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PRODUCT LIABILITY LAW IN EGYPT --

AN OVERVIEW OF SOME CIVIL AND COMMERCIAL CODE RULES

by

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Egyptian law governing "product liability" has traditionally been found in general Civil Code principles on contract or tort (wrongful act; in Arabic: العمل غير المشروع). More recently, the Egyptian legislature enacted a new Commercial Code, including some significant additional rules on product liability.

The Egyptian legal system adjudicates many so-called product liability lawsuits each year. However, experience suggests that such lawsuits do not occur with the same relative frequency as found in the U.S. legal system.

Of course, there are fundamental differences between the U.S. and Egyptian legal systems. The Egyptian legal system (including its judicial structure and procedures, as well as its substantive laws) is largely a civil law system, along the lines of European continental civil law systems. Product liability lawsuits brought before the Egyptian courts involve civil law concepts of contractual and tort liability, with the judge determining both questions of law and assessment of fact -- juries are not a feature of the Egyptian judicial system. Similarly, the U.S. legal concept of punitive damages (*i.e.*, awards that exceed a private party's actual damages suffered) does not exist in Egypt, and class action

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lawsuits are not a prominent feature of the Egyptian judicial system.

1. Egyptian Civil Code

The Egyptian Civil Code discusses various sources of obligations, the most important of which for present purposes are contract and tort. The applicable Egyptian legal provisions are quite similar to those prevailing in most European civil law jurisdictions. In general, a claim for compensation under the Egyptian Civil Code, unlike the law in some other Arab jurisdictions, must be based on either contractual or tort liability. In other words, a plaintiff may not base its claim against a defendant on a combination of the two types of liability. Where a contract exists, a contractual party seeking compensation for harm suffered generally must proceed under contract principles.

(a) Contractual Liability

In the case of harm suffered by a purchaser of a product, the seller's liability would be based on contract. Under Egyptian law, the seller of a product implicitly warrants that it is free from any defect (in Arabic: عيب).

Article 447 of the Egyptian Civil Code contains some general rules as to a seller's liability to a purchaser:

- A seller is liable to a purchaser if, at the time of delivery, the relevant product does not possess those qualities that the seller guaranteed, or if the product has a defect(s) that diminishes its value or usefulness for the purpose intended, as indicated in the contract or from the nature or destined use of that product.
- The seller is liable for harm caused by the defect even if the seller was unaware of such defect.
- However, the seller is not liable for any defect of which the purchaser was aware at the time of the sale, or for any defect that the purchaser could have discovered by examining the product with the care of a reasonable person. As an exception to this general rule, a seller would be liable to the purchaser if the seller had assured the purchaser that the product was free of any defect, or if the seller fraudulently concealed such defect.

Despite such generally applicable rules on seller liability, the Egyptian Civil Code allows contractual parties relatively broad freedom to negotiate their respective obligations and liabilities, through specific contractual provisions on warranty, indemnification and waiver. For example, Article 453 of the Egyptian Civil Code states that the parties to a contract may agree to increase, decrease or eliminate the seller's warranty, again provided that the seller has not fraudulently concealed defects from the purchaser. Along these same lines, general contract rules in the Egyptian Civil Code allow parties to agree that the obligor be discharged from all liability for its failure to perform contractual obligations, with the exception of liability arising from the obligor's fraud or gross negligence (gross error; in Arabic: خطأ جسيماً).

(b) Tort Liability

Absent a contractual relationship between a manufacturer and the purchaser of a defective product, the manufacturer's liability to the purchaser would be based on tort, *i.e.*, liability for damages and injuries arising out of non-contractual obligations.

According to Article 163 of the Egyptian Civil Code, a person committing any fault (or error; in Arabic: خطأ), causing harm to another, is obliged to compensate for the damages suffered. Thus, three elements must be present for tort liability to arise: (i) a fault or error (which may be either an act or a failure to act); (ii) damage to another; and (iii) a casual connection between the fault and damage.

The Egyptian Civil Code does not permit parties to disclaim liability for tortious acts, unlike the case with contractual liability. Article 217(3) of the Egyptian Civil Code provides that "any clause discharging a person from responsibility for wrongful acts [torts] is void". Nonetheless, Egyptian tort principles favorable to a defendant -- such as contributory fault, intervening cause, and necessity -- may help to reduce the number of product liability lawsuits that are actually initiated in Egypt.

(c) Damages

Article 221 of the Egyptian Civil Code contains some general principles for quantifying damages resulting from breach of an obligation, whether arising under contract or tort. (The Civil Code often refers to the party breaching its obligation as the 'debtor', and the party suffering harm from that breach as the 'creditor'.)

- The judge will determine the amount of damages, if it has not been established within the parties' contract (e.g., a liquidated damages clause) or by law.
- The amount of damages shall include losses suffered by the creditor as well as lost profits, provided such are the normal result of the debtor's failure to perform its obligation (or its delay in performing). For these purposes, such losses shall be considered to be a 'normal result' if the creditor is not able to avoid those losses despite making reasonable efforts.
- If the relevant obligation arises from contract (rather than tort) principles, then a debtor will not be liable for damages greater than what could have been normally foreseen at the time of entering into the contract -- although this limitation does not apply if the debtor committed fraud or gross negligence.

Egyptian Civil Code liability provisions do not explicitly use the term "consequential" damages. In Egypt, a person generally is not liable for indirect damages. A person may be liable for direct damages, including both "material damage" (in Arabic: الضرر المادي) and "moral damage" (in Arabic: الضرر الادبي او معنوي). Contractual liability includes those damages which are both direct and foreseeable, i.e., the "natural result" of a contractual breach. Tort liability includes all direct damages, i.e., whether foreseeable or unforeseeable. Egyptian jurists have summarized these rules in the following examples:

- **Direct/Indirect.** If a lessor fails to fulfill the provisions of a lease and the lessee is forced to move its business to other premises, the cost of the move (including increased rent at the new premises) would be direct damages arising from the contractual breach. However, if the new premises contain certain harmful bacteria which cause the lessee's employees to become ill, this harm would be indirect damages for which the lessor would not be liable under either contract or tort principles.
- **Foreseeability.** A bus company can foresee that a passenger will carry luggage containing articles of more or less considerable value (as opposed to items of quite exceptional value). Consequently, if the bus company misplaces a passenger's luggage, it will be liable for such damages. Compare the situation where a passenger is traveling to a destination in order to participate in a special event, such

as a jockey at a horse race, a student at an important university exam, or a businessman at an important contract negotiation. If the bus arrived late at the destination, the passenger normally cannot recover the damages suffered by not participating in the event, unless circumstances indicate that the bus company foresaw the special risk which it was assuming.

- **Loss/Profit.** If a singer breaks his/her contract with a theater owner, the latter can claim expenses incurred in preparing for the performance, advertising, set designs and the like, as well as for the loss of profits which the theater owner would have derived from the concert. In addition to these material damages, a court may consider whether the theater owner also suffered moral damages (e.g., loss of reputation with the public) due to the singer's breach of contract.

- **Mitigation.** If a farmer hires a moving company to transport a broken piece of equipment to be repaired, but the equipment is lost by the moving company, the farmer cannot wait for months to pass and then claim losses for being without the equipment for an entire season. Rather, when the farmer learns that the equipment is lost, he should use his best efforts to obtain replacement equipment.

The Egyptian Civil Code also contains some other rules on damages that apply specially to either contractual liability or tortious liability, but not both. For example, contractual parties may agree in advance as to "liquidated damages" owed in the event of contractual breach. Articles 224 and 225 of the Egyptian Civil Code contain three important general principles:

- The liquidated amount is not owed if the debtor proves that the creditor did not suffer any damage;
- The liquidated amount may be reduced if the debtor proves that the parties' estimation was excessive, or if the debtor has partly performed the contractual obligation; and
- The creditor is not entitled to claim more than the liquidated damages, even if harmed in excess of the liquidated amount, unless the debtor has committed fraud or gross error.

(d) Wrongful Death

Unlike some other Arab civil codes (such as in Kuwait and the United Arab Emirates), the Egyptian Civil Code does not contain special statutory rules applicable solely to damages from wrongful death. By way of contrast, for example, the UAE Civil Code reflects principles of Islamic law (Shari'ah) on this issue: a person committing a harmful act causing death is obliged to pay diyya (sometimes translated as "blood money"; in Arabic, *الدية*). Article 299 of the UAE Civil Code is drafted to reflect these Islamic law principles.

In light of various (sometimes divergent) rules as to the amount of diyya paid under traditional Islamic law, the UAE Federal government has fixed the amount of diyya by statute. The currently applicable law is UAE Federal Law No. 17 (1991) as amended, entitled "Setting the Amount of Legal Diyya to be Paid to Victims of Wrongful Death." Article 1 of Law No. 17 (as amended in 2003) fixes diyya at UAE Dirhams (Dhs.) 200,000 (or approximately U.S.\$54,000, as UAE Dhs. 3.67 approximately equals US\$1.00) -- applicable in all courts in the UAE, and paid to the victim of a wrongful death.

2. Egyptian Commercial Code

The new Egyptian Commercial Code was enacted in 1999, replacing a law that had been in effect since 1883. The Commercial Code received much publicity for introducing new rules on technology transfer, protections to local commercial agencies, and for re-tooling applicable regulations on various banking matters (most notably, checks). However, less attention was given to Article 67 of the Commercial Code, a six-paragraph provision containing some new product liability rules.

The first paragraph of Article 67 reflects the general rule that both the producer and the distributor of a product will be liable to anyone suffering harm caused by the product, if the harmed person proves such harm resulted from a defect in the product.

The second paragraph of Article 67 specifies when a product will be deemed 'defective': if sufficient precautions were not taken in product design, manufacture, assembly, processing for consumption, storage, packaging, method of display or use, so as to prevent the occurrence of harm or to warn against the possibility of such harm.

The third paragraph of Article 67 defines what is meant by the expressions 'producer' and 'distributor' for these purposes. A

producer is the manufacturer of a product prepared in its final form for introduction into the stream of commerce -- even if some of the components used in assembly were manufactured by others. A distributor includes not only the commercial importer, but also the wholesale merchant distributing products in the Egyptian market through retailers. A retail merchant may also be deemed a distributor for this purpose, if that merchant was aware (or was under some duty to be aware) of the defect in the product.

According to the fourth paragraph of Article 67, a claimant may bring a lawsuit against the producer or the distributor or both, without limiting the liability of either (what a U.S. lawyer might call "joint and several liability"). Moreover, if the business center of the producer or distributor is outside Egypt, a claimant may bring suit before the Egyptian court within the circuit in which lies a branch, factory, agency, or office of the defendant(s).

Under paragraph five of Article 67, a lawsuit will be time barred (or prescribed; in Arabic: **تقادم**) after the lapse of three years from the date the harmed person learns of the harm and the person responsible therefor. In all cases, this right to sue lapses after fifteen years from the day the wrongful act took place. (However, such Commercial Code time bars should be carefully considered and compared to other statutory limitation periods found in Egyptian law. For example, in the case of sales contracts under Article 452 of the Egyptian Civil Code, a purchaser's action on a warranty is time barred after one year from the delivery date of the product sold, even if the purchaser only later discovers the defect, unless the purchaser agrees to be bound to a longer period of warranty. (The seller cannot avail itself of this one year limitation period if the purchaser proves that the seller fraudulently concealed the defect.)

Finally, the sixth paragraph of Article 67 considers null and void any contractual condition, provision or the like that seeks to excuse the producer or distributor from liability, or to shorten the above-mentioned time bar (statute of limitations).

3. Some Practical Considerations

In general, the Egyptian court system is notoriously inefficient, which probably dissuades many potential Egyptian claimants from initiating product liability lawsuits, and increases the likelihood of negotiated settlements. Moreover, experience suggests that potential Egyptian claimants are generally less likely to sue foreign manufacturers, given the substantial legal costs that may arise when seeking to enforce an Egyptian court judgement overseas.

Finally, and at the risk of overstatement, experience suggests that damage awards in Egyptian product liability lawsuits are generally much smaller than in U.S. product liability lawsuits. Some of the possible reasons have been previously mentioned -- for example, no punitive damage awards to private litigants in Egypt, and no jury trials. Rather, the amount of compensation is determined by the Egyptian courts (and experts employed within the judicial system). As a practical matter, the value of damaged property, lost wages/earning capacity, and medical/hospital costs in many Egyptian product liability lawsuits would be a fraction of the value in comparable lawsuits within the U.S. legal system -- reflecting the different economic conditions that currently exist in these two countries.

HLStovall/ah
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EGYPTIAN COMMERCIAL CODE

ARTICLE 67*

1. The producer and the distributor of a product shall be liable towards anyone who suffers any bodily or material harm caused by a product, if the harmed person proves such harm resulted from a defect in the product.

2. Specifically, the product shall be deemed defective if sufficient precautions were not taken in its design, manufacture, assembly, processing for consumption, storage, packaging, method of display or use, to prevent the occurrence of harm or to warn against the possibility of such harm.

3. In applying this Article:

(a) the expression "producer" shall mean the manufacturer of the product who prepared it in the final form in which it was offered into commerce, whether all the parts used in assembly of the product were manufactured by the producer or another party. The expression "producer" shall not apply to a subordinate [in Arabic, تابعي] of the producer.

(b) the expression "distributor" shall mean the importer of the product for trade, and the wholesale merchant who undertakes its distribution in the local market through retailers even if, at the same time, the wholesaler itself undertakes retail sales. The expression shall also include the retail merchant if it was aware, or if it was obliged to be aware, when selling the product of the defect in it. The standard for such determination is what an ordinary merchant selling the same kind of product would do in similar circumstances.

4. The claimant may bring a lawsuit against the producer or the distributor or both of them together, without joint liability between the latter two. If the business center of the producer or distributor is outside Egypt, trial is permitted before the Egyptian court within the circuit in which lies a branch, factory, agency, or office of [the defendant].

5. The lawsuit shall be prescribed after the lapse of three years from the date the harmed person learns of the harm and the person responsible therefor. This [right to sue] shall lapse after fifteen years from the day the wrongful act took place.

6. All conditions or statements intended to excuse the producer or distributor from liability, or limit or reduce the period for prescription, shall be null and void.

*Unofficial translation, prepared by Howard L. Stovall, from the original Arabic text.