the interests of the class members will be represented and handled in an appropriate manner, i.e. the representative claimant is a typical class member with regard to whom the facts and circumstances are similar to the rest of the group. Notwithstanding the foregoing, the court may certify a class action even if the aforementioned conditions (iii) and (iv) are not met, if it believes such conditions can be met in another manner, such as by adding a representative claimant (a claimant authorised by the court to represent a class action). Additionally, class actions cannot be filed with regard to every issue, but rather only with regard to a closed-list of issues that are addressed by various laws, including the Consumer Protection Law, 1981.

A court's certification of a class must contain a definition of the class. Generally, at this point all the defined class is bound by the claim, unless a putative member specifically opts out by notifying the court. In certain circumstances, a court may certify a class action in the model of 'opt-in', meaning the claim will bind only those who ask to be part of the class.

Class actions are fairly common and more than a few involving product liability have been brought.

4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

Only the following parties are allowed to file a motion to approve a class action: (i) a person who has a cause of action in the matter at hand; (ii) a public agency, regarding a matter that is within the agency's scope of public aims in which it engages; and (iii) an organisation, regarding a matter that is within the organisation's scope of public aims in which it engages, provided that the court is convinced that it would be difficult for a person to bring the claim.

4.5 How long does it normally take to get to trial?

It is hard to estimate without specific circumstances of a case. Moreover, it varies among the type of courts (Magistrate Courts – generally limited to claims of up to NIS 2.5 million – or District Courts) and the court locales. Generally, it can be expected to take at least one year from the date of filing the action until the start of trial, assuming no interlocutory appeals arise that delay proceedings.

4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

Under the Civil Procedure Regulations, a court may strike a Statement of Claim against some or all of the defendants if the Statement of Claim fails to allege a cause of action, the claim is a nuisance or is vexing, the value of the claim made is not properly established (the claimant can cure this within a court provided time period), or the court fee paid is insufficient (the claimant can cure this within a court-provided time period). The Statement of Claim must show each defendant's relation to the claim – a failure to demonstrate such relation can serve as grounds for a motion to strike.

Additionally, under the Civil Procedure Regulations, a court may dismiss an action altogether against some or all of the defendants if *res judicata* is established, the court does not have jurisdiction, or for any other reason for which the court reasons the action can be dismissed at the outset.

Striking out of a claim is without prejudice, whereas dismissing a claim is with prejudice.

The Civil Procedure Regulations allow a court to conduct pre-trial hearings to make efficient, simplify, quicken or shorten the trial or to investigate the possibility of compromise between the parties. Matters that can be addressed at a pre-trial hearing are wide in scope. Absent certain circumstances, a decision made at the pre-trial hearing will be valid for the remainder of the proceedings.

4.7 What appeal options are available?

A party can appeal a final judgment by the trial court as a matter of right. Prior to the final judgment, a party may appeal interlocutory orders and "other decisions" only by leave of the appeal court. Notwithstanding, these orders and decisions can be addressed in the appeal of the final judgment. To appeal a second time on a final judgment, a leave to appeal must first be obtained.

4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

The parties have a right to file expert reports as part of their evidentiary case. There are no substantive, but some procedural, restrictions. The court can appoint experts, and usually does so, when the parties file contradicting expert reports or when the parties consent for the court to do instead of the parties filing expert reports.

4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Israeli procedure does not include pre-trial oral depositions and witnesses are expected to testify under cross-examination in court. Direct testimony may be, and commonly is, submitted by affidavit. A party may serve interrogatories on opposing parties. Expert witnesses reports are submitted in writing, but the experts can generally be cross-examined orally in court.

4.10 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

A party may demand that the opposing party identify documents relevant to the subject matter of the lawsuit. The opposing party then must identify such documents by way of affidavit. The requesting party has a right to examine documents identified in such affidavit. A party may also demand copies of documents referenced in the opposing party's pleadings. Additionally, a party may move the court for an order to disclose a specific document.

Certain grounds for refusal to disclose, such as privilege, exist.

4.11 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

Various alternative methods of dispute resolution, such as arbitration or mediation, exist. Courts encourage, but generally cannot compel, use of these methods.

A court is authorised to render a compromise verdict, with the consent of the parties, without the need for the parties to present evidence.

4.12 In what factual circumstances can persons that are not domiciled in your jurisdiction, be brought within the jurisdiction of your courts either as a defendant or as a claimant?

According to the Israeli Civil Procedure Regulations, a foreign defendant can be made subject to Israeli jurisdiction by proper service of the statement claim upon the defendant. The Civil Procedure Regulations distinguish between a defendant (or its representative) that is present in Israel and a defendant that is not.

In the case of a foreign defendant present in Israel, the claimant must serve the defendant itself, but if that is not possible, the claimant can serve the statement of claim upon a person or an entity that is authorised by the defendant to receive service or a person or an entity that is doing business in Israel on behalf of the foreign defendant and has intensive business relations with the defendant.

In the case of a foreign defendant not present in Israel, the claimant needs to obtain the court's approval to serve the claim out of the jurisdiction. Typically, such approval is granted *ex parte* and the foreign defendant can thereafter challenge by filing a motion. Israeli courts have authority to grant such permit in eleven (11) specific situations listed in the Civil Procedure Regulations, including where a contract was breached in Israel, where the claim is based on an act or omission in Israel, or where the foreign defendant is a necessary party in a claim filed in Israel against another party which has been duly served.

A foreign claimant can bring a claim into Israeli courts, and serve the claim upon the defendant, according to the Civil Procedure Regulations. A common case is where a foreign claimant sues an Israel domiciled defendant.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

The Prescription Law 1958 (the "**Prescription Law**") governs limitation periods, absent a specific provision in another applicable law. Please see our answer to question 5.2.

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the Court have a discretion to disapply time limits?

Under the Prescription Law, the limitations period for civil claims (other than in connection with property) generally is seven years from when the cause of action accrues, unless another law specifically provides otherwise. Generally, some tolling may apply. See below and the answer to question 5.3.

For claims under the Torts Ordinance or Consumer Protection Law, the cause of action accrues: (i) when the negligent act occurred; or (ii) where damage must be shown to establish liability, when the damage occurred and if the damage was not discovered when the damage occurred, then the date when the damage was discovered. In the latter scenario, the period of limitations nonetheless expires 10 years from when the damage occurred.

The parties can, by written agreement, agree upon a period of prescription longer than that fixed by the Prescription Law or, in the case of a claim not relating to land, also upon a shorter period, so long as the agreed period is not less than six months.

The limitations period for a given claimant begins only after the claimant reaches 18 years of age. Regarding incapacity, when calculating a period of limitations, the period of time in which a claimant is mentally incapacitated and does not have a guardian suspends the period of limitations. If a guardian is appointed for such a claimant, the period of limitations is suspended until the guardian becomes aware of the facts underlying the claimant's cause of action.

Under, the Sale Law, the plaintiff is subject to certain time-limited obligations of notice to the defendant.

The Defective Product Law provides that a claim under such law has a limitations period of only three years. Moreover, a claim under the Defective Product Law must be submitted within 10 years from the end of the year that the product left the manufacturer's control.

In a class action, special calculations to the limitations periods apply. For example:

- If the court approved the petition for a class action, each member is considered as if they submitted the claim on the day of the approval.
- If the court rejects the motion for a class action, the limitations period will end within a year after the decision of rejecting the claim becoming final, on condition that the claim did not expire before submission for the motion for the class action.
- In an opt-out class action, if a member of the class opts out, it may submit its claim within one year of its opting out, on condition that the claim did not expire before submission of the motion for the class action.
- In an opt-in class action, the limitations period of class members opting in expires only after a year after the last date it had to notice of its right to opt-in, on condition that the claim did not expire before submission of the motion for the class action.

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

The Prescriptions Law provides that if an action is for fraud or deceit, the limitations period begins from when the claimant learns of the fraud or deceit. The Prescriptions Law further provides, however, that if the claimant did not know of the facts underlying his cause of action, for reasons not of his making and that reasonable care could not have prevented, the period of limitations begins when the claimant learns of these facts.

6 Remedies

6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

Remedies under the Torts Ordinance include monetary compensation and injunctive relief. A claimant in a personal injury case may recover compensatory damages for its actual expenses, including treatment costs and lost profits as a result of the injury. Damages for pain and suffering may also be recovered.

Remedies for breach of contract are awarded pursuant to the Contracts Law (Remedies for Breach of Agreement), 1970 (the "Remedies Law"). Under such law, the remedy for breach is either enforcement or cancellation of the agreement, and in either event, damages. The plaintiff does not have a right to enforcement, however, if: (1) the agreement is not capable of being performed; (2) the agreement is for personal services; (3) enforcement would require unreasonable supervision of the court or execution offices; or (4) enforcement would be unjust under the circumstances.

Remedies under the Consumer Protection Law are generally those available under the Torts Ordinance. Under the Consumer Protection Law, a court is authorised to award damages to a consumers association if it assisted the claimant, but the Consumer Protection Law sets limitations for such compensation. The Consumer Protection Law also allows for exemplary damages, but such damages are limited by a statutory amount. See the answers to questions 6.4 and 6.5. If the consumer was misled in a material way, he has the right, within a reasonable time after discovery of the misrepresentation, to cancel the merchandise acquisition agreement and to a return of the consideration already paid by him.

Under the Defective Product Liability Law, the monetary compensation for loss of earnings or loss of earning ability may not exceed three times the average wage in the economy and the monetary compensation for non-pecuniary damages may not exceed a statutory amount (as adjusted by the consumer price index and as may be enlarged by the Minister of Justice).

6.2 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

The Torts Ordinance addresses damage and defines the concept widely as: loss of life; asset; comfort; physical well-being; or reputation. The Torts Ordinance also addresses pecuniary damage and defines that concept as actual loss or expense which can be evaluated and details of which can be provided. Thus, a claimant in a personal injury case may recover damages for pain and suffering and for lost earnings and treatment costs. There are precedents for awarding damages for mental injury only (without physical injury).

The Defected Products Law provides a right for compensation only for personal physical injury.

6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

It is not yet settled whether claims may properly be made for medical monitoring in circumstances where the product has not yet malfunctioned and caused injury. Please see our answer to question 6.2.

6.4 Are punitive damages recoverable? If so, are there any restrictions?

Punitive damages are rarely, if ever, awarded. While the Torts Ordinance does not specifically grant a court authority to award punitive damages, courts in the past have awarded punitive damages in situations where the tortfeasor acted wilfully, oppressively or maliciously. Notwithstanding, the trend of the last few decades has been not to award punitive damages in tort negligence cases.

"Aggravated damages" are sometimes awarded by Israeli courts, most commonly in libel cases, for non-pecuniary injury, taking into account aggravated harm caused as a result of an aggravated manner in which a wrongful act is committed.

The Consumer Protection Law allows the court to award "exemplary damages", up to a maximum of NIS 10,000, in certain circumstances and up to NIS 50,000 in cases of a continuing or repeating offence or due to severe circumstances

6.5 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

Generally not, but under the Consumer Protection Law, a court's authority to award exemplary damages is limited to a maximum amount of NIS 10,000 or NIS 50,000, in certain circumstances. Please see our answer to question 6.4.

6.6 Do special rules apply to the settlement of claims/ proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

Settlement of class action claims requires court approval.

Under the Civil Procedure Regulations, an infant is permitted to file a claim via its custodian or by its "close friend". Settlement in such a case requires court approval.

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the Claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the Claimant in respect of the injury allegedly caused by the product. If so, who has responsibility for the repayment of such sums?

Under the Correction of Civil Tort Rules Law (Amelioration of Corporeal Damages) 1964, (the "**Amelioration Law**") an entity which ameliorates (whether doing so by compulsion of law or voluntarily) certain personal injuries caused to the claimant has the right to compensation for the amelioration from the injuring party.

Additionally, the National Health Insurance Law, 1994 (the "**Health Insurance Law**") provides specifically for the right of an Israeli Sick Fund or other health services provider (as defined in the Health Insurance Law) to compensation from an injuring party for treatment services the fund or provider provided to the injured party.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

Under to the Civil Procedure Regulations, the court can obligate a losing party to pay the costs of the successful party. The court has wide discretion in this matter and generally orders the losing party to pay at least some of the successful party's costs, but normally not all such costs.

7.2 Is public funding e.g. legal aid, available?

Under the Legal Aid Law 1972, a party suffering from poor financial means may apply to the Legal Aid Unit of the Ministry of Justice for legal aid. If the application is granted, a registered legal aid lawyer will be appointed to act for such party. The aided party will be required to pay a symbolic fee, according to its payment ability. Rejection of a legal aid application can be appealed.

Court filing fees may be waived for a party in poor financial circumstances.

When awarding costs, the court has a wide discretion in this regard and will consider the legal aid status of the losing party.

7.3 If so, are there any restrictions on the availability of public funding?

Legal aid is granted on the basis of criteria set by the Ministries of Justice and of Welfare, from time to time. As a general rule, entitlement to legal aid is based upon fulfilment of the following conditions: (i) the nature of the case; (ii) the economic means of the applicant; and (iii) the prospects for success with the claim.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Lawyers may fund civil product liability claims through conditional or contingency fees although, in connection with motorised vehicle accidents, the contingency rate is limited by Israeli bar rules. These types of fees are prohibited in criminal matters.

Lawyers may not accept compensation that is not monetary, although some lawyers take this to mean only that compensation must include some cash.

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

In principle, champerty is considered not permitted, as a matter of public policy. The exact parameters of champerty, however, are unclear. More specifically, Section 22 of the Torts Ordinance prohibits assignment of a right to a remedy for, or a liability in

respect of, a tort, other than by operation of law. Notably, the proposed Civil Codex (see question 8.1 below) omits this section. Case law on the subject, regardless of the nature of the claim, is limited, but suggests that third-party funding should be permitted regarding claims that are not related to bodily injury.

Under Israeli Bar rules, a lawyer may not lend its client money for legal expenses, unless for a reasonable period of time.

7.6 In advance of the case proceeding to trial, does the Court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

No, the court does not exercise any control over the costs to be incurred by the parties. However, as described in our answer to question 7.1, the court has a wide discretion regarding the costs that will be obligated on the losing party. Under this discretion, the court will consider whether the successful party requested costs are proportionate to the value of the claim and are reasonable.

8 Updates

8.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction.

In 2006, the Ministry of Justice proposed the codification of Israeli civil law. The main purpose of the proposed Civil Codex is to harmonise the various civil laws and precedents and provide an omnibus section of definitions for all Israeli civil law. While the proposed Codex is generally considered not to materially change substantive law, it nonetheless does propose certain changes that can significantly affect product liability claims. For example, the Codex would increase the period of limitations for a defective product action to four years from the current three years under the Defective Product Law and proposes a limited form of aggravated damages in tort actions.

The Class Action Law and the Consumer Protection Law are not part of the Codex and therefore would be unaffected if the proposed Codex were to be enacted as law. Currently, the Codex has no legal power, but from time to time claimants invoke it in an attempt to influence the case at hand.

Recently (2014), the Supreme Court upheld a district court judgment that was given in a claim to certify a class action. The district court dismissed the claim against Phillip Morris USA Inc. and others that were represented by the law firm Caspi & Co. The claimant argued that the descriptor "lights" on the packs is misleading since those cigarettes are not safer than the full flavour cigarettes. The court dismissed the claim and decided, among other determinations, that the courts should not be acting in a paternalistic way and should not assume the public to be ignorant and not to know and understand the health risks of smoking.

Note

The information above is not, and cannot be a substitute for, legal advice. Neither the preparation of such information nor any receipt of such information establishes any attorney-client relationship or privilege, or may be considered an offer or acceptance on behalf of Caspi & Co. or any of its attorneys to represent any person.

Norman Menachem Feder
Caspi & Co.
33 Yavetz Street
Tel Aviv 65258
Israel

Tel: +972 3 796 1220
Fax: +972 3 796 1320
Email: nmf@caspilaw.com
URL: www.caspilaw.com

Norman Menachem Feder is a partner at Caspi & Co., where he manages the firm's international department. Mr. Feder advises international and domestic clients on a variety of commercial and investment matters and in various international litigations and arbitrations, including those involving product liability.

Before joining the firm, Mr. Feder practised for more than six years as a litigator at Cleary, Gottlieb, Steen & Hamilton in New York, where, among other things, he represented defendants in L-tryptophan mass tort litigations. Prior to embarking on private practice, Mr. Feder served as judicial law clerk to Deputy Chief Justice Menachem Elon of the Supreme Court of Israel (Jerusalem) and, prior to that, to Judge Roger Miner of the United States Court of Appeals for the Second Circuit (New York). Before these clerkships, Mr. Feder was a Luce Scholar, in the capacity of which he acted as a white-collar criminal investigator in Singapore for Singapore's Ministry of Finance.

Mr. Feder is an Adjunct Lecturer at the Tel Aviv University Faculty Law School and was Adjunct Professor at the Benjamin N. Cardozo School of Law in New York. He is a graduate of the New York University School of Law, with a degree of J.D. and numerous honours. Prior to his law studies, Mr. Feder obtained B.A. and M.A. degrees in English and Comparative Literature from Columbia University in New York. Mr. Feder has authored numerous legal articles and was editor-in-chief of the New York University Journal of International Law & Politics.

Gad Ticho
Caspi & Co.
33 Yavetz Street
Tel Aviv 65258
Israel

Tel: +972 3 796 1201
Fax: +972 3 796 1301
Email: gticho@caspilaw.com
URL: www.caspilaw.com

Gad Ticho is a partner at Caspi & Co., where he manages the firm's civil and commercial litigation practice. His practice focuses on civil, corporate and commercial matters. Issues about which Mr. Ticho litigates include administrative law, banking and finance, contracts, commercial disputes, corporate governance, intellectual property, insolvency, real estate and securities and torts.

Mr. Ticho has handled many trials and has represented individuals, companies and cooperative societies. He is well experienced in class action litigation, in which he often represents defendants. Mr Ticho also has conducted numerous internal corporate investigations and has assisted in the development of compliance programmes.

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Caspi & Co. is one of Israel's oldest and best known law firms. Since its founding in 1927, the firm has maintained leading domestic and international litigation and corporate practices.

The firm serves as outside counsel to a variety of major corporations, financial institutions, investment groups, project developers and governmental entities and commonly plays a role in many of Israel's most noted court and arbitral actions and preeminent transactions. Regular involvement with major actors and innovative issues positions the firm as a top-rate advocate and advisor that can provide a variety of critical and cutting edge legal services.

Caspi & Co. prides itself on its deep experience in product liability. The firm's lawyers have counseled defendants in numerous mass tort and product liability litigations, such as those involving genetically engineered food supplements, adulterated foods, dangerous consumer products, and the like, and its litigation practice is commonly rated highly by professional reviewers.