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PRODUCTS LIABILITY IN SPAIN AND ITS LEGAL REGULATION

Tort liability in Spain for defective products certainly has its origins in the United States, with the development in the 20th Century of the doctrine of “**Strict Liability**.” This doctrine places responsibility on the manufacturer for the damages caused, for the simple reason that the manufacturer is the beneficiary of the sale of the products, regardless of any negligence or intent to harm.

In Europe, with the advent of the Industrial Revolution, the legal doctrine of products liability was developed through the “**Risk Theory**,” by which product liability is charged upon those that are the cause of unreasonable danger with a harmful result and that require a remedy (strict liability).

Spain incorporated in its legislation the **Council Directive 85/374/EEC of 25 July 1985**, by means of **Law 22/1994 of July 6**, of tort liability for damages caused by defective products. This law provides for strict liability, although not in an absolute way, since the manufacturer is exonerated from liability in the cases listed within the law.

This Directive pursued a homogeneous system within the European Union, and, as a consequence, Spain modified **Consumers Law 26/1984 of July 19** through the **Legal Disposition 1/2007 of November 16**, through which the Revised Text of Consumers Law and other complementary laws were approved, resulting in the inclusion of product liability into the area of Consumer Law.

Consumers Law places general liability on the manufacturer for harm caused by defects of manufactured or imported products. This law defines a product as “*any movable good, including those attached or incorporated to other movable goods or to real assets, as well as gas and electricity*”.

The defect of a product can be either (1) a manufacturing defect - which implies an imperfection in a product that departs from the product’s intended design; (2) a design defect – where the product design is not reasonably safe, and the manufacturer could have avoided the risk of harm; or (3) an instructions or warnings defect – where the risk of harm could have been avoided if the consumer had been provided with adequate instructions or warnings for its use. According to the law, a **defective product** is considered to be: *Any product which does not provide the safety that could be legitimately expected, taking into account all the circumstances and, particularly, its presentation, its reasonable intended use, and the time of its distribution*; Nonetheless, it is also considered a defective product when it does not provide the safety usually provided by other copies of the same series.

But, according to the law, a product shall not be considered defective solely because an improved version of the product is distributed.

Also, the law defines a **manufacturer** as one who is engaged in producing or importing within the European Union: (1) a finished product; (2) any component integrated into a finished product; or (3) raw material.

In the event that the manufacturer cannot be identified, the provider of the product will be considered to be the manufacturer, unless, within a period of three months, the provider indicates to the injured party the identity of the manufacturer or the supplier or provider of the defective product. The same rule applies in the case of an imported product if the product does not indicate the name of the importer, even if it indicates the name of the manufacturer (in the case of suppliers).

The law establishes as responsible for product liability the following entities: (1) the company that manufactured the finished product that caused the damage; (2) the manufacturer of any integrated component of a finished product if it produced the damage; (3) the manufacturer of raw material (when it is identifiable once it has been incorporated into the product); and (4) those placing their brand into a generic product (store brands).

Although the law identifies the four entities above as manufacturers, it does not specify the criterion for the distribution of responsibility among them.

Furthermore, the law stipulates that a party seeking remedies for products liability has the duty to introduce evidence of the defect, the harm caused, and the bond between both. In essence, the duty to introduce evidence corresponds to the injured party; however, if the circumstances of the production of the damage can be deduced from a manufacturing defect, it is presumed that the product is defective, and therefore the manufacturer must demonstrate that its product is not defective and show that it fulfills all requirements. In this case, there is an exchange of the duty to introduce evidence.

However, **the producer will not be liable** where it gives evidence that: (1) the defective product has not been distributed; (2) according to the circumstances of the case, it may be presumed that the defect did not exist when the product was distributed; (3) the product was not manufactured for sale or any other form of distribution with an economic purpose, nor was it manufactured, imported, supplied, or distributed within the context of a professional or business activity; (4) the defect is due to the fact that the product was made in accordance with valid mandatory rules; or (5) in accordance with the scientific and technical knowledge at the time the product was distributed, the existence of the defect could not be anticipated.

The manufacturer of an integrant part of a finished product shall not be liable when it is proved that the fault is chargeable to the perception of the product to which it was incorporated or to the instructions given by the manufacturer of the product.

Medications, food, or food products intended for human consumption are identified as **consumable goods**, which are not covered under the exclusion of liability: *“That in accordance with the scientific and technical knowledge at the time the product was distributed the existence of the defect could not be anticipated”*. Although this represents a great step for Spain and the European Community, the treatment of these products is not even close to the one existing in the United States, where simply commercializing a product and getting benefits from its sale implies the assumption of manufacturer responsibility.

The law emphasizes that the tort liability of the manufacturer for the damages caused by the defective products is **limited**. The law covers personal injury, death, and bodily injury, but does not cover moral damages.

According to law property damages covered by the law are damages to objects different from the defective product itself, and objectively intended for private consumption.

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a) *A release of 390.66 euros shall be deducted from the amount of compensation for property damage.*

b) *The manufacturer's global product liability for death and injury caused by identical products with the same defect will be limited to 63,106,270.96 euros.* Notwithstanding the property damages that are not enforceable by this law, may be claimed under other civil proceedings (regulated in Spanish Civil Code, Article 1902).

Moreover, the law establishes that property damages caused in the product itself shall not be compensated in accordance with the provisions of this section, but that those forms of damages are protected with civil and mercantile legislation.

We must also be aware that the action for compensation for damage and loss expires after **three years**, counting from the date the injured party suffered the damage caused by the product, whenever he knows the identity of the party liable for the damages caused.

Also, when compensation has been granted by a responsible party, this party will have the right to make a claim against the other parties for a period of **one year**, counting from the day the compensation was paid.

Similarly, the prescription may be interrupted by any form foreseen in the legislation (Civil Code) by means of notification to the manufacturer or so-called, even by fax, or initiating a legal procedure. All rights recognized by the law in favor of the injured party expire over a period of 10 years, counting from the date the product that caused harm was distributed, unless, within this period, legal proceedings are initiated.

Also, the law describes the consequence of the participation of the injured party in a harmful event, even to the point of excluding the manufacturer from all liability. The law establishes that liability can be reduced or eliminated, depending on the circumstances, on a case-by-case basis where the damage was caused jointly by a defect of the product and the guilt of the injured party.

In view of the foregoing, the position of the supplier in the case of a defective product is of great importance since the supplier is considered to be the manufacturer of the defective product where the supplier knew of the existence of the defect; however, the supplier may make a claim against the manufacturer by an action of recovery.

Finally, it is important to emphasize that the injured party can claim remedies of product liability directly against all the responsible parties listed in the law since they are jointly and severally liable.

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