

Guide to Product Liability in Hong Kong

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A. Sources of product liability law in Hong Kong

Hong Kong does not have a single set of law for product liability. Rather, laws in Hong Kong concerning product liability consist of general contract law and tort law, as well as a number of statutes applicable to safety of consumer goods and specific goods, including the:

- Consumer Goods Safety Ordinance (Cap. 456);
- Toys and Children's Products Safety Ordinance (Cap. 424);
- Pharmacy and Poisons Ordinance (Cap. 138); and
- Dangerous Goods Ordinance (Cap. 295).

B. Product liability claim under general contract law and tort law

General contract and tort law lay the foundation for product liability claims in Hong Kong. The most common causes of action for product liability claims are:

- the tort of negligence;
- breach of contract; and
- breach of statutory duty.

B.1 Tort of negligence

In Hong Kong, product liability in tort of negligence is not a strict liability. In a case arising from defective products, the claimant must prove the following in order to establish the manufacturer's liability in negligence:

- the manufacturer owed a duty of care to him/her (and what kind of duty was owed);
- the manufacturer was in breach of the duty of care;
- the breach of duty caused the claimant's personal injury or property damage;
- the negligent act has a sufficient proximity to the injury/damage; and
- the claimant suffered actual loss due to the negligent act.

Apart from the manufacturer, the retail supplier, importer, distributor and/or part suppliers can also be liable in negligence.

The claimant must be able to show that the defendant was in breach of its duty to exercise reasonable care to supply a safe product free of defects. Generally, there are three types of defects that may create product liability issues, (i) manufacturing defects that occur during the manufacturing or assembly process, (ii) design defects which are inherent in the design of the product, and (iii) marketing or "failure to warn" defects which refer to failure to provide proper warnings about possible safety risks associated with the use of the product, including misleading marketing information, insufficient instructions etc.

Demonstrative case 1: Lam Mo Bun v Hong Kong Aerosol Co Ltd & Others
[2001] 1 HKLRD 540

Facts

The Plaintiff was injured in an explosion after spraying an aerosol of insecticide (the product) in his kitchen. The explosion occurred because the gas discharged from the product became trapped in his running washing machine. The explosion was ignited by the sparks generated by the machine. The label on the product stated "poison", "flammable", "keep out of reach of children". The bottle was pressurised and should not be sprayed within a short distance of a flame or high temperature area or punctured or incinerated or exposed to direct sunlight or heat. The solvents and propellants used in the product were not detailed.

Held

The manufacturers of the product were liable in negligence. Manufacturers must warn any user of their product against a foreseeable danger and issue proper instructions for its use. It was foreseeable that the product might be explosive after spraying, if a concentration of the discharged gas was exposed to an electric spark, such as that from a household electrical appliance.

B.2 Breach of contract

Under contract law, a buyer as a party to a sale of goods contract can bring a product liability claim against its contractual counterparty (which is usually the retail seller). The specific types of claims a buyer can bring depend on the terms of the contract.

Alongside the express terms written in the sales contract, Hong Kong legislation also imposes certain implied terms. Under the Sale of Goods Ordinance (Cap. 26) (“**SOGO**”):

- Sale by description: Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description (section 15, SOGO).
- Merchantable quality: Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality (section 16(2), SOGO). The requirements of merchantable quality include the goods supplied are free from defects (including minor defects) and as safe and durable as reasonably expected with regard to description, price and other relevant circumstances (section 2(5), SOGO).
- Fit for particular purpose: Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract are reasonably fit for that purpose (section 16(3), SOGO).

Demonstrative case 2: P Gopaldas Ltd v AS Watson Group (HK) Ltd [2015]
HKEC 342

Facts

The Plaintiff is a limited company incorporated in Hong Kong and its director Mr. Manesh lived in a flat registered under the Plaintiff. In November 2008, Mr. Manesh bought four dehumidifiers from a shop of 1st Defendant. On 10 February 2010, one of the four dehumidifiers which was placed in the master bedroom overheated and ignited, causing serious fire and smoke and damage to the flat and the chattels therein. The Plaintiff sued the 1st Defendant (retailer) and 2nd Defendant (supplier) for common law negligence; and for breach of implied term of merchantable quality under section 16 of SOGO.

Held

The Defendants were jointly and severally liable to the Plaintiff for negligence and/or breach of implied term of contract of merchantable quality in selling the defective dehumidifier to the Plaintiff which caused the fire accident and had exposed the flat and contents therein to a risk of damage of which 1st Defendant and/or 2nd Defendant ought to have known.

Under the Control of Exemption Clauses Ordinance (Cap. 71), the liability in negligence that causes death or personal injury cannot be excluded by terms of contract.

C. Liability under the Consumer Goods Safety Ordinance (Cap. 456)

The main legislation governing safety requirements for consumer goods (those ordinarily supplied for private use or consumption) is the Consumer Goods Safety Ordinance (Cap. 456) (“CGSO”). This statute imposes a general requirement for all manufacturers and suppliers to comply with in safeguarding quality of their products and services.

Under section 4 of the CGSO, a general safety requirement is introduced to impose a duty on manufacturers, importers and suppliers of consumer goods to ensure that the consumer goods are reasonably safe, having regard to the following circumstances —

- (a) the manner in which and the purposes for which the goods are sold;
- (b) the use of marks, instructions or warnings on the goods in connection with its keeping, use or consumption;
- (c) compliance with reasonable safety standards published by a standards institute; and
- (d) the existence of reasonable means to make the goods safer.

If there are approved standards which apply to certain consumer goods, the consumer goods will be taken to comply with the general safety requirement if the approved standards are met.

Section 6 of the CGSO provides that a person shall not—

- (a) supply;
 - (b) manufacture; or
 - (c) import into Hong Kong,
- consumer goods unless the consumer goods comply with—
- (i) the general safety requirement for consumer goods; or
 - (ii) where an approved standard applies to consumer goods, the approved standard for the particular consumer goods.

The CGSO authorises the Secretary for Commerce and Economic Development to approve a safety standard or safety specification applicable to consumer goods or a class of consumer goods by regulation. Such regulations may be made when dangerous consumer goods are found in the market which fall outside any specific control schemes and require clearly stipulated safety standards for speedy and effective enforcement.

The CGSO also authorises the Secretary for Commerce and Economic Development to prohibit the supply manufacture in Hong Kong, or importation into Hong Kong, of specified consumer goods or a class of consumer goods.

The Commissioner of Customs and Excise (“C&ED”) enforces the legislation and has the following enforcement powers:

- (a) power to issue a notice to warn requiring that person, at his own expense and by his

- own arrangements, to publish a warning that a product may be unsafe unless certain steps are taken;
- (b) power to issue a prohibition notice prohibiting that person from supplying certain consumer goods which are found to be unsafe for a specified period of time;
 - (c) power to issue a recall notice requiring the immediate removal of unsafe goods from sale and the retrieval of those goods (e.g. by an offer to buy-back or exchange) already supplied; and
 - (d) power to issue a requirement notice requiring —
 - (i) the manufacturer, importer or supplier of consumer goods to have them tested in the form and manner specified by C&ED;
 - (ii) the manufacturer, importer or supplier of consumer goods to modify them or their labelling, packaging or advertising so that they comply with the general safety requirement, an approved standard or a safety standard/specification established by regulation; and
 - (iii) a person who advertises specified consumer goods to include warning notices in the advertisements or to cease the advertising.

Any violation of section 6 with respect to this ordinance is subject to a fine at level 6 (HK\$100,000) and one year of imprisonment on first conviction. On subsequent convictions, the defendant is subject to a fine of HK\$500,000 and imprisonment for two years.

D. Product liability litigation

In Hong Kong, product liability actions with a monetary claim for HK\$75,000 or less are brought to the Small Claims Tribunal. Proceedings are conducted in an informal manner before the Small Claims Tribunal and no legal representation is allowed.

Product liability actions are brought in the District Court when a case involves the claim amount over HK\$75,000 but no more than HK\$3 million. If the monetary value claimed is more than HK\$3 million, the case will be heard in the Court of First Instance. Except for defamation cases, all civil trials in Hong Kong are heard by a judge without a jury.

In civil litigation, the burden of proving fault or defect and damage is on the claimant. The standard of proof is on the “balance of probabilities”, i.e. it is more probable than not that the fault or defect occurred and the damage suffered is due to the fault or defect.

Civil lawsuits in Hong Kong must be filed within six years from the date of the breach of contract or duty of care (section 4(1)(a), Limitation Ordinance (Cap. 347) (“LO”). Personal injury claims have a time limit of three years (section 27(4), LO). If a claim has passed its limitation period, the claimant will be barred from bringing it, and only in exceptional circumstances can the time limits under the LO be extended, such as where the claimant was mentally incapacitated for a certain period, or the action is based on the defendant’s fraud. A typical time span of a product liability action is usually two to three years.

E. Other regulations and regulators of product safety in Hong Kong

There are also legislations concerning liability for selling specific products, including:

Food

- Public Health and Municipal Services Ordinance (Cap. 132), Part V covers general protection for food purchasers, offenses in connection with the sale of unfit food and adulterated food, composition and labeling of food, food hygiene, and seizure and destruction of unfit food.
- Food Safety Ordinance (Cap. 612) under which food importers and distributors are required to register with Food and Environmental Hygiene Department (“**FEHD**”) and food traders (include importers, distributors and retailers) are required to keep records of movements of food.
- The FEDH is responsible for enforcing the food legislation in Hong Kong.

Pharmaceutical products

- Pharmacy and Poisons Ordinance (Cap. 138) and Pharmacy and Poisons (Amendment) Ordinance 2020 which require that medicines (pharmaceutical products) must be registered with the Pharmacy and Poisons Board prior to their sale in the market.
- Undesirable Medical Advertisements Ordinance (Cap. 231) which prohibits the advertisements likely to lead to the use of any medicine, surgical appliance or treatment in order to prevent the adverse effects of improper self-medication by members of the public.
- The Drug Office of the Department of Health (“**DH**”) regularly screens medical advertisements from different media and actions will be taken against those who contravene the Ordinance.
- Antibiotics Ordinance (Cap. 137) requiring that antibiotics are prescription medicines and they could only be sold on doctor’s prescription in registered pharmacies under the supervision of a registered pharmacist.
- Dangerous Drugs Ordinance (Cap. 134) requiring that some medicines classified as dangerous drugs are prescription medicines and they could only be sold on doctor’s prescription in registered pharmacies under the supervision of a registered pharmacist.
- Import and Export Ordinance (Cap. 60) requires that every consignment of importation or exportation of pharmaceutical products requires a licence.
- The DH is responsible for overseeing the safety, efficacy and quality of all medicines marketed in Hong Kong.

Toys

- Toys and Children’s Products Safety Ordinance (Cap. 424) which stipulates the statutory safety standards to regulate the safety of toys and children’s products which are manufactured, imported or supplied for local use or consumption.
- Toys and Children’s Products Safety Division of the C&ED enforces the Toys and Children’s Products Safety Ordinance

Dangerous Goods

- The amended Dangerous Goods Ordinance (Cap. 295) (“**DGO**”) came into effect on 31 March 2022. The DGO regulates the manufacture, storage, conveyance and use of dangerous goods. A person must have a licence granted by the Fire Services Department

(“**FSD**”) under the DGO to manufacture any dangerous goods (“**DG**”), or store, convey or use DG exceeding the exempt quantity.

- FSD regulates DG in accordance with the DGO and two pieces of subsidiary legislation which are the Dangerous Goods (Application and Exemption) Regulation 2012, Cap. 295E; and the Dangerous Goods (Control) Regulation, Cap. 295G.

The Consumer Council issues consumer alerts on product recall. It also offers a system where customers can file complaints against sellers and manufacturers, and mediate disputes between parties. However, the Consumer Council as the mediator does not have judicial or quasi-judicial power. In the event that such mediation is unsuccessful, the claimant must bring the claim to and litigate before the court.

The C&ED is responsible for the enforcement of the Trade Descriptions Ordinance (Cap. 362). For more details, please see our section for the Trade Descriptions Ordinance.

F. References and public materials

[Cap. 26 Sale of Goods Ordinance](#) under Hong Kong e-Legislation website
[Cap. 71 Control of Exemption Clauses Ordinance](#) under Hong Kong e-Legislation website
[Cap. 347 Limitation Ordinance](#) under Hong Kong e-Legislation website
[Cap. 456 Consumer Goods Safety Ordinance](#) under Hong Kong e-Legislation website
[Cap. 424 Toys and Children's Products Safety Ordinance](#) under Hong Kong e-Legislation website
[Cap. 138 Pharmacy and Poisons Ordinance](#) under Hong Kong e-Legislation website
[Cap. 51 Dangerous Goods Ordinance](#) under Hong Kong e-Legislation website
[Consumer Protection webpage](#) under HKSAR Customs and Excise Department website
[Consumer Protection webpage](#) under HKSAR Consumer Council website
[Consumer Goods Safety Ordinance Pamphlet](#) under HKSAR Customs and Excise Department website
[Information about Food Safety Ordinance](#) under Centre for Food Safety website
[FAQs](#) under Drug Office of HKSAR Department of Health website
[Toys and Children's Products Safety Ordinance](#) under HKSAR Customs and Excise Department website
[Fire Protection Notice No.4 – Dangerous Goods General](#) under HKSAR Fire Services Department website

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