

International Comparative Legal Guides

Product Liability 2026

A practical cross-border resource to inform legal minds

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1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role? Can liability be imposed for breach of statutory obligations, e.g. consumer fraud statutes?

Product liability can arise under three possible circumstances in Malaysia, namely:

- (1) breach of contract;
- (2) tortious act, for example, negligence; and
- (3) breach of statutory obligations, for example, the Consumer Protection Act 1999 (“CPA”).

Contract/tort

A product liability claim under contract or tort of negligence is fault-based, where the plaintiff has the burden of proof to establish that the defendant is at fault.

For contract, the plaintiff will have to prove that there is a breach of contractual obligations by the defendant.

For the tort of negligence, the plaintiff will have to prove that:

- (a) the defendant owes a duty of care to the plaintiff;
- (b) the duty of care has been breached; and
- (c) the plaintiff has suffered damages as a result of the breach of duty of care by the defendant.

Statutory obligations

Sections 66 to 72 CPA (Part X) deal specifically with the subject of product liability. Section 68(1) CPA provides that where any damage is caused wholly or partly by a defect in a product, the following persons shall be liable for the damage:

- (a) the producer of the product;
- (b) the person who, by putting his name on the product or using a trademark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and
- (c) the person who has, in the course of his business, imported the product into Malaysia in order to supply it to another person.

Section 68(1) CPA imposes strict liability. It is not necessary for the plaintiff to prove that the defendant is at fault for a product liability claim under Section 68(1) CPA. It is sufficient for the plaintiff to prove that the product is defective, and the plaintiff has suffered damage resulting from the defective product.

1.2 Does the state operate any special liability regimes or compensation schemes for particular products, e.g. medicinal products or vaccines?

There is no formal scheme of compensation or special liability regimes for a particular product. However, the Government may implement an *ad hoc* financial scheme for a medicinal product/vaccine that has an impact on public health. In 2022, the Ministry of Health implemented a Special Financial Assistance Adverse Effects of COVID-19 Vaccine for recipients of the COVID-19 vaccine who have suffered adverse effects requiring hospitalisation or death resulting from the COVID-19 vaccine. The Government has clarified that the funds disbursed by the said *ad hoc* scheme are not a form of “compensation” but are merely “financial assistance” to the vaccine recipients.¹

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the “retail” supplier, or all of these?

The manufacturer of the product is generally responsible for the fault/defect. However, other parties within the supply chain can also be held liable depending on the nature of the fault/defect.

Under Section 68(1) CPA, the following persons can be held responsible for the fault/defect in a product:

- (a) the producer of the product;
- (b) the person who, by putting his name on the product or using a trademark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and
- (c) the person who has, in the course of his business, imported the product into Malaysia in order to supply it to another person.

For contractual claims, the responsible party would be the entity that is privy to the contract with the plaintiff and has breached the said contract.

As for claims involving the tort of negligence, the entity that is found by the Courts to owe a duty of care to the plaintiff would bear the responsibility for the fault/defect if there is a breach of such duty.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

It is possible for a regulatory authority under the Government to be found liable vicariously for an act of tort. Sections 5 and

6 of the Government Proceedings Act 1956 (“GPA”) govern the liability of the Government in relation to tortious acts. Section 5 GPA recognises that the Government can be found liable for any wrongful act done, or neglect or default committed, by any public officer. However, this is subject to the fulfilment of the conditions in Section 6(1) GPA, which state that “no proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally”.

In a reported case against the Government, the Federal Court held that the Government officer who was responsible for the alleged tortious act must be made a party in the suit before the Government can be made liable vicariously as a principal. It was only upon a successful claim against the officer personally that a claim could be laid against the Government.²

In practice, it is quite unlikely for a regulatory authority to be found liable directly for a defective/faulty product considering that the Government is rarely involved directly in the manufacturing, importing, distributing or retailing of a product. Nevertheless, as a regulatory authority may be responsible for granting the approval/licence for the manufacture, import or sale of a product, the Government may be held vicariously liable if the Government officer is found to be personally negligent in carrying out his duties in granting the approval/licence for a defective/faulty product.

1.5 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

Pursuant to Section 23(1) CPA, the Minister (currently from the Ministry of Domestic Trade and Cost of Living (“KPDN”)) may, upon the recommendation of the Controller, publish an order in the Gazette to label specific goods or services as prohibited goods if they have caused, or are likely to cause, harm to any person or property, or if they are deemed unsafe. Section 23(2) (a) CPA further provides that the Minister’s order may require for the supplier to recall such prohibited goods at his own expense. Any failure to adhere to the Minister’s order issued under the CPA to recall products is considered to be an offence, and the offender can be subjected to criminal prosecution.

Apart from the CPA, there is also other legislation that provides for the recall of specific categories of products that are defective or have safety issues, such as the Communications and Multimedia (Technical Standards) Regulations 2000, the Medical Device Act 2012, the Control of Drugs and Cosmetics Regulations 1984, and the Food Act 1983.

1.6 Do criminal sanctions apply to the supply of defective products?

Yes, according to Section 25 CPA, any contravention of Part II (Misleading and Deceptive Conduct, False Representation and Unfair Practice) or Part III (Safety of Goods and Services) of the CPA can result in criminal sanctions. The supply of defective products is prohibited under Part III of the CPA.

2 Causation

2.1 Who has the burden of proving fault/defect and damage?

For breach of contract or tortious claims, the plaintiff has the

burden of proving fault in any product liability claim involving breach of contract or tort of negligence.

As for a product liability claim under the CPA, the plaintiff has the burden of proving that the disputed product is defective and has caused damage to the plaintiff, although it is not necessary to establish the fault of the defendant.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

In cases involving negligence, the “but for” test is generally applied by the Courts in Malaysia to prove causation. The plaintiff would have to establish, on a balance of probabilities, that “but for” the defendant’s breach of duty of care, the injury/damage would not have occurred.³

In certain circumstances, the Courts have indicated that they are open to applying the “material contribution to risk of injury” test without showing factual “but for” causation. This can occur in cases where it is impossible to determine which of a number of negligent acts by multiple actors in fact caused the injury, but it is established that one or more of them did in fact cause it.⁴ This can potentially help to ease the plaintiff’s burden to prove causation in situations where it is difficult to apply the “but for” test.

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

Section 68(2) CPA permits a person who suffered damage from a defective product to submit a request to the supplier of the defective product to identify:

- (a) the producer of the product;
- (b) the person who, by putting his name on the product or using a trademark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; and
- (c) the person who has, in the course of his business, imported the product into Malaysia in order to supply it to another person.

Section 68(4) further provides that if the supplier fails to comply with the abovementioned request within a reasonable period of time, the supplier will be held liable for the loss or damage.

Apart from the CPA, if a plaintiff is not able to identify the producer that had manufactured the defective product in a negligence claim, it is arguably difficult for the plaintiff to succeed in this particular cause of action.

We are not aware of any reported cases where “market-share liability” has been applied by the Malaysian Courts.

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of “learned intermediary” under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

Instructions for, or warnings with respect to, doing/refraining from doing anything with/in relation to a product are considered to be some of the matters that a person is generally entitled to expect in relation to a product, as provided under Section 67 CPA. Hence, Courts are more likely to rule that there is a defect in a particular product if the said product lacks instructions or warnings.

A failure to warn can give rise to liability if there is (a) a statutory obligation imposed on manufacturers to affix warning labels on their products, such as cigarettes, or (b) a duty of care owed by the manufacturer to the consumers of a particular product. The type of information, advice and warning that will be taken into account in determining liability is generally a question of fact to be considered by the Courts, depending on the relevant circumstances of each case.

We are not aware of any reported cases where the principle of “learned intermediary” has been applied by the Malaysian Courts. However, we are of the view that it is possible for a manufacturer to argue in their defence that a doctor or pharmacist has negligently used or applied a prescribed pharmaceutical product on a consumer without first checking the information or warning provided by the manufacturer in the said product.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Section 72 CPA provides that it shall be a defence for any person in any civil proceeding under Part X CPA to show the following:

- (a) That the defect is attributable to compliance with any requirement imposed under any written law.
- (b) That he did not, at any time, supply the defective product to another person.
- (c) That the defect did not exist in the product at the relevant time.
- (d) That the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question may reasonably be expected to discover the defect if it had existed in his product while it was under his control.
- (e) That the defect:
 - (i) is a defect in a product in which the product in question is comprised therein (the “subsequent product”); and
 - (ii) is wholly attributable to:
 - (A) the design of the subsequent product; or
 - (B) compliance by the producer of the product in question with instructions given by the producer of the subsequent product.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable, or is it for the manufacturer to prove that it was not?

Yes, this defence is specifically provided under Section 72(1)(d) CPA. It is for the defendant (which could be the manufacturer) to prove that it is entitled to rely on this defence. Please see our response to question 3.1 for further details.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

Yes, this defence is specifically provided under Section 72(1)(a) CPA. Please see our response to question 3.1 for further details.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

Parties in a legal suit are barred from relitigating an issue or a cause of action once a judgment based on merits has been by passed by the Court, by virtue of the doctrine of *res judicata*. However, the doctrine of *res judicata* does not prevent the defendant from being sued by a different claimant in respect of the same defective product and having similar issues relitigated in separate proceedings. Where the Court has already passed judgment on a particular issue after considering its merits, it can be persuasive or binding on subsequent proceedings dealing with the same issue, depending on the facts of the case.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings, is there a time limit on commencing such proceedings?

Yes, a defendant can claim against a third party for contribution or indemnity towards any damage payable to the plaintiff. This can be done in the same or subsequent proceedings. A defendant who has entered an appearance may issue a third-party notice to claim contribution or indemnity against a person who is not already a party to the action.

For actions founded on a contract or tort, Section 6 of the Limitation Act 1953 (“LA”) prescribes a time limit of six years for a plaintiff to commence action in Court, starting from the date on which the cause of action has accrued. However, if the defendant is the Government or a person acting in execution of statutory or other public duty, the Public Authorities Protection Act 1948 provides that the time limit for a plaintiff to commence an action is three years after the act, neglect or default complained of.

3.6 Can defendants allege that the claimant’s actions caused or contributed towards the damage?

Yes, this is permitted under Section 12 of the Civil Law Act 1956

where the damage was caused partly by the plaintiff's own fault. In such circumstances, the damages recoverable by a defendant shall be reduced to such extent as the Court thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage.

3.7 Are there any examples in your jurisdiction of legislation providing exemptions from product liability in respect of products produced and/or deployed in the context of a public health emergency?

There are no examples of such exemption in Malaysia.

4 Procedure

4.1 In the case of court proceedings, is the trial by a judge or a jury?

Trials in Court proceedings are conducted before a judge. The jury system in Malaysia was abolished in 1995.

4.2 What is the standard of proof applied by the court? Does the court have to be satisfied of a fact "on the balance of probabilities" (i.e. more likely than not), "beyond all reasonable doubt" or to a different or more flexible standard?

The standard of proof required for a conviction in a criminal prosecution case is "beyond all reasonable doubt". For a civil Court proceeding, it is sufficient for the Court to be satisfied "on a balance of probabilities" when deciding on a particular issue or passing judgment on liability.

4.3 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

Yes, Order 40 Rule 1(1) of the Rules of Court 2012 ("RC 2012") provides that in any cause or matter in which any question for an expert witness arises, the Court may at any time, on its own motion or on the application of any party, appoint (a) an independent expert, or (b) if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.

4.4 Is evidence introduced solely by the parties or may the court take evidence on its own initiative?

Court proceedings in Malaysia are based on the adversarial system. Parties are generally required to introduce and submit their own evidence in Court to support their respective positions in proceedings. Nevertheless, the Evidence Act 1950 ("EA") also empowers the Court to take evidence on its own initiative. Section 165 EA provides that the judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness or of the parties. However, the judge's power under Section 165 EA does not supersede the other provisions in the EA on legal privilege and other forms of privileged communications.

4.5 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure "opt-in" or "opt-out"? Who can bring such claims, e.g. individuals and/or groups? Are such claims commonly brought?

Yes, Order 15 Rule 12 RC 2012 permits a class action to be filed in Court for multiple claims. This procedure is opt-in. The prerequisites to the rule are as follows:

- (a) there must be multiple persons;
 - (b) there must be the same common interest, arising under the same contract or the same grant or claim in respect of the same subject matter;
 - (c) the relief sought must not be personal but must benefit the class as a whole; and
 - (d) the parties represented must constitute a defined class.
- Class action suits are rarely initiated in Malaysia.

4.6 Can claims be brought by a representative body on behalf of a number of claimants, e.g. by a consumer association?

Yes, this can be done provided that the representative body can meet all the prerequisites under Order 15 Rule 12 RC 2012, as mentioned in our response to question 4.5. However, it must be noted that the representative body must be a valid establishment in Malaysia, as an illegal entity and its officers do not have any legal capacity to sue in Malaysia.⁵ Furthermore, if the representative body is an unincorporated society registered under the Societies Act 1966, the suit must be filed in the name of one of its office bearers.⁶

4.7 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

An advocate and solicitor practising in Malaysia is required to adhere to strict publicity rules as provided under the Legal Profession (Publicity) Rules 2001. As such, due to the stringent regulations, it is uncommon for lawyers to advertise for claims in Malaysia.

4.8 How long does it normally take to get to trial?

It generally takes around nine to 12 months from the filing of an action in Court for a trial to commence, if there are minimal or no interlocutory applications to be disposed in the suit. If the Court's schedule is busy or if the suit has multiple contentious interlocutory applications, it can take more than one year for a trial to commence.

4.9 Can the court try preliminary issues, the results of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

Pursuant to Order 33 Rule 2 RC 2012, the Court may order any question or issue arising in a cause or matter, whether of fact or law, or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at, or after the trial of the cause or matter. The Court may also give directions as to the manner in which the question or issue shall be stated.

The Court can invoke Order 33 Rule 5 RC 2012 to dismiss an action if it is satisfied that the decision of any preliminary issue renders the trial unnecessary.

Alternatively, Order 14A Rule 1 RC 2012 permits the Court, whether on its own motion or upon the application of a party, to determine any question of law at any stage of the proceedings if such question is suitable to be determined without the full trial of the action. The Court can then choose to either dismiss an action or make such order or judgment that it thinks just.

4.10 What appeal options are available?

Every award made by Tribunal for Consumer Claims (“Tribunal”) is considered to be final and binding on all parties to the proceedings, as per Section 116 CPA. However, a decision issued by the Tribunal can still be subjected to judicial review from the High Court.

Decisions of the Subordinate Courts (Magistrates Court and Sessions Court) are appealable to the High Court, provided that the disputed amount or value of the subject matter is more than RM10,000. There is no minimum threshold imposed for appeals to the High Court premised on a question of law. A final appeal can be made to the Court of Appeal against the High Court’s decision for matters originating from the Subordinate Courts.⁷

For matters originating from the High Court, parties can appeal to the Court of Appeal.⁸ A final appeal can be made to the Federal Court, which is the Apex Court of Malaysia. However, a party appealing to the Federal Court must obtain leave before it can proceed with the hearing of the final appeal at the Federal Court. In order to obtain leave, the Federal Court must be satisfied that the appeal involves (a) a question of general principle decided for the first time, or (b) a question of importance upon which further argument and a decision of the Federal Court would be to public advantage.

4.11 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Yes, the Court can appoint experts to assist it in considering technical issues by way of Order 40 Rule 1(i) RC 2012, as explained in our response to question 4.3. Parties in the proceedings can also appoint their own expert witnesses to present expert evidence before the Court by way of Order 40A RC 2012. The Court can limit the number of expert witnesses who may be called at the trial.

4.12 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Pre-trial deposition is not available in Malaysia. However, there are provisions for discovery by way of interrogatories under Order 26 RC 2012 where a party can file an application in Court to serve a series of written questions on the other party. The other party is required to answer the interrogatories by way of affidavit within a specific period of time, which is no less than 14 days.

The evidence-in-chief of a witness is required to be given by way of a witness statement. The Court will provide directions for the exchange of witness statements between parties during pre-trial case management (“PTCM”).

Expert reports are required to be exchanged between parties if there are expert witnesses called to testify at the trial. Order 40A Rule 5 RC 2012 also permits the Court to direct a discussion between experts for the purpose of requiring them to identify issues in the proceedings and, where possible, reach an agreement on an issue.

4.13 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

A party can file an originating summons pursuant to Order 24 Rule 7A(1) RC 2012 for an order for the discovery of documents before the commencement of proceedings. If Court proceedings have already commenced, a party can file a notice of application pursuant to Order 24 Rule 7(1) RC 2012 for an order for the discovery of documents at any time during the course of proceedings. Once an order for discovery is granted by the Court, the party required to give discovery is required to comply with the order throughout the duration of the proceedings.

4.14 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation, e.g. mediation, arbitration?

It is not mandatory for alternative methods of dispute resolution to be pursued before litigation is commenced in Malaysia, unless parties are bound by a mediation clause or an arbitration clause in a contract between them. The mediation process is available for parties to utilise during the course of litigation. The Courts generally encourage parties to consider mediation as a method to achieve settlement of the dispute. Parties can choose to record the terms of settlement by way of a consent judgment, or by executing a settlement agreement.

4.15 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

It is possible for a defendant domiciled in a foreign country to be sued in Malaysia with leave of the Court. The plaintiff will need to file a notice of application pursuant to Order 11 Rule 4(1) RC 2012 to obtain leave of Court to initiate the service of a notice of a writ out of the jurisdiction on the foreign defendant. The plaintiff will need to state in the supporting affidavit that he has a good cause of action and will need to provide information on the place or country in which the defendant may be found. Leave will not be granted unless the Court is satisfied that the case is a proper one for service out of the jurisdiction. Order 11 Rule 1(i)(A) to (M) RC 2012 provides the list of circumstances in which leave of Court may be granted for service out of the jurisdiction, and some of the relevant circumstances include the following:

- If the action begun by the writ is brought against a defendant to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract that:
 - (i) was made within the jurisdiction;
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing; or
 - (iii) is by its terms, or by implication, governed by the law of Malaysia.

- If the action begun by writ is brought against a defendant in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction.
- If the action begun by the writ is founded on a tort committed within the jurisdiction.
- If in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction, whether or not damages are also claimed in respect of the doing of or a failure to do that thing.
- If the claim is brought to enforce or set aside any judgment or arbitral award.

4.16 May hearings take place or witness evidence be given virtually via teleconferencing or other technical methods?

Yes, Section 15A of the Courts of Judicature Act 1964 (“CJA”) provides that the Federal Court, Court of Appeal and High Court may, in the interest of justice, conduct the proceedings of any cause or matter, civil or criminal, through a remote communication technology. A “remote communication technology” is also defined in the CJA as a live video link, a live television link or any other electronic means of communication.

In addition, Order 33A Rule 3 RC 2012 permits the Court or Registrar to direct a person or witness:

- (a) to attend (other than to give evidence) those proceedings, by means of a remote communication technology; or
- (b) to give evidence through a remote communication technology.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

Yes, there are time limits. See our response in question 5.2 for more details.

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the court have a discretion to disapply time limits?

For actions founded on a contract or tort, Section 6 LA prescribes a time limit of six years for a plaintiff to commence action in Court, starting from the date on which the cause of action has accrued. There are also certain circumstances where the limitation period can extend beyond the initial time period fixed by Section 6 LA:

- (a) for negligence claims not involving personal injuries, the limitation period is calculated three years from the date on which the plaintiff had discovered damage;⁹ and
- (b) for a person under disability, the limitation period for negligence claims not involving personal injuries is extended by three years from the date the person ceased to be under a disability or died.¹⁰ Section 2(2) LA provides that a person shall be deemed to be under a disability while they are an infant or of unsound mind.

If the defendant is the Government or a person acting in execution of statutory or other public duty, the Public Authorities Protection Act 1948 provides that the time limit for a plaintiff to commence an action is three years after the act, neglect or default complained of.

The Court does not have any discretion to disapply the limitation period that is prescribed by legislation. Only an Act of Parliament can suspend or alter the application of the limitation period. For example, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 provided that any limitation period specified in Section 6 LA that expired between 18 March 2020 and 31 August 2020 would be extended to 31 December 2020.

Nevertheless, it is pertinent to note that Order 18 Rule 8(1) RC 2012 imposes a requirement for the defence of limitation to be specifically pleaded. Otherwise, a defendant may not be entitled to rely on the defence of limitation.

As for the Tribunal under the CPA, its jurisdiction is limited to a claim that is based on a cause of action that accrues within three years of the claim, as provided under Section 99(2) CPA.

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Section 29 LA provides that in circumstances where: (a) the action is based upon the fraud of the defendant or his agent, or of any person through whom he claims or his agent; (b) the right of action is concealed by the fraud of any such person as aforesaid; or (c) the action is for relief from the consequences of a mistake, the period of limitation will not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it. However, this provision in Section 29 LA cannot enable any action to be brought to recover, enforce any charge against, or set aside any transaction affecting any property that:

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or
- (ii) in the case of a mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

6 Remedies

6.1 What remedies are available, e.g. monetary compensation, injunctive/declaratory relief?

The Courts have the power to grant the following remedies for product liability claims under contract, tort or the CPA, which include:

- (a) damages;
- (b) injunction;
- (c) specific performance; and/or
- (d) declaratory orders.

Section 112 CPA permits the Tribunal to grant the following awards:

- (a) that a party to the proceedings pay money to any other party;
- (b) that goods be supplied or resupplied in accordance with the CPA or the contract to which the consumer is a party;
- (c) that goods supplied or resupplied to the consumer be replaced or repaired;

- (d) that the price or other consideration paid or supplied by the consumer, or any other person, be refunded to the consumer or that person;
- (e) that a party comply with the guarantee;
- (f) that money be awarded to compensate for any loss or damage suffered by the claimant;
- (g) that the contract be varied or set aside, wholly or in part;
- (h) that costs to or against any party be paid;
- (i) that interest be paid on any sum or monetary award at a rate not exceeding eight per cent *per annum*, unless it has been otherwise agreed between the parties; or
- (j) that the claim be dismissed.

6.2 What types of damage are recoverable, e.g. damage to the product itself, bodily injury, mental damage, damage to property?

The damages that are awarded by Court are compensatory in nature. For contractual claims, the plaintiff can sue for compensation for monetary losses suffered by him as a result of the breach of contract. For tortious claims, the plaintiff can sue for compensation for personal injury, death and/or damages to personal property that are caused by the act of tort, provided that it is not too remote. For a claim under the CPA, the plaintiff can sue for damages caused by the defective product ("damage" is defined under Section 66 CPA as death or personal injury, or any loss of or damage to any property, including land). The amount of damages awarded are also subject to the principles of mitigation of loss.

6.3 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

No, it cannot be recovered.

6.4 Are punitive damages recoverable? If so, are there any restrictions?

The Courts have held that punitive damages can be awarded under certain circumstances, namely:

- (a) the defendant has acted with vindictiveness or malice; or
- (b) the defendant's conduct has been calculated by him to make a profit for himself that may well exceed the compensation payable to the plaintiff.¹¹

The Courts also explained that punitive damages are not intended to compensate the plaintiff and are not recoverable as a matter of right. The amount of punitive damages awarded is left to the judge's discretion and is determined by considering the character of the defendant's misconduct, the nature and extension of the plaintiff's injury and the means of the defendant.¹² In practice, it is uncommon for the Courts to award punitive damages, as the primary purpose of damages is to compensate the plaintiff.

6.5 Is there a maximum limit on the damages recoverable from one manufacturer, e.g. for a series of claims arising from one incident or accident?

If the claim against the manufacturer is filed in the Tribunal under the CPA, the maximum total amount of damages that the Tribunal can award is RM 50,000.

For claims that are filed in the Subordinate Courts, the maximum amount of damages that the respective Courts can award are as follows:

- (a) Magistrates Court – RM 100,000.
- (b) Sessions Court – RM 1,000,000.

There is no maximum limit on the amount of damages recoverable from a manufacturer for claims that are filed in the High Court.

6.6 Do special rules apply to the settlement of claims/proceedings, e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

Yes, there are special rules under Order 76 RC 2012 in relation to the settlement of claims/proceedings that are applicable to a person under disability. The term "person under disability" is defined in the said provisions as a person who is a minor or a mentally disturbed person within the meaning of the Mental Health Act 2001. Order 76 Rule 10 RC 2012 provides that where money is claimed by or on behalf of a person under disability, a settlement, compromise, payment, or acceptance of money paid into Court, whenever entered into or made, shall not, so far as it relates to that person's claim, be valid without the approval of the Court.

Order 22B Rule 7 RC 2012 also provides that a person under disability may make, withdraw and accept an offer to settle, but no acceptance of an offer made by him and no acceptance by him of an offer made by another party is binding on him until the settlement has been approved, as provided in Order 76 Rule 10 RC 2012.

There are no special rules applicable to the settlement of group/class actions.

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the claimant in respect of the injury allegedly caused by the product? If so, who has responsibility for the repayment of such sums?

No, the Government authorities are not able to do so.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; and (b) their own legal costs of bringing the proceedings, from the losing party?

Court fees are non-refundable regardless of the outcome of the Court action. The Court has the discretion to award costs to the successful party, which is required to be paid by the losing party. In practice, the amount of costs awarded by the Court rarely covers the entire legal costs of bringing the proceedings that is expended by the successful party.

7.2 Is public funding, e.g. legal aid, available?

Yes, legal aid is available in Malaysia through entities funded by the Government, namely the National Legal Aid Foundation and the Legal Aid Department. The scope of assistance offered

by the National Legal Aid Foundation is only limited to criminal cases while the Legal Aid Department can handle both criminal and civil cases.

The Malaysian Bar also runs a Legal Aid Clinic programme funded by its own members.

7.3 If so, are there any restrictions on the availability of public funding?

The legal aid services provided by the Legal Aid Department are generally restricted to citizens of Malaysia only. The types of civil action that are eligible for legal aid from the Legal Aid Department can be found in the Third Schedule of the Legal Aid Act 1971. This includes consumer claims (Item No. 19). In order to be eligible for fully funded legal aid (Category I) under the Legal Aid Department, the annual source of income for the applicant must be RM 30,000 and below. Applicants that earn between RM 30,000 to RM 50,000 can qualify for partially funded legal aid (Category II).

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

No, this is not allowed. Lawyers in Malaysia are prohibited by Section 112 of the Legal Profession Act 1976 from accepting contingency fees.

7.5 Is third-party funding of claims permitted and, if so, on what basis may funding be provided?

No, this is not permitted. Third-party funding of claims is not regulated in Malaysia, but the Courts have held that champerty agreements (which involve third-party funding of claims) are not enforceable in Malaysia as they are contrary to public policy and a contravention of Section 24(e) of the Contracts Act 1950.¹³

7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

Before the commencement of trial, the Court would generally direct parties to attend a PTCM relating to the matters arising in the action or proceedings. During the PTCM, the Court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with such information as it thinks fit, and the appropriate orders and directions that should be made to secure the just, expeditious and economical disposal of the action or proceedings, including the possibility of mediation in accordance with any practice direction for the time being issued.¹⁴

A party to any proceedings may serve on any other party an offer to settle pursuant to Order 22B Rule 1 RC 2012. The Court can exercise control over the amount of costs payable by parties if there is an offer to settle made by a defendant pursuant to the aforesaid provisions. It is provided in Order 22B Rule 9(2) RC 2012 that where an offer to settle made by a defendant (a) is not withdrawn and has not expired before the disposal of the claim, and (b) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle, the plaintiff is entitled to costs to the date the offer was served, and the defendant is entitled to costs from that date.

8 Updates

8.1 Please outline the approach taken to date by the courts in your jurisdiction in relation to product liability for new technologies such as artificial intelligence, machine learning, and robotics, and identify the ways in which this approach differs (if at all) from the approach taken with other products.

There are no reported Court cases in Malaysia involving new technologies such as artificial intelligence, machine learning or robotics as of the date of writing this chapter.

8.2 If relevant for your jurisdiction, what impact do you anticipate as a result of the revised disclosure requirements under the new EU Product Liability Directive?

The EU Product Liability Directive has no effect in Malaysia.

8.3 Please identify any other significant new cases, trends and developments in Product Liability Law in your jurisdiction.

In March 2024, the KPND informed Parliament that the Government was conducting a feasibility study for the implementation of a “lemon law”, which would provide consumers with an avenue to file claims and seek legal redress if they receive defective or substandard motor vehicles that could not be repaired.

Subsequently, in May 2025, it was announced that the KPND had drafted a cabinet paper proposing amendments to the CPA, which included “lemon law” provisions.¹⁵

In the Budget 2026 announcement in October 2025, the Prime Minister confirmed that the CPA will be amended to incorporate “lemon law” elements, to ensure protection for consumers.¹⁶

The Minister of the KPND reiterated in a media statement issued in January 2026 that his Ministry will be focusing on the implementation of a “lemon law” in Malaysia and this would involve the amendment of several key provisions in the CPA to include procedures and dispute resolution mechanisms for compensation claims involving new vehicle purchases.¹⁷

Endnotes

- <https://codeblue.galencentre.org/2022/03/02/npra-financial-assistance-for-covid-vaccine-side-effects-not-compensation>
- Kerajaan Malaysia & Ors v Lay Kee Tee & Ors* [2009] 1 MLJ 1.
- Nurul Atikah Mustafa Kamal v Nurazlina Suriani Zulkifly & Ors* [2019] 9 CLJ 395.
- Elizabeth Chin Yew Kim & Anor v Dato' Ng Gim Huat & Other Appeals* [2017] 2 CLJ 274.
- Ong Boon Hua @ Chin Peng & Anor v Kerajaan Malaysia* [2010] 3 CLJ 125.
- Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 1 LNS 763.
- Leave of the Court of Appeal is required if the value or subject matter of the claim (excluding interest) is less than RM 250,000.
- Leave of the Court of Appeal is required if the value or subject matter of the claim (excluding interest) is less than RM 250,000.
- Section 6A LA.
- Section 24A LA.
- Tradewinds Properties Sdn Bhd v Zulkhiple bin A Bakar & Ors* [2019] 2 CLJ 261.

- 12 *Sambaga Valli K R Ponnusamy v Datuk Bandar Kuala Lumpur & Ors & Another Appeal* [2017] 1 LNS 500 CA.
- 13 *Amal Bakti Sdn Bhd & Ors v Milan Auto (M) Sdn Bhd & Ors* [2009] 6 CLJ 153.
- 14 Order 34 Rule 2(2) RC 2012.
- 15 <https://www.nst.com.my/news/nation/2025/05/1218921/lemon-law-table-protect-car-buyers>
- 16 <https://belanjawan.mof.gov.my/pdf/belanjawan2026/ucapan/bs26.pdf> (see paragraph 39).
- 17 <https://www.bernama.com/en/news.php?id=2515058>



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Stanley also has litigation experience and has represented clients in a number of cases in the High Court and appellate courts in Malaysia. He is a registered trademark agent and industrial design agent in Malaysia.

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