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# **The Legal 500 Country Comparative Guides**

## **Thailand PRODUCT LIABILITY**

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This country-specific Q&A provides an overview of product liability laws and regulations applicable in Thailand.

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# THAILAND

## PRODUCT LIABILITY



**1. What are the main causes of action upon which a product liability claim can be brought in your jurisdiction, for example, breach of a statutory regime, breach of contract and/or tort? Please explain whether, for each cause of action, liability for a defective product is fault-based or strict (i.e. if the product is defective, the producer (or another party in the supply chain) is liable even if they were not individually negligent).**

According to the Act on Liability for Injuries from Unsafe Products, B.E. 2551 (2008) (Product Liability Law), the main cause of action upon which a product liability claim can be brought is the injured party suffering damage from an unsafe product, where that product has been sold to the consumer, regardless of whether such damage is a result of the wilful or negligent act of the relevant business operators.

'Business operators' refers to the product manufacturers or hirers, importers, sellers (if the products do not indicate the manufacturer, hirer, or importer), and persons who use the name, trademark, trade name, mark, or statement that would lead to the understanding that they are the manufacturer, hirer for manufacture or importer of the product in question.

The term 'unsafe' means a product that causes (or may cause) damage as a result of a manufacturing or design defect; or because appropriate instructions for using or storing the product, warnings, or other information regarding the product, were not provided (or where it was provided but the information was inaccurate or insufficient). Consideration must also be given to the specific nature of the products, as well as the way that the products may be used or stored under normal and expected conditions.

The Product Liability Law applies the principle of strict liability. The injured party who suffers damages arising from the use of unsafe products does not have to prove

the unsafeness of the products but only has to prove that, under ordinary use or storage, the damage occurred from the use of the said product sold by the business operator.

**2. What is a 'product' for the purpose of the relevant laws where a cause of action exists? Is 'product' defined in legislation and, if so, does the definition include tangible products only? Is there a distinction between products sold to, or intended to be used by consumers, and those sold for use by businesses?**

The term 'product' is defined under the Product Liability Law to cover all types of movable properties produced or imported for sale, including agricultural products and electricity, but excluding certain products as prescribed in the ministerial regulations.

In principle, the term 'product' should refer to only tangible products, however, the Product Liability Law specifically extends to electricity.

The Product Liability Law does not separately define specific terms to provide a distinction between products sold to or intended to be used by consumers and those sold for use by businesses.

**3. Who or what entities can bring a claim and for what type(s) of damage? Can a claim be brought on behalf of a deceased person whose death was caused by an allegedly defective product?**

A party that can bring a claim for product liability under the Product Liability Law is an injured party. The injured party can bring civil claim for damages from an unsafe product, whether to life, body, health, wellbeing, emotions, or property, but excludes damage to the unsafe product itself. Claims for compensation for pain

and suffering that the injured party suffers as a result of the unsafe product are also permitted.

A claim may be brought on behalf of a deceased person whose death was caused by an allegedly defective product. A legal heir or the executor of the estate of the deceased is entitled to file a lawsuit on behalf of the deceased.

#### **4. What remedies are available against a defendant found liable for a defective product? Are there any restrictions on the types of loss or damage that can be claimed?**

Monetary compensation for damage from an unsafe product, whether to life, body, health, wellbeing, emotions, or property, is available against a defendant found liable for a defective product. The amount of compensation will be determined by the court based on the circumstances and gravity of the damage. The court may also determine additional compensation for mental damage arising from damage to the body or wellbeing of the injured party.

Punitive damages not exceeding two times the compensation granted may also be set in the case that it is found that the business operators have produced, imported, or sold the products knowing that the products are unsafe, or fail to be aware of such facts due to gross negligence.

Under the Consumer Case Procedure Act, B.E. 2551 (2008), if the actual damages do not exceed THB 50,000, the courts are empowered to fix punitive damages at not exceeding five times the actual damage.

In addition, if it appears to the court that there are goods sold or remaining in the market that may be harmful to life, body, health, or hygiene of consumers as a whole, and no other protective method may be used, the court may issue an order for the business operator to make an announcement regarding the unsafe goods, recall the goods, and/or refund the purchase price (in accordance with the conditions prescribed under the Consumer Case Procedure Act.)

#### **5. When is a product defective? What must be shown in order to prove defect?**

Legally speaking, the liabilities under the Product Liability Law should be related to unsafeness of the products (rather than their defects). Damage or the likelihood of damage may arise from manufacturing

defect, design defect, or warning defect. To determine whether a product is unsafe, the court will take into account the nature of the product and its ordinary use and storage.

#### **6. Which party bears the burden of proof? Can it be reversed?**

The injured party has the burden to prove that under ordinary use or storage, the damage suffered has been caused by the product. However, the injured party does not have the burden to prove which particular business operator's actions or omissions caused the damage (e.g. manufacturer, importer, or seller). The burden of proof is on the business operator to prove that it should not be liable for the damage that was caused by the product.

Additionally, under the Consumer Case Procedure Act, where there are any arguments regarding the facts related to the manufacture, design or composition of the product, if the court is of the view that such facts are known specifically by the party that is a particular business operator, then the burden of proof in relation to such matters will fall on that particular business operator.

#### **7. What factors might the court consider when assessing whether a product is defective? To what extent might the court account for a breach of regulatory duty, such as a breach of a product safety regulation?**

A defective or unsafe product is defined as a product that causes damage, either as a result of a manufacturing or design defect, or because of lack of or improper warnings or instructions for use. In the case of a manufacturing defect, the court would consider whether the product functions normally as it is supposed to. If the product in question functions abnormally and causes injury to the consumer, it is likely that the court will determine that the product is defective or unsafe.

A breach of regulatory duty or breach of a product safety regulation may be convincing evidence that a product is defective, although it is not conclusive. In a product liability case, a consumer does not have to prove that the product in question is in violation of a product safety regulation or that the business operator violates a regulatory duty. It suffices if the consumer proves that they suffer injury from the defective product, regardless of whether there is a breach of regulatory duty or product safety regulation. But if it appears to the court that the product itself does not pass a required safety

regulation, and it causes harm to the user, this would prompt the court to conclude that the product is defective.

## 8. Who can be held liable for damage caused by a defective product? If there is more than one entity liable, how is liability apportioned?

The liability sits with the 'business operator,' which includes the manufacturers or hirers, importers, sellers of the products (if the products do not indicate the manufacturer, hirer, or importer), and persons that use the name, trademark, etc. of the manufacturer, hirer, or importer of the product in question. All relevant entities are jointly liable. The entity may not need to be at fault to be liable.

If there is more than one entity liable, as between themselves, the joint and several business operators must be liable in equal proportions unless otherwise determined. When the injured party has been totally compensated, the business operators who provided compensation to the injured party would have the right of subrogation.

## 9. What defences are available?

The defences available include the following:

- the product is not unsafe;
- the injured party was already aware that the product was unsafe; or
- the damage arose from improper use or storage of the product in a manner not in accordance with the directions, warning, or information reasonably, clearly, and correctly provided by the business operator.

Defences for particular business operators in certain circumstances are also available. For example, a manufacturer in contract manufacturing is not liable if it can prove that the unsafe products are a result of the hirer's design, order or instruction. In addition, part manufacturers are not liable if they can prove that the unsafe products are as a result of the design, assembly, or the instruction on use, storage, or warning provided by the manufacturer of the final product.

## 10. What is the relevant limitation period(s) for bringing a claim? Does a different limitation period apply to claims

## brought on behalf of deceased persons?

The case must be brought to court within three years from the date on which the injured party becomes aware of the damage and the identity of the relevant business operators that must be liable, but in any case within 10 years from the date of the sale of the product in question.

However, where damage occurred to life, body, health, or hygiene, resulting from an accumulation of the substance within the injured party's body or the case where it takes time before the symptom becomes apparent, the case can be brought to court within three years from the date the injured party is aware of such damage and of the identity of the person bound to be liable, but not exceeding 10 years from the date the injured party is aware of the damage.

Where there are negotiations concerning the damages between the business operator and the injured party, or the person with the right to sue on consumer's behalf, the prescription period will be suspended during the negotiations, until either party terminates the negotiations.

The same limitation period applies to claims brought on behalf of a deceased person by their legal heirs or the executor of their estate.

## 11. To what extent can liability be excluded, if at all?

Any prior agreement between the consumers and the business operators, or any notification or announcement of the business operators, to limit or exclude liability of the business operators for the damage arising from unsafe products will not be upheld in court.

## 12. Are there any limitations on the territorial scope of claims brought under a strict liability statutory regime?

There are no specific limitations on the territorial scope of claims brought under the Product Liability Act and the Consumer Case Procedure Act. General provisions of the jurisdiction of Thai courts would be applied.

Thai courts may have jurisdiction over a case when (i) the injured party or business operator resides in Thailand; (ii) the damage occurs in Thailand; or (iii) the business owner owns property that may be subject to a judgement enforcement in Thailand.

### 13. What does a claimant need to prove to successfully bring a claim in negligence?

The main elements to prove a tort claim under Thai law are that the perpetrator caused the damage by intent or negligence, and that the act resulting in the damage is an illegal act.

In the event of damage arising from an unsafe product, the claim should be brought by the consumer under Product Liability Law as discussed in the questions above. This is because with a tort claim, the burden of proof would rest with the plaintiff (the consumer), and in cases involving product liability, the consumer would usually be at the disadvantage in proving the elements above, since the business operators, such as a manufacturer, would be the party that holds the relevant information, e.g. the design, manufacturing process.

There would be no advantage to the plaintiff in pursuing a claim under tort law as opposed to under Product Liability Law.

### 14. In what circumstances might a claimant bring a claim in negligence?

A negligence claim under Thai law means a tort claim alleging that the defendant acts or fails to act without due and reasonable care (recklessness). However, a claim for compensation based on product liability law can be made against the business operators even though the business operators do not act negligently, or omit to act with due and reasonable care. Even though the business operators have exercised due and reasonable care in making or distributing the products, it is not sufficient to relieve the business operators from liability. Unless the business operators can successfully prove one or more defences as stated in item 9 above, the business operators are liable for the damage caused by the defective products even though reasonable care has been taken by the business operators.

### 15. What remedies are available? Are punitive damages available?

Restitution of the property or its value, along with damages for any injuries sustained, may be awarded in order to remedy a tort resulting from an unsafe product. The compensation will be determined by the court based on the circumstances.

Punitive damages are not available for tort claims. However, in the case of claims for liability under the Product Liability Law as explained above, the court may determine additional compensation for mental damage

arising from damage to the body or wellbeing of the injured party.

Punitive damages not exceeding two times the compensation granted may also be awarded if it is found that the business operators have produced, imported, or sold the products knowing that the products are unsafe, or fail to be aware of such facts due to gross negligence.

Under the Consumer Case Procedure Act, if the actual damages do not exceed THB 50,000, the courts are empowered to fix punitive damages at not exceeding five times the actual damage.

### 16. If there are multiple tortfeasors, how is liability apportioned? Can a claimant bring contribution proceedings?

Unless the court decides differently, the tortfeasors will be held accountable both jointly and severally. Procedures for contributions may be initiated.

### 17. Are there any defences available?

Defences available include the defence that the damage was not caused by an illegal act committed by the business operator, whether by intent or negligence.

### 18. What is the relevant limitation period(s) for bringing a claim?

One year from the date the injured party becomes aware of the tort and the identity of the perpetrator, but not exceeding 10 years from the date of the commission of the tort.

### 19. To what extent can liability be excluded, if at all?

Generally, a consent given to the perpetrator by the injured party would rule out the liability for tort.

### 20. Do the laws governing contractual liability provide for any implied terms that could impose liability where the product that is the subject of the contract is defective or does not comply with the terms of sale?

Generally, contractual provisions could not cause liability under the Product Liability Law. However, under the Civil and Commercial Code, the seller would be liable in the

case of any defect in the property sold that impairs its value or its fitness for ordinary purposes or for the purposes agreed in the contract.

## 21. What remedies are available, and from whom?

The remedies depend on the terms mutually agreed in the contract. A claim may be brought by each contract party or successors to the rights of the contract party under specific circumstances.

## 22. What damages are available to consumers and businesses in the event of a contractual breach? Are punitive damages available?

The type of damages available to consumers and businesses in the event of a contractual breach would be compensation for the normal damage arising from failure to deliver the product in accordance with the contract. Damage arising out of special circumstance may also be compensated if the relevant parties can expect or should have been able to expect such a circumstance in advance. Punitive damages are not available for a contractual breach.

## 23. To what extent can liability be excluded, if at all?

The liability may be excluded in some cases, including that the buyer is aware of the defect or should have been aware of the defect had care expected from a reasonable person been exercised, or if the defect is clearly evident at the time of delivery and acceptance by the buyer without any reservation.

However, a contractual term made in advance to exclude liability from fraud or gross negligence is void. In addition, the Unfair Contract Terms Act, B.E. 2540 (1997) also provides that unfair contract terms include terms that unfairly limit or exclude liability arising from a breach of contract.

## 24. Are there any defences available?

The defences would depend on the facts of the case. Generally, the seller may prove that the seller has performed properly according to the contract. Other defences available may include the following:

- the buyer knew of the defect at the time of sale or ought to have known of it if the buyer

had taken such care as may be expected from a prudent person;

- the defect was clearly apparent at the time of delivery and the buyer has accepted the property without reservation; or
- the property was sold via public auction.

## 25. Please summarise the rules governing the disclosure of documents in product liability claims and outline the types of documents that are typically disclosed.

There are no specific rules governing the disclosure of documents in product liability claims. However, under the Consumer Case Procedure Act, the court will be responsible for questioning the witnesses, while the parties to the case (or their lawyers) can only do so with the court's approval. The court may also ask the witnesses about any facts that it considers to be connected to the case though these issues are not raised by one of the parties, and may order other evidence to be produced for the sake of justice.

In cases where a person or a party to a case is concerned that evidence on which they may rely will be lost or difficult to produce at a later date, such person or party may submit a claim to the court demanding that such material be promptly heard. In an emergency, the claimant may also request that the court order the seizure of evidence under the conditions specified by the court.

## 26. How are product liability claims usually funded? Is third party litigation funding permitted in your jurisdiction and, if so, is it regulated?

In Thailand, third parties do not offer litigation funding. 'No win, no fee' and contingency fee agreements are not acceptable under Thai law.

## 27. Can a successful party recover its costs from a losing party? Can lawyers charge a percentage uplift on their costs?

Under the Consumer Case Procedure Act, consumers (or their legal representatives) would generally be exempted from paying court fees. For the specific circumstances, the consumer may be ordered by the court to pay all or parts of the exempted fees, e.g. the court found that the consumer filed unreasonable claims or sought inappropriate amounts of damages. If the consumer fails to pay the fees as ordered by the court,

the court may order the case to be dismissed. In addition, the court may order the business operator to pay the court fees for the injured person at its discretion.

The successful party may additionally include the costs incurred during the case in its request for compensation in an effort to recover those expenses. Any such award, though, would be at the court's discretion.

**28. Can product liability claims be brought by way of a group or class action procedure? If so, please outline the mechanisms available and whether they provide for an 'opt-in' or 'opt-out' procedure. Which mechanism(s) is most commonly used for product liability claims?**

Yes, a group of consumers may initiate a class action suit.

Class actions are initiated by filing a complaint together with a motion for class certification. A motion for class certification must establish that the dispute satisfies the legal requirements, including: the nature of the complaint; the nature of the class; the advantages of a class action procedure for the case; and that the class lawyer can fairly and adequately protect the interests of the class.

There are five main requirements for a class to be certified:

1. commonality: the questions of law and fact are common to the class;
2. typicality: the plaintiff and the class members have the same unique characteristics;
3. numerosity: the class is so numerous that individual actions become complicated and impractical (however, the law does not specify the threshold at which the class members will be considered 'numerous,' so this requirement mostly depends on the court's discretion);
4. efficiency: the class action is a more just and efficient way to resolve the matter than individual actions; and
5. adequacy: the plaintiff and class lawyer can demonstrate that they can fairly and adequately protect the interests of the class.

After the complaint and the motion for class certification is filed, the court will set up a hearing to determine whether the five requirements for class certification are met. During that hearing, the court will normally allow both parties to present their witnesses and evidence to

show whether the class should be certified. The court is empowered to inquire into any facts and evidence from the parties, as well as determine whether specific witnesses or evidence should be presented to the court in the interest of determining class action certification.

The court decision can be appealed, and the decision of the Appeal Court is final. Normally, the final decision on the class certification can be reached within six to 12 months from the day the appeal is submitted.

The Thai class action regime adopts an 'opt-out basis.' There is no requirement to notify class members to start a class action. Once the class action is certified, the court will issue an announcement for which the plaintiff bears the expense to notify the class members that a class action has commenced. The notification must include the time period for members who do not wish to be a class member to opt out of the class. There are two ways to notify class members that the action has been certified on their behalf: (1) members whose names are listed in the motion must be notified by the plaintiff by registered mail to their addresses; or (2) for other class members, the notification can be published in newspapers and other appropriate media (such as on the court's website or other websites). The court also has the power to order the plaintiff to propose to the court its plans to notify the class members of the certification.

A class member can opt out from the class action by notifying the court in writing within the period specified in the notification. A member who opts out will no longer be regarded as part of the class and will not be bound by the judgement of the court.

Generally, the role of the class members in the case is quite limited, and mainly involves observing the case. However, the class members have the right to substitute the plaintiff or object to other class members' request to substitute, if the plaintiff can no longer fairly and adequately represent the class members (e.g. if the plaintiff dies or becomes incapacitated, the plaintiff misses court appointments or abandons the complaint, or the plaintiff no longer wishes to be the named plaintiff). In addition, a class member has the right to appoint a new class lawyer if the court requests a change.

**29. Please provide details of any new significant product liability cases in your jurisdiction in the last 12 months.**

One of the recent significant product liability cases in Thailand is a class action case between car-related business operators and a group of nine consumers.

Despite the fact that there is only the court of first instance's decision at this stage and the court's interpretation and decision may be modified by higher courts, it offers an interesting interpretation of the Product Liability Law.

In this case, a group of nine consumers claimed that they suffered damages from cars they purchased and filed a complaint against three defendants: (i) the owner of the cars' trademark; (ii) the manufacturer of the cars' parts sold to the owner of the cars' trademark; and (iii) the company that assembled cars on behalf of the owner of the cars' trademark. The damages caused included the engine shaking, the motor oil level abruptly rising, incorrect cylinder firing, strange diesel particles in the filter system, the car's incapacity to operate, and overconsumption of gasoline.

It seems that the court interpreted the concept of 'business operator' under the Product Liability Law as referring to a person who uses a trademark to give consumers the impression that they are the manufacturer. Based on the court's ruling, as the defendants in (ii) and (iii) only manufactured and assembled cars for the owner of the cars' trademark, the court decided that the only 'business operator' under that Product Liability Law is the owner of the cars' trademark.

This court's interpretation also confirms that mental injury compensation is practically enforceable. That is, the court viewed that the existence of these car problems had harmed the consumers' mental health as the customers would have been worried and concerned that their vehicles would not be safe, even though the consumers did not actually sustain any physical harm. As a result, the court decided that these cars violated the Product Liability Law and ordered the owner of the cars' trademark to pay THB 30,000 (about USD 850) to each customer as well as cover the cost of any necessary repairs.

However, for punitive damages, the owner of the cars' trademark was able to demonstrate in court that it made its best effort to address and fix the issues with the cars as soon as it became aware of such issues through complaints. Eventually, the court did not order the owner of the cars' trademark to pay punitive damages. This could serve as a standard in the future for punitive damage defence.

In addition to highlighting the viability of class action proceedings, the key interpretations of the Product Liability Act and interesting issues posed from this case may be summarized as follows:

- the Product Liability Act can be applied to

determine that the products were unsafe, even if the damage was only to the consumers' mental health (rather than their physical health);

- a person or company that uses a trademark to convey to consumers that it is the manufacturer would be regarded as a business operator under the Product Liability Law;
- it is possible to award damages for mental health in practice;
- putting out maximum effort to address issues and repair unsafe products could reduce the possibility of punitive damages; and
- the defence that a manufacturer in contract manufacturing is not liable if it can prove that the unsafe products are a result of the hirer's design, order, or instruction is applicable in practice.

### 30. Are there any policy proposals and/or regulatory and legal developments that could impact the current product liability framework, particularly given the advancements in new technologies and increasing focus on the circular economy?

Although there have been no recent significant policy proposals, regulatory, or legal developments in Thailand that could impact the current product liability laws, there have been recent developments on the draft defective product liability law (Lemon Law Bill). The Lemon Law Bill has been revised and updated to include general provisions for general products and additional specific provisions for cars, motorcycles, electronic devices, and engines to reflect changes in market conditions. The main idea is that a business operator has a presumed liability for product defects that impair the utility of such products for consumers within a specific period of time.

### 31. What trends are likely to impact upon product liability litigation in the future?

Potential trends impacting product liability litigation might be influenced by consumer expectations for product safety, the establishment of legal precedents and class action suits.

As awareness grows, there is potential for an escalation in consumer expectations, thereby influencing the landscape of product liability cases. We are starting to see more development of legal precedents, particularly in emerging technologies, which will likely play a crucial role in shaping legal interpretations. Additionally, the

increase of class action suits might be linked to

consumers seeking collective resolution.

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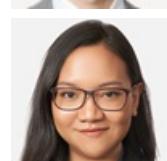
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