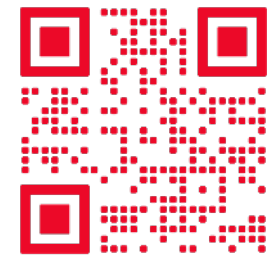


Product Liability-where it is and where it's going?

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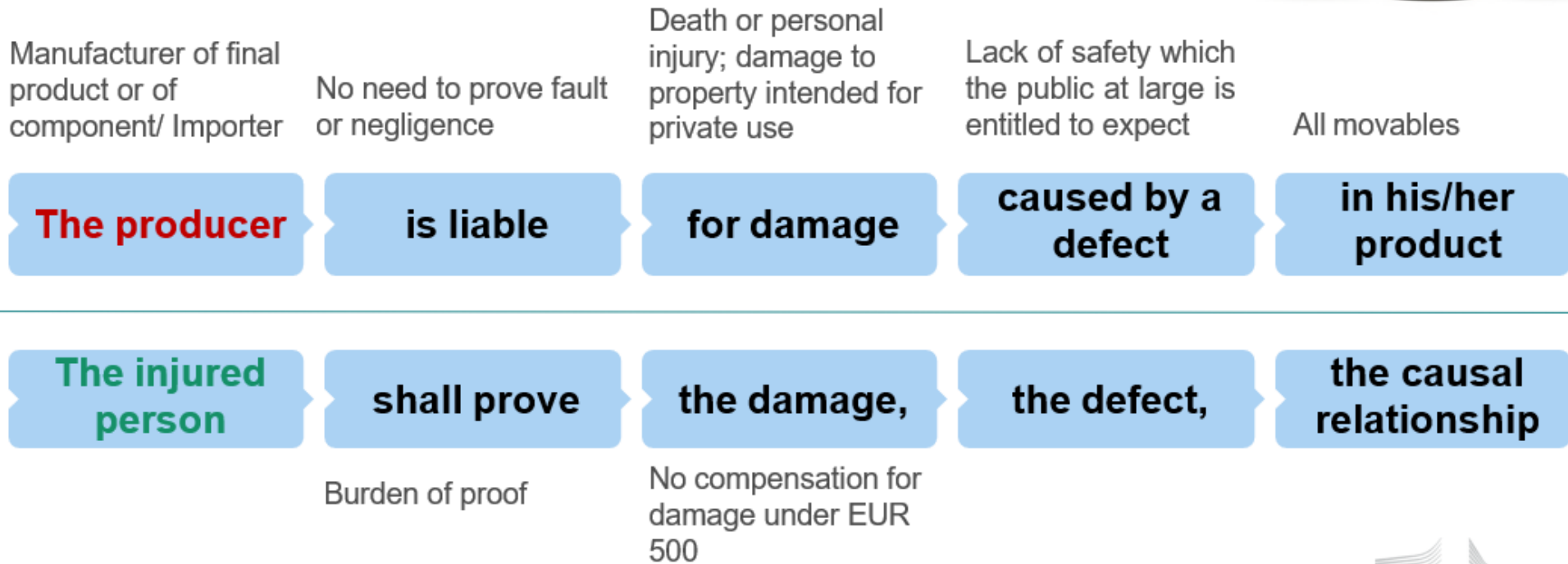
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Understanding law, understanding you

Product Liability Directive 85/374

- **Adopted on 25 July 1985**
- **introduced a uniform system of no-fault liability for defective products.**
- **It applies to any product marketed in the European Economic Area.**

Main principles – Balance of interests



Product Liability Directive 85/374

- **The purpose of the Directive was that a producer of a defective product would be strictly liable for any damage caused by its product.**
- **Those considered to be producers are:**
- **The actual producers of the product;**
- **Those who ‘own-brand’ products produced by others;**
- **Component producer and**
- **Importers into the EU of products from outside the EU.**



Secondary defendants

- **'suppliers' will only be liable where**
- **the person who suffered damage requests that the supplier identify the primary defendant (the producer),**
- **where that request is made in reasonable time and**
- **the supplier fails to do so within a reasonable time.**

Defect Article 6

- **A product is considered defective for these purposes when**
- **it does not provide the level of safety that a person is entitled to expect, taking all the circumstances into account, including:**
- **Presentation of the product.**
- **Use to which it can reasonably be expected that the product will be put.**
- **Time the product was put into circulation.**

5th Review of the PLD May 2018

- **The concepts of 'product', 'producer', 'defect' and 'damage' may need to be re-evaluated to align with modern industry,**
- **which is "increasingly integrated into dispersed multi-actor and global value chains with strong service components".**
- **Refurbished and repaired products may need to be directly addressed, as the report stated: "Who will be the manufacturer... in the case of repair, reuse and refurbishment?".**

PEOPIL concerns raised with EC

- **The definition of a defective product;**
- **the difficulties establishing causation and in particular the extent to which that is used to re-insert a requirement to prove fault which is absent from the Directive, which leads to different case-laws in European countries;**
- **the need to prove causation – specifically for injuries for which a medical device or pharmaceutical product may have been recalled;**

What's proposed?

- **Article 9**
- **Burden of proof**
- **1. Member States shall ensure that a claimant is required to prove the defectiveness of the product, the damage suffered and the causal link between the defectiveness and the damage.**

What's proposed: presumptions of fault?

- 2. The **defectiveness of the product shall be presumed**, where any of the following conditions are met:
 - (a) the **defendant has failed to comply with an obligation to disclose relevant evidence** at its disposal pursuant to Article 8(1);
 - (b) **the claimant establishes that the product does not comply with mandatory safety requirements** laid down in Union law or national law that are intended to protect against the risk of the damage that has occurred; or
 - (c) **the claimant establishes that the damage was caused by an obvious malfunction of the product** during normal use or under ordinary circumstances.



What's proposed: causation?

- **3. The causal link between the defectiveness of the product and the damage shall be presumed**, where it has been established that the product is defective and the damage caused is of a kind typically consistent with the defect in question.
- **4. Where a national court judges that the claimant faces excessive difficulties,**
- **due to technical or scientific complexity, to prove the defectiveness of the product or the causal link** between its defectiveness and the damage, or both,
- **the defectiveness of the product or causal link** between its defectiveness and the damage, or both,
- **shall be presumed where** the claimant has demonstrated, on the basis of sufficiently relevant evidence, that:



What's proposed: excessive difficulties?

- (a) the product contributed to the damage; and
- (b) it is likely that the product was defective or that its defectiveness is a likely cause of the damage, or both.
- The defendant shall have the right to contest the existence of excessive difficulties or the likelihood referred to in the first subparagraph.
- 5. The defendant shall have the right to rebut any of the presumptions referred to in paragraphs 2, 3 and 4”.



What else is proposed?

- **Distributors (offline and online sellers) also becoming liable if they fail to give the name of the EU-based liable person to the injured person on request.**
- **This applies to online marketplaces too, but only if they present themselves to the consumer as a distributor.**
- **The new directive will also require companies to disclose evidence that a claimant would need to prove their case in court.**
- **The EC reports that this is to address the asymmetry of information between the manufacturer and consumer:**
- **Long stop limitation will remain at 10 years from placing the product into circulation save**
- **where there is latent personal injury damage when it will be 15 years.**



What is missing?

- **Secondary defendant suppliers who profited and the producer is no more;**
- **Presumption of defect where there is a product recall;**
- **Date of supply remains the putting into circulation;**
- **Identifying the producer remains challenging.**

Thank you.

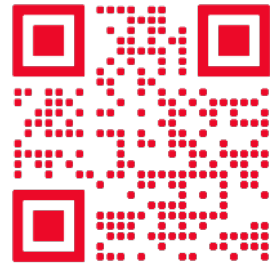


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