

PRODUCT LIABILITY UNDER UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG) AND ETHIOPIAN LAW

Yosef Workelule Tewabe*

Abstract

This article explores product liability by analyzing its treatment under the United Nations Convention on Contracts for the International Sale of Goods (CISG) and Ethiopian law, specifically focusing on claims related to property damage and personal injuries caused by defective products. The study begins by outlining the theoretical frameworks of product liability to underscore its complexity and significance. A crucial distinction is made between the two legal frameworks: while the CISG addresses claims for property damage, it does not encompass personal injury claims, thereby creating gaps in consumer protection. The methodology employed in this analysis includes a descriptive approach, which allows for a thorough examination of each legal framework, alongside a comparative study to highlight differences and similarities between the CISG and Ethiopian law. The findings indicate that Ethiopian law provides a more comprehensive basis for addressing both types of harm, in contrast to the limited scope of the CISG. This limitation suggests a need for reform. The study advocates amending the CISG to explicitly cover personal injury claims, enhancing Ethiopia's product liability framework, and improving legal awareness among relevant stakeholders. Ultimately, this article aims to clarify legal ambiguities and strengthen product liability protections, thus benefiting businesses, consumers, and the global marketplace.

Keywords: CISG, Product Liability, Ethiopian law, Defective Products, Personal Injury, Property Damage

INTRODUCTION

In an increasingly interconnected global economy, individuals and businesses find it challenging to independently fulfill all their needs without relying on trade. A different factor, including resource scarcity, geographical limitations, time constraints, and differing levels of technological access, necessitate the exchange of goods and services across borders. This trading activity not only strengthens connections among individuals within the same region but also bridges gaps across different jurisdictions. However, as international trade expands, so does the risk of product liability issues, emphasizing the need for established regulatory frameworks to ensure accountability and safety in commercial exchanges.¹

* LL.B. (University of Gondar), LL.M. in Business and Corporate Law (Bahir Dar University), Lecturer in Law, University of Gondar, Law School, Attorney, and Legal Consultant He can be reached at yosyworkelule@gmail.com or workeluleyosef@yahoo.com for any inquiries. <https://orcid.org/0000-0002-5561-745X>. The author would like to thank anonymous reviewers for their genuine and constructive comments.

¹ Christensen, B.J., Kowalczyk, C. (2017). Introduction to Globalization: Strategies and Effects. In: Christensen, B., Kowalczyk, C. (eds) Globalization. Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-662-49502-5_1

In international and domestic commercial transactions, a well-regulated relationship between buyers, sellers, and third parties is essential for achieving the primary objectives of commerce.² The essence of these transactions lies in the exchange of goods and services, where one party possesses a surplus of a specific product, while another faces scarcity.³ To optimize the benefits of international commerce and mitigate risks, it is crucial to establish clear liability and rights frameworks that govern the actions of all parties involved.⁴ Countries like Ethiopia have enacted laws designed to regulate these relationships, facilitating smoother commercial interactions within their domestic jurisdictions.⁵

Significant efforts have been made to create a comprehensive international commercial law framework, culminating in the establishment of the United Nations Convention on Contracts for the International Sale of Goods (CISG) in 1980. The CISG has garnered extensive support, with a majority of UN member states signing the convention.⁶ In alignment with its constitutional commitments, Ethiopia has made strides to become a signatory to the CISG. The House of Peoples' Representatives of the Federal Democratic Republic of Ethiopia ratified the CISG on June 25, 2020, and tasked the Ministry of Trade and Industry with overseeing its implementation in collaboration with other government institutions. However, Ethiopia has yet to submit the formal instrument of accession to the Secretary-General of the United Nations, as required by Articles 91(3) and (4) of the CISG. Until this essential step is completed, Ethiopia remains classified as a non-contracting state under the CISG. This status underscores the need for urgent action to finalize its accession process, which would enable Ethiopia to fully engage in the benefits and obligations outlined in the CISG framework.⁷

Product liability emerges as a critical concern in business transactions, whether domestic or international. Effective regulation of product liability is essential to safeguard consumers and

² Paul L. Joskow, Roger G. Noll, (1981), Regulation in Theory and Practice: An Overview, *the MIT Press*, pp. 1 – 78. Available at <http://www.nber.org/chapters/c11429>.

³ Vesna Grozdanovska, et.al, (2017), International Business and Trade, *International Journal of Sciences: Basic and Applied Research (IJSBAR)*, Vol. 31, No 3, at 105-114.

⁴ Michael Joachim Bonell, (2018), the law governing international commercial contracts and the actual role of the Unidroit Principles, *Uniform Law Review*, Vol. 23, Issue 1, March 2018, Pages 15–41, <https://doi.org/10.1093/ulr/uny001>.

⁵ This regulatory framework often includes provisions for contracts, liability, and dispute resolution to create a transparent and equitable marketplace.

⁶ Larry A. DiMatteo, (2013), Harmonization of International Sales Law, Cambridge University Press, Commercial Contract Law Transatlantic Perspectives, pp. 559 – 580, DOI: <https://doi.org/10.1017/CBO9781139235662.030>.

⁷ United Nations Convention on Contracts for the International Sale of Goods Ratification Proclamation, (2020), *Federal Negarit Gazette*, Proclamation No. 1220/2020, 26th Year No. 73, Addis Ababa 25th July, 2020.

ensure that businesses are held accountable for the products they sell. With the global economy in mind, the implications of Ethiopia's delayed accession to the CISG become significant. Once Ethiopia finalizes its formalities, the rules governing international sales of goods will significantly influence transactions involving both Ethiopian businesses and international stakeholders.

In this context, understanding the legal frameworks that govern product liability in both the CISG and Ethiopian domestic law is paramount. Analyzing these frameworks provides valuable insights for various stakeholders, including legal practitioners, policymakers, and businesses, as they navigate potential disputes arising from defective products.

Defective products pose notable risks that can result in serious consequences. These risks encompass:

1. **Personal Injury:** Harm sustained by individuals due to defective products, which can range from minor injuries (like cuts and bruises) to serious harm (including broken bones or poisoning). Such injuries underscore the urgency of effective regulations to protect consumers.
2. **Property Damage:** Damage to physical belongings or property resulting from defective products, such as a faulty appliance causing a fire that damages a house, a defective car part leading to an accident, or malfunctioning electronic devices ruining other items. Property damage can extend to damage suffered by the sold goods themselves and other physical assets.

In light of these risks, countries have developed product liability clauses within their legal frameworks to provide compensation and enforce accountability. The CISG serves as a pivotal instrument in regulating the international sale of goods, particularly concerning issues of defective products and associated liabilities.

Moreover, Ethiopian laws also recognize product liability through various legal instruments, including the Civil Code, Criminal Code, and consumer protection proclamations. This legal recognition is vital for creating a comprehensive understanding of product liability issues.

This article aims to conduct a comparative analysis of the regulations related to product liability in both the CISG and Ethiopian domestic laws. The study will focus on identifying key strengths and weaknesses in each framework and propose strategies for bolstering strengths while addressing existing gaps.

Through this analysis, the article aims to inform and guide policymakers, legal practitioners, and businesses by elucidating the interplay between international and domestic regulatory approaches. Ultimately, the insights gained can contribute to enhanced consumer protection and accountability within Ethiopia's evolving commercial landscape.

1. THE CONCEPT OF PRODUCT LIABILITY

Product liability refers to the responsibility of a manufacturer or seller of goods to compensate for injury caused by defective merchandise that it has provided for sale. Black's law dictionary defines product liability as "[a] manufacturer's or seller's tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product. Product liability can be based on a theory of negligence, strict liability, or breach of warranty."⁸

During the early industrial revolution, product liability was characterized by an emphasis on "privity" between buyer and seller, with the remote manufacturer ordinarily being shielded from direct liability. The theory of caveat emptor—let the buyer beware—that pretty much governed consumer law from the early eighteenth century until the early twentieth century made some sense.⁹

In his commentary on the McKean work regarding product liability, Grant Gilmore observed that "Product liability is a relatively new term. Lawyers used to talk about liability for breach of warranty in a more complex manner, without bothering to specify whether they were talking about blame in contract or tort. [...] In this century, the barriers have been positioned largely on the contract side—the defenses of privity of contract, disclaimer, and the plaintiff's failure to give timely notice of the defect—so that we have become accustomed to thinking of tort as providing the escape route."¹⁰

Gilmore's quotation highlights the evolving nature of product liability law and its distinction from traditional concepts of liability. Historically, discussions around liability often conflated contract and tort principles, making it difficult to navigate the legal landscape surrounding defective products. However, as product liability has become more defined, the focus has shifted towards contractual frameworks, where defenses such as privity of contract and

⁸ Black's Law Dictionary 1328 (9th ed.2009).

⁹ Hosmanek, Smith, and Dayton, (2022), Business Law, Ethics, and Sustainability, the University of Iowa pp. 438 -440. Accessed at: <https://iwo.uiowa.edu/esploro/outputs/textbook/Business-Law-Ethics-and-Sustainability/9984376757702771>

¹⁰ Grant Gilmore, (1970), Products Liability: A Commentary, The University of Chicago Law Review, Vol. 38, No.103, at 109, last Para.

disclaimers have gained prominence. These defenses can limit a plaintiff's ability to seek redress for defective products, thereby creating a perception that tort law serves as a fallback option when contractual claims fail.

Product liability is considered a descendant of both tort and contract law. Typically, product liability claims are not associated with international sales transactions; they usually involve two parties a consumer and a manufacturer who are generally not connected by a contract.¹¹

Product liability is fundamentally understood as the claims a buyer can make against a seller, typically arising under the terms of a contract. As Denis W. Stearns articulated in his work “Product liability law evolved from contract law, with the first decisions strongly favoring manufacturers. For a very long time, the “general rule” was that a manufacturer could not be sued, even for negligence, by someone with whom he had no contract.”¹² Recently, however, domestic legislation has begun to evolve by incorporating both tortious and contractual aspects of product liability into their legal frameworks.

Under Ethiopian law also there is the same experience with other jurisprudence as the details discussed below in a separate section. In the case of CISG as well, without disregarding its inapplicability for personal injuries, there are some implications for claiming compensation for defective product damage on the buyer or the third party property without a binding contractual relationship as the CISG Advisory Council clearly stipulated in its opinion No. 12.¹³ Current incidents in various jurisdictions involving defective products highlight the urgent need for states to strengthen their regulatory frameworks in this area. By doing so, they can better protect their citizens and prevent the harsh consequences that arise from such incidents.¹⁴

¹¹ Vinluan, M. (2022). Product Liability. In: Pasha, A.S. (eds) Laws of Medicine. Springer, Cham. https://doi.org/10.1007/978-3-031-08162-0_10

¹² Denis W. Stearns, (2005), Winterbottom v. Wright. Product Liability History. Available at [Product Liability: A Brief History of Its Early Origins | Marler Clark. s](#)

¹³ See CISG-AC Opinion No. 12, Liability of the Seller for Damages Arising Out of Personal Injuries and Property Damage Caused by Goods and Services under the CISG, Rapporteur: Professor Hiroo Sono, School of Law, Hokkaido University, Sapporo, Japan. Adopted by the CISG Advisory Council following its 17th meeting, in Villanova, Pennsylvania, USA, on 20 January 2013

¹⁴ Such as; In the United States, Toyota recalled 412,000 passenger cars, mostly the Avalon model, for steering problems that reportedly led to three accidents; Portable baby recliners that are supposed to help fussy babies sleep better were recalled after the death of an infant: the Consumer Product Safety Commission announced the recall of 30,000 Nap Nanny recliners made by Baby Matters of Berwyn, Pennsylvania; More than 70,000 children and teens go to the emergency room each year for injuries and complications from medical devices. Contact lenses are the leading culprit, the first detailed national estimate suggests; Smith and Noble recalled 1.3 million Roman shades and roller shades after a child was nearly strangled: the Consumer Product Safety Commission says a five-year-old boy in Tacoma, Washington, was entangled in the cord of a roller shade in May 2009. FindLaw, AP reports; The Consumer Product Safety Commission reported that 4,521 people were

In general, product liability refers to the remedies available when a defective product causes personal injury or property damage. The category of product liability might differ in different international and domestic jurisdictions. It may include liability in the contract, tort/delictual liability, or both categories. To determine the scope and proper category of product liability, scholars have proposed three different but supportive theories on product liability. Thus, product liability can be based on a theory of negligence, strict liability, or breach of warranty. Warranties theory is representative of contractual remedies and the rest of the two have more of extra-contractual character.¹⁵

2. THEORIES OF PRODUCT LIABILITY

2.1. Warranties Theory of the Product Liability

The Oxford Dictionary defines a warranty as “a written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specified period.”¹⁶ From this definition, we can argue that agreement is the primary condition of a warranty, which is designed to provide repair or replacement for a defective product within a specified timeframe. If the seller breaches the terms of the agreement, the buyer retains the right to pursue alternative remedies provided by the law. Such claims fall under product liability, rooted in a pre-existing and binding contractual relationship.

In this context, the seller can be held liable for breaching promises regarding the quality, conformity, or title of the product, to the extent of commitments outlined in the contract. However, it is important to note that beyond these parameters, the buyer cannot rely solely on the warranty as grounds for their action. Warranties can be categorized into express and implied warranties.¹⁷ An express warranty refers to the clear affirmations made by the seller within the contract concerning the product's features, such as quality, expiration date, content

killed in the United States in consumer-product-related incidences in 2009, and millions of people visited hospital emergency rooms from consumer-product-related injuries. US Consumer Product Safety Commission, 2009 Report to the President and the Congress, accessed March 1, 2011, <http://www.cpsc.gov/cpscpub/pubs/reports/2009rpt.pdf>; Reports about the possibility that cell-phone use causes brain cancer continue to be hotly debated. Critics suggest that the studies minimizing the risk were paid for by cell phone manufacturers. Matt Hamblen, “New Study Warns of Cell Phone Dangers,” Computerworld US, August 9, 2009, accessed March 1, 2011, <http://news.techworld.com/personal-tech/3200539/new-study-warns-of-cell-phone-dangers1>.

¹⁵ Hylton, Keith N., the Law and Economics of Products Liability (July 25, 2012). Boston Univ. School of Law, Public Law Research Paper No. 12-39, Boston Univ. School of Law, Law and Economics Research Paper No. 12-39, Available at SSRN: <https://ssrn.com/abstract=2117245> or <http://dx.doi.org/10.2139/ssrn.2117245>

¹⁶ [Warranty noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com](http://www.oxfordlearnersdictionaries.com/definition/english/warranty)

¹⁷ Don Mayer, et al, (1970), Basics of Product Liability, Sales, and Contracts (v. 1.0), available at http://2012books.lardbucket.org/attribution.html?utm_source=header

description, and other relevant issues. Claims of breach of express warranty fundamentally represent claims of misrepresentation.¹⁸ Conversely, an implied warranty encompasses characteristics or standards of the product that are not explicitly articulated in the agreement but should be recognized by the seller during the performance stage. These implied warranties may stem from the contract itself or from established business practices. While some implied warranties necessitate specific actions for compliance, many are derived from long-standing business customs or practices.¹⁹

The implied warranties can be classified into three main sub-categories: the implied warranty of merchantability (which is only applicable to merchants), the implied warranty of fitness for a particular purpose, and the implied warranty of title. Both forms of warranties are acknowledged under Article 35 of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Additionally, Ethiopian law contains provisions addressing warranties provided by the seller in the general contract and special sales contract law sections of the civil code.²⁰

However, the theory of warranty does not encompass all claims related to product liability due to its privity requirement, which necessitates an agreement or contractual relationship between the claimant and the defendant. In the trade of goods and services, particularly in international commerce, defective products can affect not only the buyer who has direct contact with the seller or manufacturer but also third parties who lack such direct contact. The product may pass through various hands before reaching the final consumer, and at each stage, its defects could potentially injure one or more parties with no contractual relationship with the manufacturer.²¹

Given these circumstances, two additional theories have been proposed to address issues arising outside the strict contractual relationship between the seller and buyer. These theories serve to highlight the limitations of warranty as a sole basis for liability in cases involving defective products, particularly in complex distribution channels.

2.2. Negligence Theory of the Product Liability

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Andrew F. Daughety and Jennifer F. Reinganum, et.al, (2013), *Economic Analysis of Products Liability: Theory, Research handbook on the economics of torts*, (pp.69-96). DOI:10.4337/9781781006177.00011.

Unlike in the case of warranty theory, on the seller's side, there are no either express or implied undertakings whereas, the seller or the manufacturer would be liable for his/her negligence. Negligence theory advocates the fault-based tortious liability of the seller/manufacturer irrespective of the existence or non-existence of a contract.²² Privity is no longer relevant. The responsibility of the defendant in the negligence theory is inherited from his fault for not giving due care and diligence.²³

The concepts of reasonableness and standard of care form the foundation of negligence theory. In the context of product liability, negligence theory is particularly relevant in two types of cases: defective design and inadequate warnings. In cases involving defective design, manufacturers and safety engineers are often held liable. The product designer should reasonably design the product for safe foreseeable use. The reasonableness of the design will be evaluated through an individual assessment for each case. In negligence claims concerning inadequate warnings, the seller or manufacturer generally has the obligation to inform the buyer of any potential risks related to a product. Assessing foreseeability will also require a case-by-case evaluation, akin to the method applied in defective design cases.²⁴

In both cases, when the seller or the manufacturer fails to fulfill their duty to inform about potential dangers associated with a reasonable design, they may face tortious liability for any damages incurred by the buyer due to their negligence. However, proving negligence can be a challenging task for the claimant. The rationale behind these rules is rooted in the principles of accountability and consumer protection, ensuring that manufacturers and sellers prioritize safety in their designs and adequately communicate potential risks to consumers. This theory seeks to balance the interests of manufacturers with the need to protect consumers from harm due to defective products.²⁵

This basis for liability is commonly utilized and is not restricted by the limitations associated with breach of warranty. In cases of negligence, any party whose carelessness contributed to the product causing the injury can be held liable, not just the seller. Efforts to limit warranties have no bearing on a negligence claim.²⁶

²² Kiely, Terrence F. and Ottley, Bruce L., *Understanding Products Liability Law* (April 1, 2006). *Understanding Products Liability Law*, 2006, Available at SSRN: <https://ssrn.com/abstract=1327927>.

²³ *Ibid.*

²⁴ Clark Alistair, (1985), *The Conceptual Basis of Product Liability*, *The Modern Law Review*, Volume 48 (3), at 325-339.

²⁵ *Ibid.*

²⁶ *Three Legal Theories for Products Liability*, Available at: <https://www.yourwisconsininjurylawyers.com/articles/three-legal-theories-for-products-liability/>.

One challenge with using negligence as a basis for liability is identifying the individual or entity responsible for the product's defect. In other words, it can be difficult to determine the specific negligent act, which often requires thorough investigation. Just being a product is defective does not necessarily prove the manufacturer breached a duty of care. Even if there was some negligence, the plaintiff must prove her damages flowed proximately from that negligence.²⁷

2.3. Strict Liability Theory of the Product Liabilities

The Strict Liability theory represents a distinct approach compared to the previous two theories. The doctrines of breach of warranty and negligence often failed to offer sufficient relief to individuals suffering damages or injuries in product liability cases due to their prerequisites of a contractual engagement and negligent activity respectively. Consequently, various legal systems have developed the tort theory of strict product liability, which holds sellers and manufacturers accountable for product defects without requiring a contractual relationship or proof of negligence.²⁸

The shortcomings in warranty and negligence theory have led to the development and necessity of an alternative theory, the theory of strict liability. Under strict liability, if goods sold are deemed unreasonably dangerous or defective, the merchant-seller is liable for any resulting property damage and personal injuries. Strict liability is a legal principle that holds sellers and manufacturers accountable for product defects without requiring a contractual or fault-based relationship with the injured party.²⁹ However, the theory is not without limitations and criticisms. Disclaimers of liability remain a concern, as they can undermine the effectiveness of strict liability. Additionally, the actions or modifications made by the plaintiff regarding the goods may limit or restrict recovery.³⁰

3. PRODUCT LIABILITY UNDER CISG

The CISG is one of the results of harmonization efforts of the commercial laws in international jurisprudence. The divergence of laws is one of the fundamental obstacles to stable international commerce. Harmonizing the substantive and procedural laws in the area has substantial importance in creating an efficient and effective global market. For this

²⁷ *Ibid.*

²⁸ John W. Reis, (2003), Product Liability Law Basic Theories and Recent Trends, COZEN O'CONNOR, Charlotte, NC 28202, pp. 1-12.

²⁹ *Ibid.*

³⁰ Zahr K. Said, (2024), Tort Law: A 21st Century Approach, University of Washington, [https://biz.libretexts.org/Bookshelves/Civil Law/Tort Law](https://biz.libretexts.org/Bookshelves/Civil%20Law/Tort%20Law), section 5.5.

purpose, countries adopted CISG to rule the buyer's and seller's rights and obligations at the international level.³¹

In terms of scope, CISG has two forms of scope of application; territorial and subject matter.³² In the case of territorial jurisdiction, the CISG would apply if one of the three circumstances exists; when the sale contract made between parties has different places of business in the different territory of member countries; when the choice of law of the forum refers the law of member state(which is subject to member state reservation); and when the parties of international sales contract refers the convention to apply irrespective of the membership of the states where their place of business situate.³³

Additionally, the CISG outlines certain subject matter restrictions regarding its applicability. Specifically, it does not apply to the sale of goods for immediate consumption, the provision of services, transactions involving goods where the buyer contributes a substantial part of the product's raw materials, sales conducted by auction, and sales executed under legal judgment, among others. Furthermore, the CISG establishes a category of excluded goods.³⁴ Further, the convention provides that it is not concerned with certain legal questions, namely the validity of the contract and transfer of property issues, but only governs the formation of the contract and the buyer and seller's obligation.³⁵

Even within the framework of buyers' and sellers' obligations, the convention excludes certain subject matters from its jurisdiction. Notably, Article 5 specifically states that the CISG does not encompass product liability claims for personal injuries sustained by any individual.³⁶ The specificity of this exclusion has sparked ongoing debate among scholars in the field since the convention's adoption.

The rationale behind these exclusions lies in the belief that domestic legal frameworks can provide better protection for these subject matters than international jurisprudence. The exclusion of product liability claims under Article 5 is also justified by the same rationale.³⁷

³¹ United Nations Convention on Contracts for the International Sale of Goods/CISG/, Apr. 11, 1980, 1489 U.N.T.S. 3. (Here in after CISG)

³² Art. 1-6 of the CISG.

³³ Art. 1 of the CISG.

³⁴ Art. 2 of the CISG.

³⁵ Art. 4 of the CISG.

³⁶ Art. 5 of the CISG

³⁷ IICL/Institute of International Commercial Law Repository: Legislative History: 1980 Vienna Diplomatic Conference. Available at: [Legislative History: 1980 Vienna Diplomatic Conference | Institute of International Commercial Law \(pace.edu\)](https://www.pace.edu/iiclr/legislative-history/1980-vienna-diplomatic-conference)

Article 5 of the convention explicitly restricts personal injury claims related to sales contract agreements, regardless of whether the injured party is a third party or one of the contracting parties. However, the convention does not clarify its applicability or exclusion regarding product liability for property damage. Either on the contracting party's property or/and on the third party. This has been creating disagreement among scholars in the area about the issue of whether the convention has totally excluded property damages through silence or whether its claims for personal injury have relevance to property damage in effect excluding property damages as well.

Many writers are doing a contrary reading to resolve the controversy.³⁸ Since there is no restriction made in other parts of the convention on it, by a contrary reading we can conclude that the rules of CISG are not excluded from governing product liability claims when the defective product causes damage to the property. The CISG advisory council also provided its opinion in Article 5 by characterizing the underlying issues under three sections.³⁹

The first opinion of the advisory related to the warranty theory of product liability and stated: "When loss is caused to the buyer by delivery of non-conforming goods, the seller is liable to the buyer for damages under Article 45(1)(b). The buyer is entitled to full compensation subject to the limitations as outlined in Article 74." ⁴⁰

In the second section of their opinion, the advisory council was concerned with interpreting the phrase 'personal injury' under Art 5 of the convention. In this section, they stipulate that:

“According to Article 5, the CISG does not govern the liability of the seller for death or personal injury caused by the goods to the buyer or any other person. When a contract entailing labor or other services is a contract of sale in accordance with Article 3(2), the CISG does not govern the liability of the seller for death or personal injury caused by such services to the buyer or any other person according to Article 5. Claims of the buyer against the seller to be indemnified against the buyer's liability for death or personal injury of a third person caused by goods or services supplied by the seller are claims for pecuniary loss of the buyer, and are not claims for "liability of the seller for

³⁸ Eun-Bin Kim, (2023), Exclusion of personal injury in the CISG and application of the common law, Korea Trade Information Society, Trade Information Research, Vol. 25, Issue 3, 2023.09, at. 155 – 172.

DOI : 10.15798/kaici.2023.25.3.155

³⁹ CISG Advisory Council Opinion No. 12 Available at: [CISG_Advisory_Council_Opinion_No_12.pdf \(cisg-online.org\)](https://www.cisg-online.org).

⁴⁰ *Ibid.*

death or personal injury caused by the goods to any person" under Article 5. These claims are governed by the CISG to the exclusion of any claims based on the applicable domestic law, whether contractual or not."⁴¹

In the 3rd section, they also addressed the possibilities for using CISG to claim compensation for the buyer's property damage by stating;

"Liability of the seller for damage to the property of the buyer caused by goods or services supplied by the seller is governed by the CISG. If the damage is caused to the goods themselves, the liability of the seller is governed by the CISG to the exclusion of any claims based on domestic law, whether contractual or not. The same applies if the damage is caused to property that is attached to the goods, or with which the goods are combined or commingled, or which are processed by the goods, in the normal course of business or in the course of normal use. However, if the damage is caused to other property of the buyer, any liability under the applicable domestic law is not excluded by the CISG." ⁴²

The problem here is not interpreting the provision in such a way and providing a solution whereas, it is in the nature of the liability. In most of the cases product liability, whether it is for personal injury or property damage is part of the domestic law regime of tortious liability, and this may create a jurisdictional competition between the two different regimes. In such a case Joseph Lookofsky analyzed the circumstances and provided solutions in the following manner: "Because such claims for buyer's property damage traditionally have been regulated by domestic rules of delict (tort, negligence, strict product liability, etc.), a question arises as to whether the application of these older rules should now be displaced by the new CISG regime, or whether the two rule-sets should be permitted to 'compete'. Although there would seem to be good reason to at least allow some degree of competition (concurrent claims), the question will ultimately have to be resolved by the various national courts on a case-by-case basis."⁴³

The CISG explicitly excludes product liability, with Article 5 primarily addressing personal injuries, as highlighted in the advisory council's opinion and the writer's understanding.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Joseph Lookofsky, (2005), WALKING THE ARTICLE 7(2) TIGHTROPE BETWEEN CISG AND DOMESTIC LAW, JOURNAL OF LAW AND COMMERCE, Vol. 25:87, at 87-105.

When it comes to property damage whether to the sold item itself or to other properties owned by the buyer the buyer has the right to seek damages from the seller based on the provisions of the CISG. However, this should be viewed as an alternative to domestic remedies, and buyers should not be precluded from pursuing domestic remedies when deemed necessary.⁴⁴

As a whole, the scope of the CISG applicability of the product liability claim is limited to the property damage of the buyer. The property damage compensation claim of the buyer may be based on the strict liability of the seller, negligence, or breach of warranty as it is inferred in the CISG advisory opinion.

4. PRODUCT LIABILITY UNDER THE ETHIOPIAN LEGAL SYSTEM

Under Ethiopian law, defective products can result in either civil, administrative, or criminal liabilities or a combination of these.⁴⁵ To provide readers with a thorough understanding of the extent and characteristics of product liabilities in Ethiopian law, an examination of the pertinent provisions in the Civil Code, Criminal Code, Trade Competition Law, and the Consumer Protection Proclamation of Ethiopia is undertaken. The Civil Code provisions provided the circumstances for both contractual and extra-contractual product liability of the seller/manufacturers. The Trade Competition and Consumer Protection Proclamation also provided administrative, civil, and criminal measures for the sale of defective products as one form of consumer protection instruments. The criminal code, on the other hand, incorporated provisions within the Production and Distribution of Substances Hazardous to Human and Animal Health and offenses against public health and Hygiene section as criminal remedies for providing defective products that cause damage to the general public. This sentence should be rewritten for clarity.

Ethiopian law does not impose any boundary restrictions. Regardless of whether the product is manufactured in Ethiopia or if the involved parties are based in a foreign country, these domestic regulations will still apply.

Under Ethiopian law, the manufacturer, the importer, the distributor, and the retailer could be potentially liable to compensate a claimant to the extent of their liability. Under Trade

⁴⁴ *Ibid.*

⁴⁵ See the civil code on sellers' obligation from Art 2274-2302, transfer of risk provisions from Art 2323-2328, and provisions on non-performance of the sales contract from 2329-2367, Trade Competition and Consumers Protection Proclamation, 2014, Federal Negarit Gazeta, proclamation No. 813/2014, 20th Year, No. 28, provisions about consumers protection. See also criminal code provisions cited below from Art. 525-534.

Competition and Consumer Protection Proclamation No. 813/ 2013 (Consumer Protection law) the consumer has the right to claim compensation or related rights thereof, either jointly or severally from the persons who have participated in the supply of goods as manufacturers, importers, wholesalers, retailers or in any other way for the damage he has suffered because of the purchase or use of the goods or services.⁴⁶ Unlike in the case of CISG, which intended to regulate only contracting parties, the seller and the buyer, in Ethiopian law, both the consumer buyers and the professional buyers are treated equally. However, the consumer protection proclamation discussed only the consumer buyer; this resulted from its purpose of establishment. Since it is legislated to control the trader's relationship with consumers, it is not expected to govern the professional buyers as well. Moreover, Ethiopia's product liability legal framework is equally applicable to both personal and property injuries, lacking any restrictions on its scope. Hence, product liabilities under Ethiopian law can be further elaborated as contractual and tort-based product liabilities.

4.1. Contractual Product Liability/ Warranty Theory under the Ethiopia Law

According to the Ethiopian Civil Code of 1960 ('Civil Code'), the seller should guarantee to the buyer that the thing sold conforms to the contract and is not affected by defects. If the thing sold to the buyer is defective the seller has the obligation to repair the defect or replace the defective product with the new one.⁴⁷ If neither is done, the buyer may bring a claim against the seller invoking non-performance of the contract. These obligations of the seller, have three categories; seller liabilities to warrant the buyer against defect, non-conformity, or dispossession of the product. These can be implied or express warranties. Some are explicitly provided in the law and others require inclusions in the parties' contract.⁴⁸

Under the provisions of the civil code, both the buyer and the seller have the ability to define the scope of their liabilities within their agreement. However, any contractual clause that seeks to exclude or limit warranty liabilities will be rendered ineffective if the seller has fraudulently concealed defects in the product from the buyer. Additionally, the seller cannot absolve himself of liability for damages arising from his own negligence, except in instances of strict liability.⁴⁹ Whereas the Consumer Protection Law of Ethiopia, as outlined in the

⁴⁶ Trade Competition and Consumers Protection Proclamation, (2014), Federal Negarit Gazeta, proclamation No. 813/2014, 20th Year, No. 28, Addis Ababa, 21st March, 2014, Article 14(5). (Here in After TCCPP).

⁴⁷ CIVIL CODE OF THE EMPIRE OF ETHIOPIA PROCLAMATION, (1960), NEGARIT GAZETA Gazette Extraordinary, PROCLAMATION No. 165 OF J960, Issue No.2 11th day of September, 1960(Here in after the Civil Code), Art. 2273-2302. and the TCCPP Art. 20.

⁴⁸ The Civil Code Art. 2287-2300.

⁴⁹ The civil code Art. 2297.

Trade Competition and Consumer Protection Proclamation (TCCPP), nullifies any agreements between the consumer buyer and the seller that seek to limit the seller's liabilities under the law, including those pertaining to warranties against defects.⁵⁰ So, Under Ethiopian law, the ability of parties to limit a seller's liabilities through their agreement is restricted to sales contracts involving professional buyers, rather than ordinary consumers.

Both the Civil Code and the Consumer Protection Proclamation mandate that buyers—whether consumers or professionals—must notify the seller or manufacturer of any defects in the product before pursuing product liability claims in court. The Civil Code stipulates that notifications should be made immediately,⁵¹ While the Consumer Protection Proclamation allows for a notification period of 15 days from the discovery of the defect.⁵²

Under Ethiopian law, remedies for defective products may include repair, replacement, refund, or compensation. The burden of proof rests with the party alleging a breach of warranty. In both cases—whether involving a professional buyer or a consumer—the buyer must file their claim in court within one year from the date of notification of the defect. Claims related to warranty cannot be brought to court after this one-year period has elapsed.

⁵³

In general, the warranty theory of product liability is recognized under Ethiopian law; however, it is not the sole remedy available for product liability claims. While warranties necessitate an agreement or privity between parties, issues of product liability often extend beyond contractual relations, necessitating additional remedies to address consumer needs. To this end, the theories of negligence and strict liability provide alternative solutions. Both of these remedies are acknowledged within the tort regime of Ethiopian law..

4.2. Tortious Product Liability under the Ethiopia Law /Strict and Negligence Theory/

⁵⁰ The TCCPP Art. 21.

⁵¹ Art. 2292. -- Notification unless the thing is likely to perish of defects.

(1) Where examination discloses nonconformity with the contract or a defect in the thing, the buyer shall without delay give notice thereof to the seller.

(2) In notifying the defect, the buyer shall indicate its nature in accordance with custom and good faith.

⁵² Art. 20(4).

⁵³ Art. 2298.- Period for suing on a warranty.

(1) The buyer shall, under pain of losing his right, bring proceedings on a warranty against defects within one year from his having given notice to the seller unless the seller intentionally

(2) The parties may not shorten this period. (3) Where specified qualities misled him. or the good working condition of the thing have been warranted by the seller for a specified period, the time within which the buyer may bring proceedings shall be reckoned from the day when this period has expired.

Under Ethiopian law, tort liabilities can be classified as either fault-based or non-fault-based. Unlike in criminal cases, the mental state of the offender whether intentional or negligent does not influence the final remedy in instances of fault-based liability. Non-fault-based liabilities may encompass either vicarious liability or strict liability.⁵⁴

Regarding product liability for sellers and manufacturers, Ethiopian law recognizes both fault-based and non-fault-based liabilities. This distinction is affirmed by provisions in both the Civil Code and the Consumer Protection Proclamation.⁵⁵

The civil code under Art 2027(1) and 2029 recognized fault-based tortious liabilities it can be either negligently or intentionally. Further, it may be an act or omission.⁵⁶ If the offenses proved by the court the offender would be extra-contractually liable for the injured. In case of a defective product also this fault-based rule of tortious liability would have applicability. Any seller/manufacturer, that causes damage or injury to another party, irrespective of the existence of a contract would be subject to extra-contractual liability.⁵⁷

The fault may arise from either negligence or intentional misconduct and can pertain to various aspects, including product design, labeling, or warnings. Accordingly, under Ethiopian law, a buyer has the right to invoke a negligence or intentional fault-based product liability theory in cases where their claim extends beyond the contractual scope, provided that. The seller or manufacturer is found to be at fault.⁵⁸

The second ground for extra-contractual liability/tort claim for defective products causing damage to the users or the buyers of the product is within the category of non-fault-based liabilities which is known as a strict liability of the manufacturer.⁵⁹

⁵⁴ See the Civil Code Art. 2027-2179.

⁵⁵ Art. 20 of the TCCPP;

1 / Any consumer may report defects in goods and services purchased and the damage to the

2/ A consumer may, without prejudice to warranties or legal or contractual provisions more advantageous to him, demand the seller, within 15 days from the date of purchase:

a) in the case of defective goods, to replace the goods or refund the price paid; or

b) in the case of defective service, to re-deliver the service free of charge or to refund the fee paid.

3/ Any consumer shall have the right to claim, in accordance with the relevant laws, payment of compensation for any damage resulting from the use of the defective goods or service or from the failure of the seller to meet his demand presented pursuant to sub-article (2) of this Article. Furthermore, under Art 14(5) it is stated about the joint and several liability of manufacturer and chains of sales of the product. However, its application is limited to consumer buyers' claims, unlike the Civil Code provisions.

⁵⁶ The Civil Code Art. 2027(1) and 2029.

⁵⁷ *Ibid*

⁵⁸ *Ibid*

⁵⁹ The Civil Code Art. 2085.

The strict liability of manufacturers is clearly articulated in Article 2085 of the Ethiopian Civil Code. This provision establishes that manufacturers are held liable for damages caused by defects in their products, irrespective of negligence as the following; “

(1) A 'person who manufactures goods and sells them to the public for profit shall be liable for any damage to another person resulting from the normal use of the goods. (2) No liability shall be incurred where the defect which has caused the damage could have been discovered by a customary examination of the goods.’⁶⁰

In order to establish strict product liability under the Ethiopian tort law regime, all elements stipulated under this provision should be fulfilled.

The first condition for establishing strict liability is that the defendant must both manufacture and sell the product. This requirement highlights that strict liability primarily holds the manufacturer accountable, as only they can fulfill these cumulative criteria. Subsequent sellers, who do not engage in manufacturing the product, are exempt from strict liability. For example, in the case of the Ethiopian Airlines crash, although the matter is currently pending if a passenger decides to pursue a strict liability claim under Ethiopian tort law, the Boeing Company would be held liable as it is both the manufacturer and seller of the airplane. In contrast, Ethiopian Airlines would only be liable for claims based on fault or breaches of contractual obligations.⁶¹

The second precondition for a manufacturer's strict liability under Ethiopian tort law stipulates that a product must be sold to the public an interpretation that encompasses private individuals and entities with the intention of making a profit. Consequently, if a manufacturer provides a product for free or without any form of consideration, they would not be held liable for damages resulting from a defective product. For instance, if Boeing were to donate a plane to Ethiopian Airlines free of charge, it could potentially exempt them from strict liability, even if both the manufacturer and the user are involved. However, in the case at hand, since Ethiopian Airlines purchased the airplane rather than receiving it gratuitously, and given that Boeing sells the aircraft for profit, the second requirement of the manufacturer's strict liability under Ethiopian tort law is satisfied.⁶²

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

The third precondition for establishing manufacturer liability under Ethiopian tort law is that the damage must arise from the product's normal use. This requirement serves an important purpose: it ensures that the responsibility for the harm rests solely with the manufacturer, rather than the victim's actions. In essence, if a victim has contributed to the incident through misuse or negligent behavior—such as using the product in a way that it was not intended to be used—they would be ineligible to pursue a claim under the principle of strict liability. For a claim to be valid, the damage must occur when the product is being used in alignment with its intended purpose and in accordance with any provided instructions or standard practices. This requirement underscores the expectation that products should perform safely under normal operational conditions, reflecting the manufacturer's responsibility to ensure the product's safety when utilized as intended. For instance, in the context of a potential strict liability claim against a manufacturer of Boeing airplanes, the law mandates that the harmed parties—such as Ethiopian Airlines and its passengers—must demonstrate that the aircraft was being operated according to standard operating procedures at the time of the crash. If evidence suggests that the aircraft was deliberately misused or that the airline failed to adhere to established protocols, this could negate the plaintiff's ability to claim that the manufacturer is strictly liable for the damages incurred. Thus, the emphasis on normal use underscores the need for accountability while recognizing the limitations of liability when misuse or negligence is involved.⁶³

The final precondition outlined in Article 2085 for establishing the strict liability of manufacturers under Ethiopian tort law is that the claimant must demonstrate that the damage defect, which resulted in the harm, could not have been identified through customary examination of the product. If the defect was indeed discoverable through standard practices, the producer may be absolved of liability. The determination of whether a defect is customarily discoverable should be assessed on a case-by-case basis. In our example, if the airline crash occurred under conditions that were typically discoverable, Ethiopian Airlines would be found at fault for negligence, while Boeing would be relieved of liability.⁶⁴

These four preconditions are cumulative requirements; if any one of them is not satisfied, the manufacturer is absolved of liability. However, if all four conditions are met, the manufacturer will be held liable for any damages caused to another person. The term "any damages" encompasses both property damage and personal injuries, which can include both

⁶³ *Ibid.*

⁶⁴ *Ibid.*

physical and moral harm. Additionally, the phrase "another person" applies to both the buyer and third-party victims. In the Ethiopian tort law framework, unlike the regime established by the CISG, the product liability of manufacturers extends beyond property damage to include personal injuries as well. Additionally, the Ethiopian product liability regime, particularly concerning tortious liability, is not restricted to professional buyers; it also applies to consumer buyers and third-party claimants.

From the consumer's perspective, the provisions of the Civil Code offer less protection compared to those in the TCCP. Under the TCCP, consumers have the right to hold all stakeholders involved in the sale of a product jointly and severally liable. In contrast, the Civil Code provisions only acknowledge the personal liability of the seller in cases of negligence and limit the manufacturer's liability to strict liability situations. Although, compared with the international frameworks of product liability we can proudly conclude that the Ethiopia product liability protection regime, except the 1000 ETB limit for moral injury,⁶⁵ has a better position to compensate the injured.⁶⁶

CONCLUSION

Product liability plays a crucial role in governing the relationship between parties involved in business transactions, both within domestic frameworks and across international borders. These provisions primarily aim to compensate buyers for any injuries or damages caused by defective products. Depending on the specifics of the laws in a given jurisdiction, liability may fall on either the manufacturer or the seller.

Traditionally, product liability has been approached under three primary theories: warranty, negligence, and strict liability. While warranty focuses on contractual obligations, negligence requires proof of fault, and strict liability imposes liability without fault. Ethiopian law incorporates elements of all three theories, while the CISG primarily operates within a contractual framework.

Ethiopia has established an all-inclusive legal framework encompassing contractual, extracontractual, and consumer protection provisions to safeguard consumer interests. Unlike the CISG, Ethiopian law does not distinguish between personal injuries and property damage. Consequently, both types of harm are addressed under this legal framework.

⁶⁵ Art 2116 of the Civil Code.

⁶⁶ NB; for criminal liability of the producers, readers of this paper can consult the relevant provisions of the criminal code and the trade practice and consumer's protection proclamation provisions. Since the aim of this article is to analyze the civil aspect of product liability the writer didn't provide a detailed analysis of this matter.

In contrast, the CISG's scope is restricted, primarily addressing property damage while excluding personal injury claims. This disparity underscores the potential gaps in consumer protection within the international legal landscape. The CISG excludes product liability claims related to personal injuries. This exclusion is justified by the availability of better remedies within domestic legal systems.

However, debates persist regarding the CISG's stance on product liability for property damage. Some argue that since domestic legislation already covers property injuries, there is no need for additional protection under the CISG. Others contend that the CISG should apply to property damage, as it explicitly excludes only personal injuries.

This ambiguity has far-reaching implications for determining the applicable law in international trade involving CISG member states, particularly regarding property damage. The absence of clear guidance on product liability within the CISG may also pose practical challenges for countries like Ethiopia, which has ratified the convention.

To enhance consumer protection and ensure accountability, policymakers must prioritize the following recommendations: Clarification of CISG Scope: The CISG should be amended to explicitly address personal injury claims and provide clear guidance on the treatment of property damage. Strengthening Domestic Frameworks: Ethiopia should continue to fortify its product liability regime by enhancing enforcement mechanisms, expanding remedies for affected consumers, and aligning domestic law with international standards. Fostering International Cooperation: Collaborative efforts among nations are crucial for developing harmonized standards and best practices in product liability, facilitating smoother cross-border trade. In conclusion, harmonizing legal approaches and bolstering consumer protection benefit both local and global markets. By addressing gaps and fostering cooperation, we can navigate the complexities of product liability effectively.