

Product liability Q&A: Japan

by Shinya Tago, Landry Guesdon and Fumiya Beppu, Iwata Godo

Country Q&A | [Law stated as at 30-Jun-2019](#) | Japan

Japan specific issues raised by product liability claims.

This Q&A provides country-specific commentary on [Product liability: Cross-border overview](#), and forms part of [Cross-border commercial transactions](#).

How a claim is brought in contract

1. Under what conditions can a buyer make a product liability claim in contract law? Can the buyer sue for breach of an implied term of the contract, or breach of express terms only?

A plaintiff (generally a buyer) can bring a product liability claim against a seller who is its counterparty in a sale and purchase contract, either for breach of contract or breach of implied statutory warranties under the Civil Code of Japan (Civil Code), provided that there is a direct contractual relationship between the injured party and the seller of the defective product.

An extensive reform of the Civil Code of 1896 has taken place to produce a more comprehensive and user-friendly version with general principles of law derived from court precedents turned into statute. Amendments adopted in 2017 will enter into force on 1 April 2020 and some of them will affect product liability albeit not drastically. These impending changes are marked herein as "CC2020" with references to renumbered Articles.

Article 415 addresses liability for incomplete performance of obligations, while Article 570 and Article 566 govern warranties against latent defects.

Also relevant in this context is Article 526 of the Commercial Code of Japan (Commercial Code), an equivalent provision to Article 566 that applies to latent and visible defects in transactions between merchants (business operators)). (See [Question 9](#) on product liability and tortious liability.)

2. Can a claim be brought by someone who is not a party to the contract?

A claim based on breach of contract must be made by a party to the contract. Currently, in most consumer transactions, the end-user/buyer does not typically have a direct contractual relationship with the manufacturer as several intermediaries can be involved in a supply chain (manufacturers, suppliers, importers, wholesalers, retailers and so on). As a result, there may often be no cause of action based on breach of contract by a consumer against a manufacturer.

Depending on the circumstances, there may be other legal avenues allowing a buyer to seek remedies against a manufacturer under the Product Liability Act or based on tort. (See [Question 9](#).)

3. How does national law regulate consumer guarantees?

The Consumer Contract Act (*Law No. 61 of 2000 as amended*) (CCA) protects consumers in their dealings with merchants (business operators). Article 8 of the CCA provides that the following clauses are void if they are included in a contract made between a consumer and a business operator:

- Clauses which totally exempt a business operator from liability to compensate a consumer for damages arising from the business operator's fault.
- Clauses which partially exempt a business operator from liability for damages arising from the business operator's fault (limited to default arising due to an intentional act or gross negligence of the part of the business operator, its representatives or employees).
- Clauses which totally exempt a business operator from liability for damages to a consumer arising from a tort under the Civil Code committed during the business operator's performance of a consumer contract.
- Clauses which partially exempt a business operator from liability for damages to a consumer arising from a tort under the Civil Code (limited to cases in which the tort arises due to an intentional act or the gross negligence of the business operator, its representatives or employees) committed during the business operator's performance of a consumer contract.
- If a consumer contract is a contract for value, and there is a latent defect in the subject matter of the consumer contract (including a contract for services), clauses which totally exclude a business operator from any liability to compensate a consumer for damages caused by such defect, except in the event that:
 - the consumer contract provides that the business operator is liable to deliver substitute products without the defect, or to repair the goods when a latent defect exists in the products which are the subject matter of the consumer contract; or
 - the consumer contract is concluded between a consumer and a business operator simultaneously with, or after another contract is concluded between the consumer and another business operator entrusted by the business operator, or between the business operator and another business operator for the benefit of the consumer, and that other contract provides that the other business operator will compensate for all or part of the damage caused by a defect, deliver substitute products without defects

or repair the defective products where a latent defect exists in the products covered by the consumer contract.

Although the CCA limits the extent to which the seller of a product may disclaim warranties relating to a product or restrict the remedies available to a buyer injured by a product sold by the seller, it does not offer any specific cause of action for damage caused by defective products.

4. On whom is the burden of proof?

As a general rule, the burden of proof lies on the plaintiff (generally the buyer).

The plaintiff must show that the seller has breached the terms and conditions of the contract by supplying a product that has failed to meet an express or implied warranty in respect of the product, and that the breach has caused an injury or damage to the plaintiff.

In practice, the buyer is at least required to prove:

- The conclusion of a sale and purchase contract.
- The existence of a fault.
- The occurrence of an injury or damage and the amount claimed as damages.

In a claim for defective products, the buyer is at least required to prove:

- The conclusion of a sale and purchase contract.
- The existence of a defect in the product.
- The occurrence of an injury or damage and the amount claimed as damages.

5. What is the limitation period for bringing a claim for breach of contract?

The extinctive prescription starts running when the right can be exercised (*Article 166, paragraph 1, Civil Code*). Generally, contract claims must be brought within ten years but this period can vary with the identity of the parties and the nature of the contract.

The right to claim damages based on liability for fault and liability for defects expire under applicable statute of limitations if they are not exercised within ten years (*Article 167, paragraph 1, Civil Code*). The right to demand compensation for breach of contract expires if it is not exercised within five years if the seller is a merchant.

Under the amended Civil Code (CC2020) (coming into force on 1 April 2020, see Question 1), the right to demand compensation for damages based on contractual liability for fault and for defects expires if it is not exercised within five years from when the victim became aware that they could claim damages (*Article 166, CC2020*). The same applies if ten years (20 in case of bodily harm or death under Article 167 of the CC2020) have elapsed following the time when they could claim damages.

Unless otherwise provided in the Commercial Code, claims arising from a commercial transaction will expire if they are not brought within five years. However, in the event that a prescription period shorter than five years is provided in other laws and regulations, these provisions will prevail (*Article 522*).

With respect to latent defects, unless the sale and purchase contract provides otherwise, the buyer must make a claim within one year from the time it becomes aware of the defect (*Article 570 and Article 566, paragraph 3, Civil Code*). This does not apply where the seller had knowledge of the defect or did not have knowledge of the defect due to its gross negligence.

In a transaction between merchants, the buyer cannot bring a claim against the seller for a defect that is not immediately obvious unless it gives notice of the defect to the seller within six months of receipt of the goods. The buyer may not pursue remedies against the seller for other defects unless the buyer notifies the seller of the defect immediately after receiving the goods (*Article 526, paragraph 2, Commercial Code*).

Notwithstanding the above rules, a court may still decide to set aside the statute of limitations in cases of fraud or concealment of evidence.

6. Are there any defences to a claim for breach of contract?

The seller may argue that a claim is time-barred under the applicable statute of limitations (see [Question 5](#)).

The other defences available to the seller are:

- Lack of simultaneous performance of the buyer's payment obligations in a contract where the parties' duties are concurrent (in other words, the seller is not under an obligation to perform its duty if the buyer has failed to fulfil its own obligations under the contract).
- Buyer's knowledge of the defect (or negligence in failing to spot the defect, see comparative negligence below).
- A special agreement between the parties disclaiming warranties and liability.

In addition and without limitation, the seller may seek to rely on:

- Comparative negligence, which can be invoked in a situation where the plaintiff can be shown to have assumed a certain level of risks, and therefore the plaintiff's own negligence contributed to the injury. The Japanese courts have adopted a comparative negligence approach as opposed to strict contributory negligence, where each party's negligence for a given injury is weighed by the judge when determining damages.
- An agreement between the parties limiting compensation (for instance, the provision of liquidated damages) and liability.
- The absence of fault attributable to the seller.

7. What remedies are available for a breach of contract?

A buyer can ask a court to rescind the sale and purchase contract and demand compensation for damages if there is a breach of contract such as failure to perform, failure to perform timely when time is of the essence or impossibility (*Articles 415, 541, 542, 543, 563 and 564, Civil Code*). If the contract cannot be rescinded, the buyer may claim compensation for damages. A buyer can ask a court to rescind the sale and purchase contract and demand compensation for damages if there is a defect in the product sold (*Article 570 and Article 566, paragraph 1, Civil Code*). If the contract cannot be rescinded, the buyer may claim compensation for damages. The plaintiff does not have to prove the manufacturer's or seller's negligence or intent. In addition, although only monetary compensation is available as a remedy under the Civil Code, the buyer can ask the seller to repair the defective goods, provide a substitute for the goods or reduce the price of the defective goods as an alternative to rescinding the sale and purchase contract and making a compensation claim.

Under the CC2020 (see [Question 1](#)), the provisions governing certain breaches of contract, including warranties against defects (whether latent or visible), will be drastically overhauled. The relevant principles will be predicated on lack of conformity and encapsulated in Articles 562 and 563 of the CC2020:

- The seller will be strictly liable for a lack of conformity of the goods. The plaintiff, typically the buyer, does not have to prove the manufacturer's or seller's negligence or intent.
- In the event of non-conformity of goods, although only monetary compensation is available as a remedy under the Civil Code, the buyer has the right to demand a repair, a replacement of the defective goods or delivery of the shortfall, or to demand a reduction of the purchase price as an alternative to cancellation of the sale and purchase contract and demanding damages and other expenses. Provided however that if the seller does not impose any undue burden on the buyer, the seller may complete performance in a manner different from that requested by the buyer.
- In considering whether a product lacks conformity, there will be several criteria which can be considered in terms of type, quality and quantity. Non-conforming goods are products with a quality that deviates from what has been agreed upon or from the use intended under the contract. Supplying goods that are less than the agreed number is deemed lack of conformity.
- Article 563 deals with price reduction reflecting the lack of conformity when the seller has failed to cure the breach within a reasonable period following a demand to do so. The buyer may still request a price reduction forthwith when completing performance is impossible, when the seller has refused to perform,

where time is of the essence and the purpose of the contract could not be timely achieved, or where it is unlikely performance will be completed regardless of a notice to the seller requiring performance.

Orders to void contracts entered into with consumers, as well as prospective orders to prevent illegal solicitations for new business can also be applied for under the CCA.

8. To what extent can liability for breach of contract be excluded?

A seller may be released from future liability to a buyer:

- By entering into a special agreement disclaiming warranties and liability for defects.
- By agreeing the amount of compensation (liquidated damages).
- By excluding or capping liability for fault.

However, strict limitations apply under the CCA as to what can be excluded in a contract between a consumer and a business operator (see [Question 3](#)). Notwithstanding any special agreement excluding statutory warranties, a seller's liability would not be excluded in the event of fraud or concealment of known facts (*Article 572, Civil Code*).

How a claim is brought in negligence

9. Under what conditions can a buyer make a product liability claim under negligence law?

Traditionally, product liability claims had been brought as tort claims under the Civil Code. Since 1995, claims can also be brought under the Product Liability Act (*Law No. 85 of 1994*) (PLA), which allows a plaintiff to seek compensation for damages caused by a defective product more flexibly.

If a defective product causes any damage to the buyer's life, body or property (excluding the product itself), the buyer can bring a product liability claim against the manufacturer (*Article 3, PLA*). The PLA defines a manufacturer as:

- Any person who manufactures, processes, or imports the product as a business.
- Any person holding themselves out to be the manufacturer of a product by putting their name, trade name, trade mark or other indication on the product, or any person who puts their name on the product in a manner that misleads others into believing they are the manufacturer.

- Any person who puts their name on a product and who, in light of the manner in which the product has been manufactured, processed, imported or sold, or any other relevant circumstances, may be deemed a "substantial manufacturer" (de facto manufacturer).

The plaintiff is not required to prove that the manufacturer owed a duty to the plaintiff and negligently or intentionally injured the plaintiff. The plaintiff only needs to demonstrate that the product was defective, and that the defect caused the injuries. A product can be deemed defective if it lacks the level of safety which it should normally possess, taking into account its nature and characteristics, its ordinarily foreseeable uses, state of the art (scientific or technical knowledge) at the time of delivery and other relevant circumstances relating to the product.

Alternatively, if a claim cannot be brought or is unsuccessful under the PLA, the injured party may bring a tort claim under the Civil Code. This type of claim, which is still relied on in civil cases to obtain monetary damages, is viewed as a last resort for persons injured by a defective product. Article 709 provides that a person who has intentionally or negligently infringed any right or legally protected interest of another will be liable for any resulting damage. In contrast with the PLA, the plaintiff must prove the defendants' intent or negligence, and the burden of proof is subject to a high standard. Causes of action under Article 709 include fraud and misrepresentation.

10. Against whom can a claim in negligence be brought?

See [Question 9](#).

11. On whom is the burden of proof?

As a general rule, the party bringing a liability claim (buyer or injured party) bears the burden of proof.

Under the PLA, the plaintiff must prove that the manufacturer's product is defective and that the defect has caused the plaintiff's injuries or damage. In practice, the plaintiff must at least prove that:

- The defendant is a manufacturer (see [Question 9](#)).
- There is a defect in the product that the defendant has manufactured, supplied, placed on the market, or delivered.
- The plaintiff's life, body or property has been injured or damaged as a result of the defect in the product.
- The occurrence of damage and the amount claimed as damages.
- A causal link between the product defect and the injury or damage.

In a claim under Article 709 of the Civil Code, the plaintiff must prove that:

- The injury was caused by a defect in the product.
- The manufacturer negligently or intentionally breached a duty owed to the plaintiff and this breach of duty caused the plaintiff's injuries or damage.

In practice, the plaintiff is at least required to prove:

- The existence of the plaintiff's right or legally protected interest.
- The existence of a breach of the plaintiff's right or interest.
- The defendant's intention or negligence in relation to the breach.
- The occurrence of a damage and the amount claimed.
- The causal link between the breach and the damage.

12. What is the limitation period for bringing a claim in negligence?

The right to seek damages based on product liability is extinguished by prescription if:

- The victim or the victim's legal representatives do not exercise such right within three years from the time they become aware of the damage and identify the party liable for the damages (the responsible manufacturer).
- Ten years have elapsed since the delivery of the product by the manufacturer.

Where damage or injuries are caused by substances which become harmful to human health after accumulating in the body, or where the symptoms linked to damage or injuries only appear after the passage of time, claims become time-barred after ten years from the time of occurrence of the damage.

Claims brought under Article 709 of the Civil Code follow a similar prescription pattern of three years and 20 years respectively.

Under Article 724 of the Civil Code, the right to demand compensation for damages in tort is extinguished by prescription if it is not exercised by the victim or their legal representative within three years from the time when the victim becomes aware of the damage and identifies the perpetrator. (Under the amended Civil Code (coming into force on 1 April 2020, see Question 1) this is extended to five years under Article 724-2 in case of damage to the life or limbs of the victim.) The same applies if 20 years have elapsed after the tort has been committed.

Notwithstanding the above rules, a court may still decide to set aside the statute of limitations in the interest of justice in cases of fraud or concealment of evidence.

13. Are there any defences to a claim in negligence?

Defences can be asserted under both the PLA and the Civil Code to avoid liability or transfer all or part of the liability to the other party (or another party).

A common defence available under the PLA and the Civil Code (under Article 418 of the CC2020 or Article 722 of the Civil Code) is comparative negligence (see [Question 6](#)), which may be a partial or complete defence. Comparative negligence can also be claimed in relation to product defect claims brought under the PLA where the manner in which the plaintiff has handled, used or stored the product can be deemed to constitute unforeseeable misuse.

Statute of limitations may also provide a valid defence under Article 5 of the PLA and Article 724 of the Civil Code if the claim is brought beyond the applicable three (under the CC2020: or, where applicable, five) or ten/20 year statute of limitations (see [Question 12](#)).

Article 4 of the PLA provides for two more defences:

- Under paragraph 1, a manufacturer will not be liable if it could not have discovered the product defect given the state of scientific or technical knowledge at the time of delivery of the product. The manufacturer must prove that the state of scientific or technical knowledge at the time of delivery was such that the existence of a defect could not have been known. Basing a manufacturer's defence on the then current state of the art is rather difficult as Japanese courts have generally interpreted the state of scientific or technical knowledge as knowledge meeting the highest scientific or technical standard then in existence.
- Under Paragraph 2, a manufacturer of products to be used as component of, or raw material for, another product is not liable when the defect has occurred primarily because it has complied with the design specifications and instructions given by the final product manufacturer, and it is not negligent with respect to the occurrence of the defect. The component manufacturer must prove that it could not have foreseen or prevented the defects in the product to be integrated in the final products.

14. What remedies are available for a claim in negligence?

Only monetary compensation is available as a remedy under the PLA and the Civil Code for claims brought under Article 3 and Article 709 respectively.

Under the PLA, the manufacturer is liable for damage and injuries to the life, limbs or property of the victim (not for damage to the product itself). In addition to physical injuries, compensation for mental pain and suffering resulting

from the injury caused by the defective product can be recoverable, as well as medical expenses and lost wages. Similar remedies are available under the Civil Code (covering damage to the product itself).

Under the CCA, it is also possible to apply for orders to invalidate contracts entered into with consumers and orders to prevent unlawful business solicitations.

15. To what extent can liability in negligence be excluded?

The parties to a contract can be released entirely or partially from their liability under the PLA or tortious liability under the Civil Code by entering into an agreement on indemnification excluding or capping such liability.

However, liability exclusions and limitations are strictly limited by the CCA with respect to contracts entered into between a consumer and a business operator (see [Question 3](#)).

Strict liability claims

16. How is strict liability implemented in national law?

Under the PLA, the manufacturer's liability is strict once it is found that the product sold was defective. Proof of the manufacturer's fault/negligence or wilful misconduct is not required to seek monetary compensation. A plaintiff seeking monetary damages under the PLA must prove that the product was defective, the damage caused, and causation between the defect and the damage suffered (see [Questions Question 9 to 14](#)).

17. To what extent can strict liability be excluded?

Liability exclusions under the PLA are discussed in [Question 15](#).

18. What remedies are available for a strict liability claim?

Remedies under the PLA are discussed in [Question 14](#).

Contributor details

Shinya Tago, Partner, Attorney at law, co-Head of the International Practice Committee

Iwata Godo

E stago@iwatagodo.com

W www.iwatagodo.com

Areas of practice: Corporate, commercial, litigation and antitrust.

Landry Guesdon, Registered Foreign Attorney, International Practice Committee

Iwata Godo

E lguesdon@iwatagodo.com

W www.iwatagodo.com

Areas of practice: Corporate, commercial and antitrust.

Fumiya Beppu, Senior Associate, Attorney at law

Iwata Godo

E fbepu@iwatagodo.com

W www.iwatagodo.com

Areas of practice: Corporate, commercial, litigation and antitrust.



END OF DOCUMENT