



Key Contacts



Chinemeze Eze
Senior Associate
chinemeze.eze@ao2law.com



Kelvin Erue
Associate
kelvin.erue@ao2law.com



Testimony Oluwadare
Associate
testimony.oluwadare@ao2law.com

PRODUCT LIABILITY IN NIGERIA: EXAMINING THE TWO SIDES OF THE COIN

In today's world, the development of products brings convenience, sparks innovation, offers limitless choices and improves the standard of living. But what happens when the everyday products we rely on turn dangerous instead of being helpful? Product Liability is designed to protect consumers by holding manufacturers, importers, distributors and suppliers accountable for unsafe or defective products. Pertinent to say that as much as the consumers have rights, the vendors and manufacturers as well, have their own rights. However, when an allegation bordering on product liability is levelled against a manufacturer, importer, distributor or supplier of a particular product with respect to a material defect or injury occasioned as a result of consumption or usage of a product by a consumer, what rights do these manufacturers, importers, distributors and suppliers have within the Nigerian legal regime?

This article aims to explore the intricacies of Product Liability law in Nigeria, focusing on the rights and responsibilities of consumers, manufacturers, importers, distributors and suppliers.

Meaning of Product Liability?

Product Liability according to the Black's Law Dictionary¹ is "the general obligation or liability of the producer or supplier of goods and services to adjust for the loss associated with its utilization, such as damage of property or personal injury². Wikipedia defines Product liability as the area of law in which manufacturers, distributors, suppliers, retailers, and others **who make products available to the public** are held responsible for the injuries those products cause. Although the word "product" has broad connotations, product liability as an area of law is traditionally limited to **products in the form of tangible personal property**

In a further definition, Product liability is a term used to describe the legal liability of manufacturers or sellers of goods to compensate buyers, users and **even bystanders** for damages or injuries suffered because of defects in goods purchased. Product liability law is the area of law governing product liability litigation.

¹ Black's Law Dictionary, 10th Edition.

² It refers to injury to the mind, body or emotions as opposed to an injury to property

It is derived from both tort law and contract law. Usually, the affected party need not prove that the supplier or producer was negligent as the defect is associated with the product or service. Product Liability is generally the manufacturer's, importer's, distributor's or supplier's exposure or liability for damages, losses or injuries that consumers, buyers or bystanders suffer as a result of usage of a defective product³.

Product Liability is crucial as it ensures accountability for product safety and quality, thereby creating a healthy living among consumers. It provides a means for individuals harmed by defective products to seek compensation and redress, while pressuring companies to enhance product safety for future use. By offering legal recourse for those affected by defective products, it helps to ensure that they recover their losses or duly restituted.



Situations When Product Liability May Arise

Product Liability may arise where-

- (i) there is a defect in the manufacturing process
- (ii) there is a defect in the product design
- (iii) there is an inadequate labelling or failure to label or give clear instructions on products usage
- (iv) there is a breach of express or implied product warranties
- (v) where strict liability applies to the product.

³ Garner (n 6) 1225.

Legal Frameworks Regulating Product Liability in Nigeria

Nigeria follows both a fault-based and strict liability system in determining product liability under the extant Nigerian legal regime. This underpins why it is derived from both contract and tort laws. While there are no explicit or stand alone legislative enactment specifically addressing product liability in Nigeria, claims can be pursued under tort law and contract law. Consumers may seek redress for negligence or breach of duty of care which has its root in strict liability.

In Nigeria, specific Statutes and Regulations have been enacted to safeguard consumer rights and protection. Some of which are:

1. The Federal Competition and Consumer Protection Commission Act (FCCPCA), 2018- This Act establishes the Federal Competition and Consumer Protection Commission, outlines its functions, structure and powers, and provides the appropriate channels for filing complaints, as well as the process for aggrieved consumers to seek redress.
2. The Sale of Goods Law of Lagos State- this law regulates the purchase and sale of goods in Lagos state, defining the rights, duties and obligations of both buyers and sellers, while promoting transparency and fairness in their transactions.
3. The Law Reform (Torts) Law of Lagos State, 2015- this law aims to reform the rules governing the assessment of damages for personal injury or death. It also revises the legal

principles surrounding compensation and liability for civil wrongs (torts) such as negligence, nuisance, defamation and trespass. Additionally, the law abolishes certain outdated defences and modifies how liability is apportioned among multiple defendants in cases of harm.

Additionally, there are regulatory agencies such as the National Agency for Food and Drug Administration and Control (NAFDAC) and the Standard Organization of Nigeria (SON). These agencies play key roles in ensuring compliance with safety and quality standards.



The Duties and Responsibilities of Manufacturers, Importers, Distributors and Suppliers in Ensuring Consumer Protection

The manufacturer has a legal duty of care towards consumers. In this regard, a manufacturer has a duty to ensure that the products produced are safe for use or consumption and meet high quality standards. The manufacturer is also responsible for providing clear instructions,

warnings about product usage and potential risks. Additionally, manufacturers are obligated to recall unsafe or defective products once they have been distributed in the market.

With respect to distributors and suppliers, they must ensure that the products they offer for sale are authentic, of high quality and safe for consumption. Additionally, distributors and suppliers are required to store and handle products properly to maintain their safety, quality and form. They are also responsible for providing warranties, facilitating repairs or processing returns for defective products.

As provided under **Sections 134 to 140** of the **Federal Competition and Consumer Protection Commission Act 2018**, manufacturers, importers, distributors and suppliers have the following duties:

- (i) duty to label goods properly
- (ii) duty to withdraw hazardous goods from the market
- (iii) duty to bear liability for defective goods
- (iv) duty to not restrict or exclude liability arising from the sale or supply of goods intended for personal use or consumption
- (v) duty to bear liability for breach of obligation imposed by law
- (vi) duty to bear liability for misrepresentation

The Elements a Plaintiff/Claimant is Required to Prove in a Case of Product Liability

In a product liability case, a plaintiff would need to demonstrate the following:

- Proof to show that the product was defective in some way
- The product was used as intended by the manufacturer
- The product's defect caused the plaintiff to suffer some type of harm
- The Plaintiff can be compensated for the damage incurred

Pertinent to state that a Plaintiff does not need to prove that a defendant acted negligently or intentionally in product liability cases. This is because the "strict liability" doctrine applies in these types of claims. Under strict liability rules, a plaintiff can prove his case and prevail in court, if he simply shows that there is a defect with the product and have accordingly suffered injury due to such defect. The law in this regard holds manufacturers, distributors, suppliers and their agents to high position and imposes responsibility on them as keepers of the consumers. In this light, they are required to anticipate the possibility of occurrence of the injury and to apply measures that would forestall the occurrence. This principle was laid down in the well celebrated case of **Rylands v. Fletcher**⁴ where the court held that an occupier of land who brings and keeps upon it anything likely to do damage if it escapes is bound to take responsibility and prevent its escape. In the event of escape, the occupier will

⁴ (1868) LR 3 HL 330

be liable for all the direct consequences of its escape, even if he has not been found guilty of negligence.

The Rights of Consumers Under the Nigerian Law Regarding Consumer Protection

- (i) right to be provided with product information in plain and understandable language.⁵
- (ii) display of goods and services for sale with clear and adequate pricing information for consumers⁶
- (iii) right to product labelling and trade description⁷
- (iv) disclosure of re-conditioned or second-hand goods⁸
- (v) unless impracticable, the seller shall provide a written record of each transaction to any consumer purchasing goods or services. This record must include the seller's details, business information, the unit and quantity of goods or services supplied, their prices and any applicable taxes⁹
- (vi) right to select suppliers¹⁰
- (vii) right to cancel advance reservation, booking or order for goods or services¹¹
- (viii) right to choose or examine goods¹²
- (ix) right to return unsafe or defective goods for a refund of full consideration¹³
- (x) right to returns goods for a refund of full consideration if the supplier delivers products intended for a particular purpose communicated by the consumer and within a reasonable time, the goods are found unsuitable for that purpose¹⁴
- (xi) right to return goods for a full refund if consumer was unable to examine the goods before delivery and within a reasonable time after delivery, reject them because the goods do not match the description, sample or expected quality as contemplated in the sales agreement¹⁵
- (xii) Right to fair dealings¹⁶

⁵ Section 114 of the Federal Competition and Consumer Protection Commission Act, 2018

⁶ Section 115 of the Federal Competition and Consumer Protection Commission Act, 2018

⁷ Section 116 of the Federal Competition and Consumer Protection Commission Act, 2018

⁸ Section 117 of the Federal Competition and Consumer Protection Commission Act, 2018

⁹ Section 118 of the Federal Competition and Consumer Protection Commission Act, 2018

¹⁰ Section 119 of the Federal Competition and Consumer Protection Commission Act, 2018

¹¹ Section 120 of the Federal Competition and Consumer Protection Commission Act, 2018

¹² Section 121 of the Federal Competition and Consumer Protection Commission Act, 2018

¹³ Section 122 of the Federal Competition and Consumer Protection Commission Act, 2018

¹⁴ Section 122(a) of the Federal Competition and Consumer Protection Commission Act, 2018

¹⁵ Section 122(b) of the Federal Competition and Consumer Protection Commission Act, 2018

¹⁶ Section 124 of the Federal Competition and Consumer Protection Commission Act, 2018

The Remedies Available to Consumers in Product Liability Claims

The remedies available to a consumer in a claim of product liability are-

- (i) Damages- specific or general damages or both can be claimed simultaneously.
- (ii) Injunction

Defences are Available to Manufacturers in Product Liability Claims

Manufacturers involved in product liability lawsuits frequently use a range of defences to either avoid liability or reduce possible exposure to damages. These defences are grounded in various principles and factors that can influence their validity and effectiveness in court.

- (i) contributory negligence- this occurs when the plaintiff fails to take reasonable precautions for their own safety or to protect the property insured under the policy. Contributory negligence can prevent or reduce a plaintiff's compensation if their actions contributed to the likelihood of the occurrence of the accident. Defendants often raise this as a defence, as compensation is adjusted based on the plaintiff's degree of fault or the percentage of their contributory negligence.
- (ii) volenti non fit injuria¹⁷- this is a Latin maxim that means "to a willing person, injury is not done". This theory presupposes that, a person cannot initiate an action for enforcement of product liability claim against another party if he knowingly and willingly placed himself in a situation where harm could occur and is aware that some degree of injury would occur. This is voluntary assumption of risk. The injured party is seen to have voluntarily consented to the risks and as well waived any possible claim for damages arising therefrom.
- (iii) misuse of product – the defendant may present evidence demonstrating that the plaintiff misused the product, leading to the damage. While the defendant may acknowledge that the injury was caused by their product, the defendant could argue that the plaintiff's improper use was the direct cause of the injury, and therefore, they are not liable.
- (iv) lack of causation- The claimant must demonstrate a direct causal link between the product defect and the injury sustained. This involves not just showing that the product was defective, but that this defect was the proximate cause of the injury. Without clear causation, even the most obvious product defects may not lead to a successful claim. It's a nuanced process that often requires expert testimony to articulate how the defect led to the injury.

¹⁷ Common law doctrine which states that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party.

- (v) comparative negligence- this implies that liability is distributed between the plaintiff and the defendant based on their respective degrees of fault. This means that both parties' actions are evaluated, and compensation is adjusted according to the percentage of responsibility that each bear for the incident.

Conclusion

Product liability presents a complex but essential balance between protecting consumers interest and safeguarding manufacturers. While consumers have the right to seek redress for defective or harmful products, manufacturers are equally entitled to defend themselves based on various legal principles. As Nigeria's market continues to evolve, it remains important to uphold high standards in fostering consumer trust and accountability in the production and distribution chain. The manufacturers and consumers must navigate their respective rights and obligations to ensure a fair, just and safe commercial environment.

Please note that the foregoing does not in any way constitute legal advice. Please kindly contact the key persons for any legal advice on the subject matter