

## Great Expectations: The Past, Present & Future of Product Liability Laws in Korea

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### Abstract

*The Product Liability Act (hereinafter, the "PL" Act) was entered into force in Korea on July 1, 2002. The purpose of the PL Act is to protect consumers against damages caused by defective products, and to contribute to the safety of citizens and the sound development of the national economy by regulating the liability of manufacturers for damages caused by the defective products.*

*This paper reviews past relevant tort case decisions in order to predict the future development of product liability theory by the Korean courts. In reviewing decisions made before the enactment of the PL Act, it was found that the courts had applied the negligence principle instead of the concept of defects, which means the plaintiff had the 'burden of proof,' the obligation to prove the manufacturer's negligence. Another tendency held by the court was to deny liability for damages if no causation existed. As the cases show, negligence is difficult to prove, as most laypeople do not have the necessary expertise regarding the intricacies of the products, making it disadvantageous for the plaintiff.*

*The courts, even before the enactment of the PL Act, recognized the need to improve laws related to torts by setting case precedents that gave remedy to the victims. Analysis of these milestone cases can be divided into three categories. First, the plaintiff would no longer bear the burden of proof while the defendant would be required to rebut presumed negligence, thereby strengthening consumer protection. Second, information representation could now be a cause for negligence, thus broadening the basis for the plaintiff's claim of negligence. Third, through reasoning by torts, the concept of defect was introduced by the Korean Supreme Court.*

*The PL Act grants the following benefits to society. First, consumers are given the right to claim against manufacturers for losses caused by defective products. Second, comparing the economic efficiency of negligence rule with strict liability rule, the PL Act has proven to be more efficient because the manufacturer is imposed with a higher standard of due care, giving the manufacturer a voluntary incentive to reduce risks. Third, the legal scheme of product liability is to shift the risk or harm incurred to*

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*the unfortunate consumer to the manufacturer.*

*The precedents set by the legal structure of other countries should also be considered, in which death and personal injury are covered by product liability while damages to property or economic loss are covered under warranties. Therefore, we should take into account the fact that the product liability cannot be expanded to include property losses when basing suits on product liability laws.*

## I. Introduction

An orphan boy lives a humble life with his sister and her husband as a blacksmith apprentice. Looked down by the girl he reveres, the orphan boy becomes ashamed of his low-class background. When the boy receives riches from a mysterious benefactor, he snobbishly abandons his family and friends for London society and 'great expectations'. This is how the story of Charles Dickens' "Great Expectations" begins. Reading this story, the hopeful atmosphere created by the recent enactment of the PL Act was brought to mind. Filled with great expectations over anticipated compensation for damages, society has come to see the objectives of the PL Act as a 'cure-all' medicine.

A civic movement group has recently declared that it will file a lawsuit against the manufacturer of the computer operating system over the computer virus attack that crippled the nation's internet service in January, 2003. Basing the suit on product liability laws, the group argued that the company should have done more to protect its customers from a threat which it was aware of. However, since there is no court precedence based on the PL Act in similar circumstances, there is a need to better understand the Korean court system, as the outcome may not meet people's expectations.

Hence, this paper will review past relevant tort case decisions in order to predict the development of product liability theory by the Korean courts, including the outcome of the lawsuit against the above computer O/S manufacturer.

The PL Act was entered into force in Korea on July 1, 2002. The purpose of the PL Act is to protect consumers against damages caused by defective products, and to contribute to the safety of citizens and the sound development of the national economy by regulating the liability of manufacturers for damages caused by the defective products. For this reason, the PL Act grants consumers the right to claim against manufacturers for losses caused by defective products.

## II. Korean Supreme Court Case Review

### A. *Traditional Tort Theory Cases*

In reviewing decisions made before the enactment of the PL Act, it was found that the courts had applied the negligence principle instead of the concept of defects, which

means the plaintiff had the ‘burden of proof,’ the obligation to prove the manufacturer’s negligence.

In a case reviewed by the Korean Supreme Court, a patient received a blood transfusion during surgery and went into shock as a result of poisonous material<sup>1)</sup>. The patient died thereafter. Subsequent investigation showed traces of bacillus bacteria in the blood bottle, and a legal action was brought against the company that manufactured the blood bottle. The plaintiff lost. Although the bottle was contaminated, the court did not find the defendant negligent.

Similarly, the Seoul Appellate Court reviewed a case in which the plaintiff suffered injuries in a traffic accident and was admitted to a hospital that gave him ‘Solumedroll’ medication<sup>2)</sup>. The plaintiff suffered side effects from the medication and sued the pharmaceutical company for damages based on torts theory. The court did not find the defendant negligent as the medicine had undergone safety tests before putting it out on the market and had even passed numerous safety tests after its market launch.

Another tendency of the court was to deny liability for damages if no causation existed.

In a Supreme Court case decided in 1983, the plaintiff was a poultry farmer who bought feedstuff manufactured by the defendant<sup>3)</sup>. After consuming the feedstuff, which contained calcium and protein, the chickens suffered from toxic conditions and died as a result. Investigation into the case found excessive amounts of acid in the urine of the chickens, commonly a symptom of excessive amounts of calcium and protein in the system. Nonetheless, the court did not hold the defendant liable for damages because the court found that there was no causation between the feedstuff containing calcium and protein and the toxic conditions suffered by the chickens.

As the above cases show, negligence is difficult to prove, as most laypeople do not have the necessary expertise regarding the intricacies of the products, making it disadvantageous for the plaintiff.

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1) Supreme Court 1976.09.14 (case no. 76-da1259)

2) Seoul Appellate Court 1992.05.12 (case no. 91-na55669)

3) Supreme Court 1983.05.23 (case no. 82-daka924)

### *B. Court's Attempts Before the Enactment of PL Act*

The courts, even before the enactment of the PL Act, recognized the need to improve laws related to torts by setting case precedents that gave remedy to the victims. The introduction of the PL Act is a result of such precedents. The courts initiated improvement efforts with the following cases, which can be seen as the primary instances of implicit application of the product liability principles. Analysis of these milestone cases can be divided into three categories.

First, as the following case shows, the plaintiff did not bear the burden of proof while the defendant was required to rebut presumed negligence, thereby strengthening consumer protection.

In 1977, the Supreme Court reviewed a case in which the plaintiff bought feedstuff manufactured by the defendant for his poultry<sup>4)</sup>. The chickens' feathers shed after several days and their stomachs ballooned. As the rate of egg production decreased to below 30%, keeping the chickens no longer economically viable, the plaintiff slaughtered the chickens as a result. Although it was not proven by direct evidence what kind of impurities were mixed into the fodder, it was presumed that the defendant was negligent by the circumstantial and indirect evidence. As a result, the defendant, as a tortfeasor, was held liable for damages.

Second, the below case illustrates an instance in which information representation could be a cause for negligence, thus broadening the basis for the plaintiff's claim of negligence.

A patient received anesthesia during surgery. However, instead of oxygen, he received nitrogen because the gas supply company (defendant) had mistakenly supplied the hospital with a nitrogen tank, which could easily be mistaken for oxygen. The patient passed away as a result and the family members sued both the hospital and the gas supply company. The Supreme Court found the hospital and gas supply company jointly and severally liable<sup>5)</sup>. The court reasoned that the defendant should have made the nitrogen tank, which is rarely used, very distinct from that of an oxygen tank by using a different color and noticeable letterings. The manufacturer also had duty of due care to provide clear product information, especially regarding safety and

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4) Supreme Court 1977.01.25 (case no. 75-da2092)

5) Supreme Court 1979.03.27 (case no. 78-da2221)

product instructions. For that reason, even if negligence was evident only in representation of product information, the court found that the overall product safety was affected.

The following case represents a further broadening of negligence based product liability lawsuit. In this case, the manufacturer was held liable because the lack of safety caused by the manufacturing process of the product could be a cause for negligence even though the design had been approved as safe and reasonable by government standards.

A six-year old child was playing with a syringe intended for educational purposes when, finding the needle hole blocked, the child tried to compress the air from the syringe. The sudden release of air pressure caused the needle to pop out, hitting the child in the left eye, and resulted in blindness of that eye. The Supreme Court held the manufacturer liable as the materials used to manufacture the syringe were found to be of inferior quality, and the needle was found to easily dislodge from the syringe body<sup>6)</sup>.

Similarly, the Daejon District Court reviewed a case in which the plaintiff placed a bottle of tonic water on the top ledge of the refrigerator's drink shelf when suddenly, the ledge was separated from the refrigerator door, causing the bottle to fall and break<sup>7)</sup>. A piece of the broken bottle got into the plaintiff's eye, and the plaintiff sued. The court found the manufacturer liable as the company was negligent in the manufacturing process and should have foreseen that the separation of the ledge from the refrigerator door could result in dangerous consequences.

Third, through reasoning by torts, the concept of defect was introduced by the Supreme Court in reviewing the following case<sup>8)</sup>. A mining company installed a current transformer, manufactured by the defendant, in the excavation area. Due to an abnormally high voltage, the transformer overheated and exploded. One person died and another suffered from severe burns. The court found a design defect in the insulator, which separates the heat from the transformer, and found the defendant liable for the damages incurred. Hence, even though the product in question was seemingly acceptable, the court, in this case, had measured the concept of defects by standards of safety and durability.

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6) Supreme Court 1979.12.26 (case no. 79-da1772)

7) Daejon District Court 1987.09.17 (case no. 85-gahap828)

8) Supreme Court 1992.11.24 (case no. 92-da18139)

The following landmark case brought together the principles of product liability by applying “presumed negligence,” which gave the defendant the burden of rebutting presumed negligence by proving that duty of care was made or that there was another cause besides the product itself existed that caused the damage.

The plaintiff was watching television when suddenly, the television set combusted, rapidly spreading fire throughout the whole household and reducing everything to ashes. Investigating the cause of the fire, it was revealed that the plaintiff had exceeded the 5-year durable period of the television set, manufactured by the defendant, by one year. The police presumed the probable cause of fire as a short-circuited electron gun within the set. The Supreme Court held the manufacturer responsible for the damages caused by the fire<sup>9)</sup>. The court, in its decision, cited that since the explosion occurred during ordinary use of the product, “reasonable safety” standard was lacking in the television set, resulting in a product “dangerous” to the consumer. In addition, it was established that the definition of a product’s durable period only denotes the minimum period during which function must transpire normally. Hence, the five-year durable period of the television set does not imply a statute of limitation and normal use of the product can be expected even after five years. Furthermore, the television set manufactured by the defendant] carried no warning stating that exceeding the durable period could result in explosion of the product.

According to tort theory, negligence must first be established. Second, damage must have occurred. Third, causation must exist between negligence and damage. Analysis of this case reveals a change in traditional tort theory in order to allocate risk and damage in a fair and equitable manner according to the principles of the law. The Supreme Court found that proving negligence was nearly impossible for a layperson due to the high level of technological expertise required.

### **III. Economic Analysis of PL Act**

With the enactment of the PL Act, the term “defect” came to signify the shortcomings of a product in manufacturing, design or representation as measured by standards of safety and durability. Some people may argue that decisions made prior to

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9) Supreme Court 2000.02.05 (case no. 98-da15934)

the enactment of the PL Act in Korea were based on damages to property and such precedents should be taken into consideration in today's product liability cases. However, as the above cases show, the manufacturers tend to be held liable for only death and personal injuries. Leading cases in the U.S. like *East River Steamship Corp. v. Transamerica Delaval Inc.*<sup>10)</sup> also adhere to such interpretation of product liability laws, with economic loss traditionally existing outside the realm of product liability. Likewise, although the PL Act does not restrict damages to any extent, the legal regime of product liability expands manufacturer's liability only to death and personal injury while damages to property is covered under warranty liabilities. Therefore, damage cases arising out of the above internet service failure in Korea should take into consideration the fact that economic loss is outside the realm of product liability and thus, is basically beyond the scope of compensation under the product liability.

Comparing the economic efficiency of negligence rule with strict liability rule, the latter has proven to be more efficient because the manufacturer is imposed with a higher standard of due care, giving the manufacturer a voluntary incentive to reduce risks. Thus, accidents are mitigated in the long run<sup>11)</sup>. However, if precaution is bilateral, that is, if both parties take precautionary action to reduce the probability and severity of an accident, then damages must be reduced in proportion to comparative negligence. Only then do the consumers have incentive to take precautions against using products and avoid consumer's moral hazard.

The legal scheme of product liability is to shift the risk or harm incurred to the unfortunate consumer to the manufacturer. In terms of economic prospects, the manufacturer's burden is shifted back to the consumer through price increase. However, this is deemed acceptable as the burden is distributed equally to all consumers of the product. Such 'socio-economic contract' or 'social insurance' can be seen as an evolutionary form of contract between the manufacturer and the consumer. In conclusion, the courts' rulings based on traditional torts theory in past damage cases were a reflection of their passive approach. Using an economic understanding of product liability theory, the courts should apply 'judicial activism' in deciding future product liability cases.

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10) 106 S.Ct. 2295, 1986

11) Kim, Eunja. *Economic Effects of Product Liability*. Seoul: Korea Economic Research Institute, 1997, p. 62.



#### **IV. Conclusion**

Going back to the story in the introduction, because the orphan boy's dreams of grandeur were built on materialism, he must first endure misfortune and suffering. As pain teaches the boy the meaning of life, the young boy matures into a man with depth of character who works hard to earn an honest living and eventually succeeds in life. The story teaches us that expectations are not fulfilled by outside forces but from within oneself. Likewise, the 'great expectation' for product liability is not simply fulfilled through the external enactment of a law, but must also be achieved through the understanding and effort within society.

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