Tutorial 3: Liability for Defective Products

Stephen O'Halloran BCL, LLM(Commercial)

Materials:

- Liability for Defective Products Act, 1991
- *Commission v. UK* C-300/95

Answering a question on Products Liability:

Read the instructions very carefully. In most problem questions, you are specifically asked to answer the question using only the Defective Products Act 1991. If there are no specific instructions, then I would follow the same approach as with Animals Liability questions. Start with the strict liability principles, and if you have time at the end, deal with the negligence principles. I would structure a problem question as follows:

- Concentrate on the Defective Products Act 1991 and the Directive in the Schedule to the Act.
- Know how the sections work, any case law and practice on past problem and essay questions.
- Remember that the easiest way to find the issues in a problem question is to look at the basis of liability e.g. four elements in Rylands v Fletcher. In this case, it is section 2(1).
- Therefore, in a question, you are looking for facts that relate to the following elements of liability:

  (1) Who is the producer and why? (Section 2(2) + 2(3)) The Irish Act only applies to companies that have their businesses in Ireland. There are special directives and principles of private international law (Conflicts of Law) which dictate when a person can bring a case against a foreign company in Irish courts. For simplicity, you will always be trying to sue the Irish company in a problem question.

  (2) Has the person/s suffered actionable damage? Is psychiatric damage recoverable and why or why not? Is economic loss recoverable? Why? When can you recover for property damage?(Section 1 definition of 'damage', 'personal injury' and 'injured person'; Directive Art 9 last sentence and preamble 'shall not prejudice national law relating to recovery of non-material damage'.)

  (3) Causation. Who is the onus of proof on? Section 4

  (4) Defect? What is a defect? Section 5, any commentary on the section?

  (5) Definition of product. Section 2(2).

  (6) Are we within the time limits as imposed by section 7?

  (7) Do we exceed the limitation of damage in section 3 (show that you know how this works).

(8) Does the producer have any defences to the action? Do you think these defences are justified or have they gone too far?

DEFECTIVE PRODUCTS ACT, 1991

The following is an annotated version of the statute in tutorials materials. Please refer to McMahon and Binchy for a much more detailed discussion of the Act. **I would strongly recommend reading McMahon and Binchy**.

The developments in products liability have their origins in the thalidomide tragedy, which generated disquiet about tort's inability to compensate those suffering personal injuries as a result of the drug. The children born with the deformities had no claim in contract, therefore they had to rely on the tort of negligence. However, there were fundamental problems with this basis of liability. First, there were considerable difficulties in proving breach of duty where injury was attributable to a products design. Proving negligence in design is a very costly exercise in pharmaceuticals litigation. In the case of thalidomide, medical and scientific opinion was sharply divided on the state of scientific and medical knowledge. Testing on embryos was not part of the screening process in 1958. The plaintiffs in England failed to establish a case in negligence: *S v Distillers (Biochemicals) Ltd* [1970] 1 WLR 114.

The adoption of the strict liability scheme for defective products by the European Community Product Liability Directive (adopted into Irish Law by the Defective Products Act 1991) changed the basis on which actions for compensation for damage caused by defective products had been brought for over fifty years. The change was from a system which required proof of negligence (*Donoghue v Stevenson*) to one in which liability was dependent on proving that the defective product had cause damage. **Strict liability** under the 1991 Act is the primary cause of action in product liability litigation in Ireland. Despite the establishment of strict liability as the primary cause of action, the Act does not affect existing contractual or tortuous liability systems in Member States (Article 13 of the Directive). Although in practice claimants are more likely to utilize the Act, the common law still remains important.

Developments since the Products Liability Directive:

The initial reviews began with a study commissioned by the European Commission on the application of the Product Liability Directive (Hodges *Report for the Commission of the European Communities on the Application of Directive 85/374/EEC on the Liability for Defective Products*). This report concluded that the Directive had 'undoubtedly made it easier for consumers to succeed in a claim for damage caused by a defective product.' The first Commission report on the implementation of the Directive in 1995 ([1998] OJ C337/54, COM(97)478 final) noted that there was very limited jurisprudence in all Member States and recommended the removal of the exclusion of primary agricultural products. In the aftermath of the BSE crisis, there was an argument that including primary agricultural products within the scope of the Directive would be an important

step towards improving consumer protection under Community law and would help win back consumer confidence in agricultural products, which had seriously waned in light of the BSE crisis. This resulted in an amendment of the Directive in 1999 which removed the primary agricultural product exclusion: Dir 1999/34/EC of European Parliament and of the Council of 10 May 1999 [1999] OJ L141/20.

Section 1: Definitions

Section 1 of most Irish statutes contains definitions of words used in other sections of the statute. There are a number of very important definitions in Section 1 that are relevant when answering a problem question on Products Liability:

> ***Damage:*** The Act says that damage includes death, or **personal injury.** It also includes damage to property, other than the product, provided that the property was something that is normally used by a private person, and that it was in fact used by the injured person for private use.
>
> **Injured Person:** This is a person who has suffered damage cause wholly or partly by a defect in the product
>
> **Personal Injury:** Includes any disease and any impairment of a person's physical or mental condition. Article 9 of the Directive states that: 'This Article shall be without prejudice to national provisions relating to non-material damage.' The preamble says that 'The Directive shall not prejudice compensation for pain and suffering and other non-material damage payable under the law applicable to the case.'
> It would seem therefore, that recovery for loss of earnings would not be excluded under the Act. See McMahon and Binchy page 1144 for the rules relating to recovery for loss of earnings in tort.
> Although the point is not addressed directly in the Directive, it seems clear in principle that 'impairment of mental condition' includes psychiatric illness, normally called nervous shock in the case law. In negligence, there have been certain restrictions on the recoverability of nervous shock. Namely, a person can only recover for a recognized psychiatric illness, and mere sorrow, grief, emotional distress, humiliation, anxiety, irrational fears and other types of mental suffering have been excluded. If the section is to be read literally, then it would seem that the restrictions do not apply to products liability cases and that all types of mental suffering, whether a recognized psychiatric illness or not, would be recoverable. Recent Commission documents assume that mental suffering is not at present covered by the Directive. Goldberg suggests that the normal control mechanisms for liability for nervous shock should apply here. Therefore, what is required is a recognized psychiatric illness like Post Traumatic Stress Disorder with attendant symptoms of depression and anxiety or Pathological Grief Disorder. In light of the above, it is clear that a lift manufacturer would not be liable to persons who suffer inconvenience or fear on being trapped in a lift

(*Reilly v Merseyside RHA* [1995] 6 Med LR 246) and a manufacturer of a bathing costume would not be liable to a claimant who, as in one American case, had apparently suffered 'humiliation, mortification and embarrassment' when the costume had allegedly become transparent when wet (*Holden v Kayser Roth Corporation* 255 NE 2d 426 Ill App, 1968). Similarly in another American case it was held that a mother could not recover for anguish and anxiety on seeing her son scalded by a defective shower system (*Ex parte Grand Manor Inc* 778 So 2d 173 Ala 2000).

Product: A product which is intended to come under the act is defined as a moveable, even if it is incorporated into another product or an immoveable. It also includes electricity. The borderline between moveable and immoveables is not always clear. Borderline examples given in the English Law Commission Working Paper on Liability for Defective Products include lifts, cranes and oil rigs. The wording is primarily meant to exclude houses and buildings from the strict liability regime. The European Commission Report, when reviewing the Directive for reform purposes, concluded that it did not seem appropriate to make the Directive apply to real estate property. In many Member States there is specific legislation on liability for buildings, and in others a person seeks compensation through the law of contract. The Directive envisaged producer's liability for defects in products which were mass industrially mass produced, but regarded real estate property as an individual service which require different rules.

Section 2: Basis of Liability and Definition of Producer and Supplier

Section 2(1) provides us with the central tenet of liability under the Act. **This is strict liability.** The Act states that 'the **producer** **shall** be liable in damages in tort for **damage caused** wholly or partly by a **defect** in his **product**'. Damage has been defined in section (1) of the Act, as has product. Producer is defined in Section 2(2) + (3). Causation is defined in Section (4) and defect is defined in Section (5).

Section 2(2) and (3): Liability is imposed on a 'producer'. This section gives us the myriad definitions of the word 'producer'. The legislation's primary focus is ensuring that the consumer is given adequate protection. One of the ways this is done is by casting the net of liability as wide as possible. In a problem question, there may well be more than one person who comes under the definition of 'producer'. If that is the case, then the plaintiff in the problem should be advised to sue all of them. You should then mention that under Section 8, where two or more persons are liable under the Act for the same damage, they will be liable jointly and severally and concurrent wrongdoers, within the meaning of Part III of the Civil Liability Act, 1961.

(a) and (b): Manufacturer or Producer of a Product or Component Part of a Product: In most cases it will b readily apparent whether a person is a manufacturer of a finished product. Take the following example: '**A**' manufactures a defective component part, which is part of a braking system manufactured by '**B**'. This renders the system defective, and the system is then

incorporated into a car manufactured by **'C'**, causing the car to crash. The driver of the car has serious injuries as a result. A, B and C are liable as manufacturers. This is so in the case of B and C even though they have not actively created a defect other than by incorporating the component in their product.

(c): Processors as Producers: Again, this is self explanatory, however, now that primary agricultural products are included in the definition of product, this section will have little relevance.

(d): Products Marketed under Trade or Brand Names: This is an important section which imposes liability on any person who puts their name, trade mark or other distinguishing mark on a product and has held himself out as a producer by doing so. This has its origins in US case law: *Carney v Sears* 309 F 2d 300 (4th Cir, 1962); *Penn v Inferno Manufacturing Corporation* 199 So 2d 210 (La App, 1967); *Forry v Gulf Oil Corporation* 237 A 2d 593 (Pa, 1968).
The theory behind the provision is that the injured person is provided with a readily identifiable defendant in the form of an own-brander or own-labeller. In addition, it encourages such persons to provide information as to the real producer – if only to join them as a co-defendant. It is widely accepted that organizations which hold themselves out as a producer of a product should carry the same responsibility for the accident as if they were the producer (*Pearson Committee Report*, England). Consumers rely on the reputation of such organizations which are often household names and such reliance should be reflected in the responsibility undertaken. Equally, the design and quality standards are almost invariably laid down by the own-brander which often is a much larger corporation than its supplier.
There are two conditions before the section will apply: (i) Person must have put TM, name or other distinguishing mark on product and (ii) by doing so, he must have held himself out to be the producer of the product. The key issue is the second condition. There may be potential problems in determining responsibility between franchisors and franchisees. In the case of a fast food outlet, a franchisee who prepares or heats the food or drinks would be liable as manufacturer and producer under Section 2(2)(a). In *B (A Child) v McDonalds Restaurants Ltd* [2002] EWHC 490, a group of claimants sued under the Act for personal injuries cause by spillage of hot drinks served by McDonalds. The majority of the 1200 McDonald's restaurants in the United Kingdom were owned and operated by McDonalds but some were operated by franchisees. For the purposes of litigation, McDonalds accepted responsibility for the operation of all its restaurants and that in the adding of hot water to coffee grounds and tea bags it was a producer of hot drinks.
The satisfaction of the second condition is invariably a question of degree. By way of contrast, persons who merely endorse or sponsor goods which carry their name would not usually be seen as holding themselves out as producers. In contrast, such endorsements have lead to liability in negligence. In *Hanberry v Hearst Corporation*, a Californian case, the plaintiff had slipped on a vinyl floor when wearing shoes which the defendants had advertised as meeting their 'Good

Housekeeping Consumer Guarantee Seal'. The Court of Appeal for the Fourth District said:

> *One who endorses a product for his own economic gain, and for the purpose of encouraging and inducing the public to buy it, may be liable to a purchaser who, relying on the endorsement, buys the product and is injured because it is defective and not as represented in the endorsement.*

Liability will not be avoided simply because the label attached to the product specifies in small print that it was 'made for' or 'distributed by' the firm in question. In *Smith v Blackwell*, and American case, the defendant wholesalers incurred liability as manufacturers when their name was repeated on the label of a tin of condensed milk some eight times and despite the fact that the label also used the word 'distributors'. The Australian Trade Practices Act 1974 establishes that if someone places their band name on a product they are deemed to be liable as producers in the event of it causing damage, even if there is a label on the product stating that they have not manufactured it.

(e): Importers: The rationale behind this important provision is as follows. First, it allows a potential defendant to be identified within the EC, avoiding the complexities of service outside the jurisdiction and possible conflict of laws issues. Secondly, it ensures that claimants will benefit from the strict liability regime associated with the Directive.
The section only imposes liability where a person has imported a product ***into*** a member state from a place ***outside*** the European Communities. Therefore, importer will be liable if he imports from US, Hong Kong etc but not if he imports from France or Spain etc. The other main limitation on the section is that the importing must be done in the course of business. In areas of doubt, this requirement will be interpreted expansively.
Identifying the first importer into the Community may be as difficult as identifying the foreign manufacturer. This difficulty is eased somewhat, because the supplier of the product is also liable as producer under Section 2(3), so the ultimate burden of identifying the original importer into the Community may fall on him.

Section 2(3): Suppliers: Liability is potentially imposed on all who supply a product. Importantly however, the liability is provisional in the sense that it renders suppliers liable only when they fail to identify a person higher up the chain of liability. The section turns a supplier into a producer when the following conditions are satisfied:

> (i)The producer (someone in section 2(2)) cannot be identified by taking reasonable steps.
> (ii)The injured person requests the supplier to identify someone from the section 2(2) list.

(iii)The request is made within a reasonable time after the damage occurs.
(iv)The supplier fails, within a reasonable time after receiving the request, to comply with it or to identify the producer.

What constitutes 'reasonable time' is something that will be assessed on a case by case basis and will depend on the difficulties involved in getting the relevant information. The time limit requirement, varies between jurisdictions. In Germany, the time limit for communicating the required information is restricted to one month. The same is true for Finland and Sweden. In Italy, the supplier has three months to supply the producer's name and address. In the case of Belgium, UK and Ireland, the time limit is left for the courts to decide.
As to the form of the response, it has been held in a German case from Lübeck that the supplier's response to the details requested must be sufficiently comprehensive to enable the consumer to write to or sue the person identified. In that case, the court held that the supplier of Advent candles had provided a relatively prompt but inaccurate and inadequate response to a request for the name of the manufacturer.

Section 3: Limitation of Damages: There is a minimum threshold before damages will be awarded under the Act. Before a court will be allowed to award damages using the Act, they must exceed £350. You can only claim for the amount which is in excess of this minimum threshold. Therefore, if you had a claim where you suffered £500 worth of damage, then you would be able to claim for £150 in court.

Section 4: Causation: There are three elements that must be proven by a plaintiff: (i) that the plaintiff suffered damage (ii) that the product was defective and (iii) and that there was a causal relationship between the defect and the damage. The controversial element is the third factor. Should it be interpreted as imposing liability however indirect and distant the causal relationship may be? Goldberg suggests that reasonable foreseeability will be the test of remoteness. This is because in contemporary examples of strict liability, like *Rylands v Fletcher*, this is the approach that has been adopted. (*Cambridge Water v Eastern Counties Leather*, foreseeability of damage was a prerequisite of liability according to Lord Goff; followed and applied in *Transco v Stockport*, per Lord Hoffman, Lord Scott and Lord Walker.)

Section 5: Definition of Defect: A product is defective if it fails to provide the safety which a person is entitled to expect, taking all circumstances into account, including (i) presentation of the product (ii) use to which it could reasonably be put and (iii) the time it was put into circulation. A product will not be defective simply because a better product was subsequently put into circulation. The cornerstone of the definition is the '**consumer expectation test'**. The safety of a product, according to the Explanatory Memorandum accompanying the Directive, is judged according to objective criteria on the basis of the circumstances in each individual case. It is irrelevant whether a product is defective in the sense that it cannot be used for its intended purpose. Claims can only be based on a lack of safety under the Act. An inferior quality product is not considered defective for the

purpose of the Directive unless it introduces a risk of injury. The requirement has been heavily criticized because it fails to provide a readily accessible test or objective standard against which a manufacturer or court can measure the safety of a product.
It is safety to which the public at large is entitled to expect, and not an individual consumer's opinion which is relevant. It is therefore an objective test. *A v National Blood Authority* considered this matter, and Burton J made some helpful comments. This case concerned plaintiffs who had contracted hepatitis C from infected blood products in England. The court concluded that the blood products were defective since the public at large was entitled to expect that the blood transferred to them would be free from infection. Burton explained the nature of the test:

> *The question to be resolved is the safety … which persons generally are entitled to expect. The test is not that of an absolute level of safety, nor an absolute liability for any injury caused by the harmful characteristic …the expectation Is that of persons generally, or the public at large … The safety is not what is actually expected by the public at large, but what they are entitled to expect … The common ground is that the question is what the legitimate expectation is of persons generally … The court decides what the public is entitled to expect.*

In *B(A Child) v McDonalds Restaurants Ltd*, this legitimate expectations test was applied by Field J. He held that the hot drinks which McDonalds sold to customers were not defective since persons generally expected that such drinks would be hot and the risks of spilling a hot drink on someone and their being scalded as a result were well known. One of the difficulties of the test is in its application to products which pose a danger only to certain sections of society, like children.

Circumstances taken into account in assessing defectiveness:

(i) **Presentation of a Product:** This category essentially concerns products which are alleged to be defective because they are not accompanied by adequate warnings or instructions for safe use or installation.

(ii) **Reasonable Use:** The use to which a product can reasonably be put will be based on an objective test of reasonableness. It acknowledges that while most products are capable of causing harm if used in an unreasonable way, if they do so, this does no mean that they have failed to achieve the required level of safety. An extreme example is the American lady who is said to have placed here poodle in a microwave oven where it was predictably incinerated. Such a use of the microwave would not lead to liability for the sole reason that it caused damage. The injury resulted from a gross misuse of a product. There are less extreme examples in Europe. In one case from the Netherlands, a District Court rejected a claim that an OB 'comfort mini' tampon was defective because it was possible to insert it into the urethra, as a young girl had done. The Court held that the way in which the tampon had been used could not reasonably have been expected by the producer, not least because

Johnson & Johnson had sold a considerable number of such tampons but had never received a report or complaint of a similar kind. There are some misuses which are expected and reasonably foreseeable. For example, standing on a table to change a light bulb. In such a case, a product may be defective, but there will also be contributory negligence imposed on the claimant.

(iii) **Time then the product was out into circulation:** This element throws light on what a person is entitled to expect. One would not be entitled to expect that chocolate cake would be edible after a year, and one should expect that a consumer product after sufficient wear and tear will become unsafe. There will however be cases in which the legitimate expectations of standards of safety will not change over the years. This was the case in *Abouzaid v Mothercare (UK) Ltd* [2000] All ER (D) 2436, which involved the defendants product 'Cosytoes'. This had been purchased in one of the defendant's stores and in 1990 whilst the claimant was helping his mother attach the product to his brother's push chair, one of the elastic straps slipped and the buckle hit him in his left eye, leaving him blind in that eye. The defendant had argued that the defect in question, was only regarded as a defect in 1999, when the case was brought, When the product was put into circulation, it was not so regarded, as they had had no complaints. The Court of Appeal held that although the case was a borderline example, the product was defective. The product was to be judged by the expectations of the public at large as determined by the Court. Public expectations had not changed between 1999 and 1990. Elasticated products had been in use for many years and there was no suggestion of any technical advance that might reasonably affect the level of safety which persons generally were entitled to expect in relation to a product of this nature.

Section 6: Defences:

(a) **The producer did not put the product into circulation:** An article has normally been put into circulation when it has been started off on the chain of distribution. Thus, if a product is released onto a market as a result of theft, the producer would not be strictly liable.

(b) **Defect came into existence after the product was put into circulation:** One of the conditions of liability is that the defect should arise in the production process. Liability is excluded where the defect arose only after the time the product was out into circulation. It is expected that products will weaken and decay over time. Provided this decay is within reasonable expectations, then there will be no liability. It is only when this decay is premature, then the product will be defective and normally this defect will be regarded as a defect inhering in it from the time it was put into circulation.

(c) **Non-Commercial Producers:** Straightforward defence. Law Commission in 1977 gave the following rather homely examples:

> *A housewife, for instance, who makes home-made jam for her local church sale-of-work should not be liable; not should the man who sells apples to his neighbours over the garden wall. On the other hand, the country dweller who provides home-made teas for tourists throughout the summer, and the small scale market gardener would presumably be regarded as acting the in the course of business.*

(d) Compliance with Mandatory Statutory Requirements: This is a very narrow defence, in that, in the unlikely event that the defect in the product results from compliance with a safety statute or mandatory regulations, then the producer will not be liable. However, the defect must be attributable to compliance with the relevant requirements. The position was explained by Lord Lucas in the House of Lords when the English Consumer Protection Bill was in its Committee stage:

> *The purpose of the subsection we are discussing is to allow the producer of a defective product a defence if the defect in the product was solely due to compliance by the producer with a UK enactment or Community obligations. This is a very strict defence and is intended to cover the situation which I believe would be against the law of possibility, where the producer of a product has made a defective product because of the inevitable result of complying with a national or Community law. It does not mean that compliance with safety regulations woul be a complete defence.*

(e) Development Risks Defence: This has been one of the most controversial elements of the Products Liability Regime. A producer will be relieved of liability that would otherwise attach if he can prove that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered. If the product was as safe as the state of the art would allow at the time of production, subsequent improvements in safety in the production process may not be relied upon by an injured plaintiff in setting the standard of safety. In determining what constitutes that 'state of the art', there have been two very helpful decisions. The first, was *Commission v UK*. The ECJ held that the defence was directed at the 'most advanced level of such knowledge at the time when the product in question was put into circulation.' However, the discoverability or accessibility of such knowledge is also an important factor. The knowledge must have been accessible at the time when the product in question was put into circulation. The state of knowledge includes **all data in the information circuit of the scientific community as a whole,**

bearing in mind, however, on the basis of a reasonableness test the actual opportunities for the information to circulate. The Advocate General illustrated the point by the much discussed example of a study based on research carried out by an academic in Manchuria and published in a local scientific journal in Chinese which does not go outside the boundaries of the region. As to this he advised that: 'I do not consider that in such a case a producer could be held liable on the ground that at the time he put the product into circulation the brilliant Asian researcher had discovered the defect in it.'

In *A v National Blood Authority*, Burton J did not find the so-called 'Manchuria Exception' entirely clear and stated that in his opinion the correct approach was to focus on accessibility and to treat as inaccessible only scientific and technical knowledge in the form of unpublished documents or unpublished research not available to the general public, retained within a research department or laboratory of a particular company.

(f) Component Producers: Allows the manufacturer of a component part to escape liability where the responsibility lies with the manufacturer of the product in which the component is fitted. The case at which the defence is aimed is where component parts such as nuts and bolts are made to the order of the finished product manufacturer, who then uses them for purposes for which they were not designed.

Section 7: Limitation Periods:

Although all the other ingredients of a successful action are present, a claim will nonetheless fail if it is not brought in time. Section 7(1) provides that a limitation period of three years is to apply to proceedings for the recovery of damages. The limitation period begins to run from the date on which the action accrued or the date (if later) on which the plaintiff became aware, or should reasonably have become aware of the damage, the defect and the identity of the producer.

The ten year long stop provision is contained in Section 7(2)(a). Under the provision, rights conferred on the injured person under the Act are extinguished on the expiry of a period of ten years from the date on which the producer put into circulation the actual product which caused the damage, unless the injured person has in the meantime instituted proceedings against the producer. There are advantages and disadvantages for this ten year limitation period. The English Law Commission and the Pearson Committee favoured it on the ground that:

> *It is in the producer's interest that he should be able to close his books on a product after it has been in circulation for a fixed period. It assists him in assessing the risk and it facilitates insurance and amortisation, thus keeping the insurance premium down. There is thus some saving, albeit*

> *marginal, which rebounds to the general benefit of the public. More important, perhaps, it sets a sate after which the producer no longer has the burden of proving that a product which has caused an accident was not defective when he put it into circulation. This burden is increasingly difficult for him to discharge as the years pass and it seems only fair that there should come a point when it is entirely removed.*

The Scottish Law Commission disagreed with this view, pointing to the arbitrary nature of the cut off period which presumably approximates to a notion of a usual lifespan of a typical product. It noted also that with such a cut off point a potential plaintiff could be debarred from recovery under the strict liability regime even before a cause of action had arisen, as when a defective drug has a long term effect (as in *Sindell v Abbott Laboratories* 607 P 2d 924 1980 Cal Sup Ct) or some item of hardware has remained unsold on a retailer's shelf over a prolonged period. In any such case, the claimant will have to fall back on the alternative of suing in negligence. They also put forward the argument that different cut off periods would apply to each component, and this would make it an incredibly complicated task in determining whether the cut off period applied or not.

The European Commission Green Paper issued in July 1999 raised the question about whether the ten year limitation period should be reviewed and noted that the European Parliament had advocated an extension to twenty years for hidden defects. The matter has been left open and further investigation is said to be required.

Remaining Sections:

The remaining sections in the Act are relatively clear.

Section 8 on concurrent wrongdoers has already been discussed.

Section 10 prevents the producer from limiting or excluding his liability to injured consumers by using a term in a contract.

Section 11 leaves open the possibility to take action in negligence if you are unable to bring a case within the strict liability regime laid down by the Act.