

# Product Liability in the Near and Middle East

## A Comparative Study of Egyptian, Qatari and Iranian Law

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### 1. Abstract

When distributing products internationally manufacturers and traders will have to consider distinctive regulatory regimes established by the jurisdictions they are engaged in. Of particular concern will be provisions on consumer protection as well tortious liability such as product liability regulations. Specific product liability regulations have developed in the Near and Middle East and Northern Africa (MENA) only recently. Thus far the existing provisions are quite rudimentary. Some MENA jurisdictions have specific laws on product liability, such as Egyptian law, which includes a comprehensive product liability regime. Other MENA countries only address product liability as a measure under consumer protection. For instance, the Qatari consumer protection regulations include a remedy for damages or loss sustained due to flawed products or services. Finally, some jurisdictions such as Iran have not introduced any specific product liability provisions. Therefore, claims for damages for defective or flawed products or services will have to be based on general provisions on contractual or tortious liability. Thus, a manufacturer or trader selling his merchandise in different MENA-Countries will have to consider diverse product liability regimes when doing so. This article provides an overview of three different approaches towards product liability existing in the MENA Region. To illustrate these the article will discuss the product liability law regimes of Egypt, Qatar and Iran.

### 2. Introduction

This article defines product liability as the responsibility of a manufacturer, importer, distributor or retailer to compensate for bodily injury or physical damage caused by defective merchandise. Obligees under product liability is any person – not only the buyer – who sustained harm due to defective goods. Product liability is strict; that means the ob-

ligor may be held responsible without proof of fault. However, direct damages – hence compensation for the defective product – cannot be recovered under product liability. Product liability applies only to consequential damages; compensation for injury or damage suffered as a result of the defect.<sup>1</sup>

In principle, the civil and commercial laws of the Near and Middle East and North Africa (MENA) are quite homogenous. This

<sup>1</sup> This understanding of product liability is common to civil, e. g. T. Klindt: *Haftung ohne Verschulden* (sog. *Gefährdungshaftung*), in: *Produkthaftung*, ed. by T. Lenz, München 2014, pp. 175 ff., as well as common law jurisdictions, see i. e. M. McWilliams / M. Smith: *An Over-*

*view of the Legal Standard Regarding Product Liability Design Defect Claims and a Fifty State Survey on the Applicable Law in Each Jurisdiction*, in: *Defense Counsel Journal* 82.1 (2015), pp. 81 ff.

is *inter alia* due to the influence of Egyptian law. In particular, the Egyptian Civil Code, Law 131/1948 (EGY-CC)<sup>2</sup> served as a basis for the development of civil and commercial laws throughout the region.<sup>3</sup> Product liability laws have, however, developed quite recently and are thus little affected by the expansion of Egyptian law in the MENA-Region during the second half of the 20<sup>th</sup> century. Consequently, regulations governing this area of law are much more heterogeneous. Furthermore, some jurisdictions in the MENA-Region – such as Iran – developed civil and commercial laws autonomously without the influence of Egyptian law. The Iranian Civil Code of 1928 (IRN-CC)<sup>4</sup> came into force even before the EGY-CC. Similar to the EGY-CC the IRN-CC was developed following the model of European civil codes – in particular the Belgian, Swiss and French civil

codes. Islamic law principles are, however, much more pronounced in the IRN-CC.<sup>5</sup>

Considering these differences manufacturers and traders selling their products in different jurisdictions of the MENA-Region have to consider different standards when assessing their liability in the region. A comparative analysis of product liability laws of the MENA-Region, therefore, is of particular relevance in practice. In addition, such an analysis is worthwhile from a scientific point of view as the relevant regulations have – thus far – been paid little attention to by doctrine.

To provide the reader with a representative overview of the issue this article will compare product liability regulations in three jurisdictions. The first section (Section 30) analyses product liability under Egyptian law. It will show how the subject is

<sup>2</sup> Arabic original text available at [www.wipo.int/wipolex/en/text.jsp?file\\_id=205494](http://www.wipo.int/wipolex/en/text.jsp?file_id=205494) (last access 4. 4. 2016).

<sup>3</sup> Since Oman enacted a civil code (Royal Decree 29/2013) based on the EGY-CC in 2013, Saudi Arabia and Lebanon remain the only countries of the MENA-Region, of which the civil and commercial law is not significantly influenced by Egyptian Law. While Saudi Arabian law differs significantly from that of other countries of the MENA-Region, Lebanese civil and commercial law is – in large parts – comparable to Egyptian law, since both laws have their basis *inter alia* in the continental European law tradition. For an overview of the adaptation of Egyptian law throughout the MENA-Region see i. e. K. Zweigert / H. Kötz: Einführung in die Rechtsvergleichung, Tübingen <sup>3</sup>1996, p. 109; N. Bremer: Herausforderungen im Geschäftsverkehr mit Nahost, in: Legal Operations Management, ed. by R. P. Falta and C. Dueblin, Berlin 2016, ch. 8.3.

<sup>4</sup> Farsi original text available at [\[gal/madani.pdf\]\(http://www.mut.ac.ir/le-gal/madani.pdf\) \(last access 4. 4. 2016\). Unofficial English translation available at \[www.refworld.org/docid/49997adb27.html\]\(http://www.refworld.org/docid/49997adb27.html\) \(last access 4. 4. 2016\).](http://www.mut.ac.ir/le-</a></p>
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<sup>5</sup> Although the legislative authority of the clergy was significantly limited by the IRN-CC in the area of civil law – for instance family law, which prior to 1928 was under the jurisdiction of the clergy, included in the IRN-CC – the commission appointed by the Iranian Ministry of Justice to draft the IRN-CC relied on three very authoritative Shia legal texts – namely, Najm ad-din Mohaqqueq Helli's Sharaye' Al-Eslam, Zein Ad-Din Shahed Sani's Sharh-e Lom'eh, and Mortaza Khorasani's Makaseb, when working on the code. For an overview on the development of the IRN-CC see i. e. Z. Mir-Hosseini: Sharia and National Law in Iran, in: Sharia Incorporated. A Comparative Overview of Legal Systems in Twelve Muslim Countries in Past and Present, ed. by J. M. Otto, Leiden 2010, pp. 327 ff.; H. Mehrpoor: The Civil Code of Iran, Tehran 2001, p. 6.

governed in the “nucleus” of the current civil and commercial law of the MENA-Region. In a subsequent section (Section 40) this article will examine to which extent Egyptian product liability regulations are reflected in other jurisdictions of the MENA-Region. To this Qatari law will serve as an example. The following, third section (Section 5) considers product liability in a jurisdiction that is not derivative of Egyptian law: Iran.

Based on the review of product liability laws of these four jurisdictions this article will outline similarities and differences existing throughout the Near and Middle East in this area of law. It will show that product liability law is still rudimentary in the MENA-Region. While most jurisdictions have enacted consumer protection laws since the late 1990s, these laws provide little in respect of liability of manufacturers, importers, distributors and retailers towards persons who sustained loss or injury due to defects in their merchandise. Still, there are considerable differences between the regulations in the different MENA-Countries. Manufacturers and traders selling their products in the MENA-Region, therefore, will have to consider diverse liability regimes.

### 3. Product Liability under Egyptian Law

Specific provisions on product liability have been introduced in Egyptian law in 1999 as part of the revised Egyptian Commercial Transaction Law, Law 17/1999 (EGY-CTL)<sup>6</sup>. Furthermore, the Egyptian Consumer Protection Law, Law 67/2006 (EGY-CPL)<sup>7</sup> enacted in 2006 comprises regulations concerning responsibility for defective products. In connection with the general provisions on contractual and tortious liability of the EGY-CC the specific provisions of the EGY-CTL and the EGY-CPL form the Egyptian liability regime for manufacturers and traders.

#### 3.1 Product Liability under the Egyptian Commercial Transaction Law

The first paragraph of Article 67 EGY-CTL provides that

the manufacturer and the distributor of a good shall be liable to any persons that sustained bodily injury or physical damage, provided that the impaired party can establish that such injury or damage was caused by a defect in the product.<sup>8</sup>

<sup>6</sup> Arabic original text available at [www.wipo.int/wipolex/en/text.jsp?file\\_id=312041](http://www.wipo.int/wipolex/en/text.jsp?file_id=312041) (last access 4. 4. 2016). Unofficial English translation available at [www.wipo.int/edocs/lexdocs/laws/en/eg/eg053en.pdf](http://www.wipo.int/edocs/lexdocs/laws/en/eg/eg053en.pdf) (last access 4. 4. 2016).

<sup>7</sup> Arabic original text available at [www.wipo.int/wi](http://www.wipo.int/wi)

[poxlex/en/text.jsp?file\\_id=311658](http://www.wipo.int/wipolex/en/text.jsp?file_id=311658) (last access 4. 4. 2016). Unofficial English translation available at [www.wipo.int/wipolex/en/text.jsp?file\\_id=191764](http://www.wipo.int/wipolex/en/text.jsp?file_id=191764) (last access 4. 4. 2016).

<sup>8</sup> Unless otherwise indicated translations are made by the author.

### 3.1.1 Elements of Claim

While the EGY-CTL does not expressly define what constitutes a defect, it provides certain examples of when a product will be deemed defective. Pursuant to article 67(2) EGY-CTL a good will, for example, be regarded as defective where sufficient precautions were not taken in design, production, assembly, processing, storage, packaging, method of display or use, so as to prevent the occurrence of harm or to warn against the possibility of such harm. The catalogue provided by article 67(2) EGY-CTL is not exclusive. Thus, it is to be regarded as a list of examples that may be considered when determining whether a good is defective.<sup>9</sup>

In principle, liability under article 67 EGY-CTL is strict.<sup>10</sup> However, liability is somewhat restricted where retailers are concerned. Retailers are only liable according to article 67(1) EGY-CTL, if they knew or should have known of the defect at the time of sale. Whether a retailer knew or should have known of the defect is determined by objective standards. Hence, a retailer is regarded to have or should have known of the defect if a diligent businessman would have discovered it (article 67(3)(b) EGY-CTL).

The burden of proof to establish the elements of the claim is on the obligee (article 67(1) EGY-CTL). Thus, the claimant has to establish that the concerned good was defective, that he sustained injury or damage and that there was a causal link between the harm incurred and the defect.

### 3.1.2 Obligor and Obligee

Liability under article 67(1) EGY-CTL is not limited to the person who purchased or used the concerned good, or to consumers in general. Any natural or legal person that sustained bodily injury or physical damage due to a defect in a good may claim compensation under article 67(1) EGY-CTL. Hence, the group of eligible obligees of article 67(1) EGY-CTL is very wide. It comprises persons who directly or indirectly suffered damage or injury due to the defect regardless of whether such harm was sustained in the obligee's private or commercial endeavours.<sup>11</sup>

Obligor under article 67 EGY-CTL are the manufacturer and the distributor(s) of the concerned good. Manufacturer within the meaning of article 67 EGY-CTL is the – natural or legal – person that produced or assembled the final good. Component suppliers

<sup>9</sup> See i. e. A. Nadoury: Products Liability in Egyptian Law, Washington DC: World Jurists Association 1997, p. 8; H. Stovail: Product Liability in Egypt. An Overview of Some Civil and Commercial Code Rules, in: Arab Law Quarterly 19 (2004), p. 285.

<sup>10</sup> Stovail: Product Liability in Egypt, p. 285.

<sup>11</sup> This approach is, however, not uncommon in product liability laws. I. e. the German Product Liability Law (German original text available at [www.gesetze-im-internet.de/bundesrecht/prodhaftg/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/prodhaftg/gesamt.pdf), last access 4. 4. 2016) also affords any consumer or commercial party that directly or indirectly sustained harm due to a defect in a good the right to seek compensation against the manufacturer or distributor(s) of the relevant product; cf. i. e. W. Braun: Produkthaftung – Produzentenhaftung. Ein Leitfaden für die Praxis, Nordstedt 2009, p. 43; Klindt: Haftung ohne Verschulden, pp. 219 ff.

and manufacturers of primary or intermediate products are not “manufacturers” according to article 67 EGY-CTL (article 67(3)(a) EGY-CTL). As per article 67(3)(b) EGY-CTL distributors under article 67 EGY-CTL include the – natural or legal – person that imported a good into Egypt, the wholesaler who distributed a good to retailers and the retailer selling a good to consumers.

The obligee may choose to hold either all, any number of or one obligor individually liable. Where the obligee holds multiple parties accountable for injury or damage incurred due to a defect in a product, the obligors are not jointly and several liable (article 67(4) EGY-CTL). Thus, where an obligee brings a claim against multiple parties his claim will be partially rejected unless he can establish to which proportion the individual obligors are liable.

Where the manufacturer or the distributor have their place of business outside of Egypt, Egyptian courts are nonetheless competent to hear any claim for compensation under article 67 EGY-CTL (article 67(4) EGY-CTL). Thus, where a foreign manufacturer or trader – directly or indirectly through a local distributor or commercial agent – sells its products in Egypt or where the product simply ends up in Egypt, this foreign manufacturer or trader may be held liable under

article 67 EGY-CTL and any dispute arising in respect to such liability may be heard by Egyptian courts. Furthermore, the application of article 67 EGY-CTL may not be excluded by agreement (article 67(6) EGY-CTL).<sup>12</sup>

### 3.1.3 Statute of Limitations

A claim under article 67 EGY-CTL must have to be filed within three years as of the injured party obtaining knowledge of the injury or damage incurred. In any case, a claim under article 67(1) EGY-CTL is time barred after 15 years from the date the defect was caused (article 67(5) EGY-CTL).

## 3.2 Product Liability under the Egyptian Consumer Protection Law

In addition, to article 67 EGY-CTL further provisions on liability for defects were introduced to Egyptian law in 2006 with the implementation of the EGY-CPL. The primary purpose of the EGY-CPL is consumer protection. As such, the law imposes certain rules of conduct on manufacturers and distributors (article 2 et seq. EGY-CPL). Overseeing compliance with these regulations is vested in the Egyptian Consumer Protection Agency (جهاز حماية المستهلك).<sup>13</sup> Furthermore, the EGY-CPL gives non-governmental organizations

<sup>12</sup> A. R. El-Sanhūrī: الوسيط في شرح القانون المدني الجديد [Commentary to the New CC], 1, دار النشر للجامعات المصرية, 1, [Cairo] 1952, p. 775; Stovail: Product Liability in Egypt, p. 280.

<sup>13</sup> The Egyptian Consumer Protection Agency was established in 2006 per Executive Regulations of the Consumer Protection Law, Law 67/2006, Decree of the

Ministry of Trade and Industry of 2006; Arabic original text available at [www.cpa.gov.eg/ar-eg/شروعات](http://www.cpa.gov.eg/ar-eg/شروعات) (last access 4. 4. 2016). Unofficial English translation available at [www.cpa.gov.eg/en-us/Legislations](http://www.cpa.gov.eg/en-us/Legislations) (last access 4. 4. 2016). The establishment, organization as well as the general principles of its operation are governed by article 12 ff. EGY-CPL.

(NGOs) active in the area of consumer protection certain competences (article 23 EGY-CPL). Aside from provisions regulating the conduct of manufacturers and distributors the EGY-CPL also establishes their liability towards consumers.

### 3.2.1 Right of the Consumer to Request Exchange or Refund

Article 8(1) EGY-CPL entitles a consumer to return a defective good and demand exchange or refund within 14 days from the date on which he received the good. A defect within the meaning of the EGY-CPL is:

[a]ny flaw due to which the value of the concerned good is reduced or which prevents the good from being utilized for its intended or customary purpose, including but not limited to flaws caused by improper transportation or storage, unless such flaw is attributed to the consumer.<sup>14</sup>

Consequently, liability under article 8(1) EGY-CPL does not require fault of the obligor. The obligor may, however, exculpate himself from his liability by proving that the consumer is responsible for the defect.

The parties able to claim under article 8(1) EGY-CPL are consumers; thus, “[a]ny person to whom a good is offered or sold and who plans to utilize said good for personal or do-

mestic purposes.” (article 1 EGY-CPL). Thus, the obligee under article 8 (1) EGY-CPL is the person who purchased the defective good, provided that he did so for personal and not commercial use. Obligor is the supplier of the concerned good. Supplier as referred to in the EGY-CPL is “[a]ny person who provides a service or manufactures, imports, distributes, exhibits, circulates or trades in a good, offers or sells a good to consumers or deals in it in any way” (article 1 EGY-CPL). The definition of supplier is very broad and explicitly includes the manufacturer and the distributor within the meaning of article 67 EGY-CTL.<sup>15</sup> Where a consumer holds multiple parties liable under article 8(1) EGY-CPL, their liability is joint and several (article 8(2) EGY-CTL).

Article 8(1) EGY-CPL explicitly only entitles a consumer to demand exchange of or refund for a defective good. He may not claim additional compensation for injury or damage sustained due to that defect. Additional compensation may, however, be claimed under different liability regimes – i. e. article 67(1) EGY-CTL.

### 3.2.2 Procedure

Complaints against infringements of consumer rights provided for in the EGY-CPL

article 8(2) EGY-CPL has to date not been discussed in the doctrine or jurisprudence. Hence, while the general scope of the EGY-CPL is indicative of them not being contained in the definition, it cannot be said with certainty whether or not they may be held liable under article 8(1) EGY-CPL.

<sup>14</sup> Article 1 EGY-CPL.

<sup>15</sup> In addition, the catchall clause at the end of the definition may also be considered to comprise persons or entities that are not directly involved in producing or trading of the concerned product such as advertisers or maintenance companies. Whether these persons or entities are considered suppliers within the meaning of

may be brought by consumers or NGOs before the Egyptian Consumer Protection Agency (article 12 (b), 23 (a) EGY-CPL).<sup>16</sup>

### 3.2.3 Penalties

A supplier who infringes the provisions of the EGY-CPL may be subject to penalties. These include fines of not less than 5.000 Egyptian Pounds and not more than 200.000 Egyptian Pounds as well as the publication of the infringement in national newspapers (article 24 EGY-CPL).

## 3.3 Product Liability under Contract

Where the specific provisions of the EGY-CTL governing product liability are not applicable, liability for injury or damage caused by a defect in a good may derive from the general provisions governing contractual liability. The principle remedy for breach of contract under Egyptian law is restitution in rem.<sup>17</sup> Where in a contract of sale after transfer of risk restitution in rem is impossible, has failed or was denied the purchaser may recover compensation for defects in the sold item pursuant to article 447 (1) EGY-CC. This article stipulates that the seller is liable to the buyer for compensation where the good sold was defective, which according to article 447 (1) EGY-CC is the case where the product – at the time of transfer of risk:

- had a flaw that decreased its value;

- did not have the properties or was not suitable for the use warranted; or

- where no agreement as to the good's properties or intended use exists – did not have the properties a good of the same kind usually has or was not suitable for the customary use of the good sold.

As such, article 447 (1) EGY-CC primarily aims to compensate the buyer for monetary loss suffered due to the fact that the item purchased was defective – i. e. loss incurred because a product could not be utilized for its intended or common purpose. It is unclear whether further indemnities for injury or damage caused by the defect – i. e. damage done to other parts of a product due to a spare part being defective.

While according to its wording the seller's liability under article 447 (1) EGY-CC may comprise liability for injury or damage caused by defective merchandise, the damages that may be recovered under contractual liability are limited. Damages may only be recovered where and to the extent that they are a "natural consequence" (نتيجة طبيعية) of the concerned breach of contract (article 221 (1) EGY-CC) and were foreseeable at the time the underlying agreement was made (article 221 (2) EGY-CC). This limitation will – in most cases – exclude consequential damages. Consequential damages will often not be foreseeable at the time the concerned agreement is made. Thus, they are

<sup>16</sup> No fees are charged by the Egyptian Consumer Protection Agency for such complaints or the subsequent procedure (article 20 (3) EGY-CPL).

Restitution in rem under Egyptian law comprises rectification of flaws or delivery of a new product (article 203 EGY-CC).

commonly not recoverable under the contractual liability regime set by Egyptian law.<sup>18</sup> Consequently, since product liability concerns consequential damages, product liability claims can often not be based on article 447 (1) EGY-CC.

Furthermore, article 447 (1) EGY-CC applies only in relations between the seller and the buyer, while product liability also concerns the manufacturer as well as other parties involved in trading with the concerned good and entitles any person who sustained damage or injury due to the flaw in the concerned good.

Finally, product liability is strict. Liability under article 447 (1) EGY-CC, however, requires fault on the part of the seller. Thus, the buyer may only claim compensation pursuant to article 447 (1) EGY-CC where he sustained loss due to an intentional or negligent act or omission of the vendor.<sup>19</sup> Strict liability under contract may only be imposed by specific warranties (article 445 (1) EGY-CC). Contractual liability may, however, also be restricted by agreement. The contractual liability regime established by the EGY-CC can, in principle, be excluded, with the exception of liability arising from intentional

or gross negligent acts or omissions of the vendor.<sup>20</sup> Whether liability for bodily harm may be excluded is still somewhat disputed, but the predominant opinion opposes an exclusion of liability for bodily harm.<sup>21</sup>

### 3.4 Product Liability under Tort

Tortious liability under Egyptian law is governed by article 163 EGY-CC et seq. and comprises liability for wrongful acts and omissions as well as vicarious and custodial liability.

#### 3.4.1 Liability for Wrongful Acts and Omissions

As the principal provision of tortious liability, article 163 (1) EGY-CC stipulates that any person who intentionally or negligently causes damage or injury to another person is liable to the harmed party for compensation. Article 163 (1) EGY-CC explicitly comprises three conditions: (1) an act or omission, (2) damage or injury and (3) a causal link between the two. It is, however, generally understood that a person is only liable under article 163 (1) EGY-CC where and as far as he was at fault.<sup>22</sup>

<sup>18</sup> See i. e. محكمة النقض المصرية (Egyptian Court of Cassation) decision of 28. 11. 1968; also see A. R. El-Sanhūrī: الوسيط في شرح القانون المدني الجديد, 1, p. 910. Still, loss of profit may be recovered under article 447 (1) EGY-CC (article 221 (1) EGY-CC).

<sup>19</sup> While the wording of article 447 (1) EGY-CC does not explicitly require fault, fault is generally perceived to be a necessary requirement for any claim pursuant to article 447 (1) EGY-CC; A. Nadoury: Products Liability in Egyptian Law, Washington DC 1997, p. 8; Stovail: Product Liability in Egypt, pp. 279 ff.

<sup>20</sup> El-Sanhūrī: الوسيط في شرح القانون المدني الجديد, 1, p. 775; Stovail: Product Liability, p. 280.

<sup>21</sup> Nadoury: Products Liability in Egyptian Law, p. 14; Stovail: Product Liability in Egypt, p. 280. Sfeir, however, argues that liability for bodily harm may be validly excluded by agreement under Egyptian law; see G.N. Sfeir: Modernization of the Law of the Arab States, San Francisco 1997, p. 109.

<sup>22</sup> A. Amkhan: The Concept of Fault in Arab Law of Contract, in: Arab Law Quarterly 9.2 (1994), p. 172; El-Sanhūrī: الوسيط في شرح القانون المدني الجديد, 1, p. 7; H. Amir /

The EGY-CC does not comprise a statutory definition of fault. The definition generally used in Egyptian law today is the one introduced by the Egyptian Court of Cassation in 1978, which defined tortious fault as conducting oneself in a way that deviates from the norm in that such conduct ignores the care and prudence an average reasonable person would observe.<sup>23</sup> This definition describes what is commonly understood as negligence. While the Egyptian Court of Cassation did not explicitly include intent in its definition of tortious fault, there is consensus that tortious fault under Egyptian law comprises intent.<sup>24</sup> Thus, as a fourth – implicit – element of claim article 163(1) EGY-CC requires that the obligor acted – or omitted to act – intentionally or negligently.

Consideration also has to be given to liability for omissions. If such liability was to be imposed without further restrictions, the group of persons possibly liable under article 163(1) EGY-CC would be extensive. For instance, an innocent bystander could be held liable for omitting to hinder a person from using an obviously unsafe product. Some jurisdictions have, therefore, chosen to limit tortious liability for omissions to situations where the concerned person was under

a duty to act – e. g. a driver involved in a car accident being obligated to assist other persons involved in the accident.<sup>25</sup> Egyptian law, however, does not apply this method, but rather solves the issue through the requirement of fault.<sup>26</sup> Thus, an Egyptian court will make an assessment of fault to consider whether a person is liable for not taking action to prevent harm from materializing itself.

As any person causing damage or injury is liable under article 163(1) EGY-CC, the manufacturer or distributor of a product may be held liable pursuant to article 163(1) EGY-CC where a defect in the good caused harm to a person and the defect was caused intentionally or negligently by the manufacturer or distributor. Thus, in contrast to liability under article 67(1) EGY-CTL a person – such as the manufacturer or distributor of a good – may only be liable for a defect if that person was responsible for causing that defect. Due to this requirement, distributors who may be held liable for production defects under article 67(1) EGY-CTL will not be liable for production defects under article 163(1) EGY-CC, since a distributor will commonly not be responsible for a production defect in a product he sells. Distributors

A.R. Amir: المسؤولية المدنية. التصيرية والعقدية. [Civil Liability. Tortious and Contractual], دار المعارف [Cairo] 1979, p. 142.

<sup>23</sup> Egyptian Court of Cassation, case no. 336, decision of 31.05.1978; also see Amir/Amir: المسؤولية المدنية. التصيرية والعقدية, p. 142. In fact in 1952 El-Sanhūri already proposed a similar definition in what is still considered the standard commentary to the EGY-CC; El-Sanhūri: الوسيط في شرح القانون المدني الجديد 1, p. 7.

<sup>24</sup> See i. e. Amir/Amir: المسؤولية المدنية. التصيرية والعقدية, p. 142; Nadoury: Products Liability in Egyptian Law, p. 13; Stovail: Product Liability in Egypt, p. 279.

<sup>25</sup> This solution was i. e. chosen in German law; see i. e. Higher Regional Court (*Oberlandesgericht*) Hamm, decision of 25.06.1998, case no. 6 U 146/96, available at *Neue Juristische Wochenschrift. Rechtsprechungs-Report* (1999), p. 1324.

<sup>26</sup> See i. e. Egyptian Court of Cassation, case no. 336, decision of 31.05.1978.

may, however, be liable for defects caused by improper storage or handling of a good pursuant to article 163 (1) EGY-CC, defects for which a manufacturer will likely not be liable.

Unlike contractual liability, liability under article 163 (1) EGY-CC is not restricted to specific persons. Any harmed party is able to recover damages under tort.

The injury or damage incurred do not have to have been foreseeable to be recoverable under tortious liability. Still, as a general principle of Egyptian law consequent damages are only recoverable under tort where they were a natural consequence of the wrongful act or omission.<sup>27</sup> Thus, tortious liability is wider than contractual liability insofar that it does not restrict the party harmed to compensation for foreseeable damage or injury, but does not necessarily cover responsibility for all consequential damages.

An action under article 163 (1) EGY-CC is time barred upon the expiry of three years as of the obligee becoming aware of the elements of claim, and in any case 15 years after the wrongful act or omission occurred (article 172 EGY-CC).

Pursuant to Egyptian law, liability under tort may not be limited or excluded by agreement. Any agreement to the contrary is void (article 217 (3) EGY-CC).

### 3.4.2 Vicarious and Custodial Liability

Vicarious liability, thus the liability for damage or injury caused by third parties, is governed by article 173 et seq. EGY-CC. Article 174 EGY-CC stipulates that a person is liable for harm caused by wrongful acts or omissions of third parties, provided that such harm was caused in execution of a task for which that third party was retained by the obligor. Thus, under article 174 EGY-CC a manufacturer or distributor may be held liable for the actions or omissions of *inter alia* an Egyptian commercial agent retained to sell his products in Egypt. The manufacturer or distributor can, however, recover any compensation paid pursuant to article 174 EGY-CC from the third party (article 175 EGY-CC).

Liability for harm caused by an object – custodial liability – is regulated in articles 176 et seq. EGY-CC. While articles 176 and 177 EGY-CC deal with liability for harm affected by animals and buildings, which will be of little relevance in respect to product liability, article 178 EGY-CC concerns liability for inanimate movable objects. It provides that a person who is charged with supervising an object – the custodian – is liable for injury or damage caused by that object to another person. Thus, since the manufacturer and the vendor will usually not have custody of a good after it was handed over to the buyer, this provision will have little

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<sup>27</sup> T. Khattab: Civil Law, in: Egypt and its Laws, ed. by N. Bernard-Maugiron and B. Dupret, Leiden 2002, p. 10; Stovail: Product Liability in Egypt, p. 281.

application in regard to product liability. Liability under article 178 EGY-CC is, however, strict.<sup>28</sup>

### 3.5 Conclusion

With article 67 EGY-CTL Egyptian law comprises a relevant product liability provision. In particular, liability under article 67 (1) EGY-CPL is – in principle – strict and claims for compensation may be brought by any person harmed against the manufacturer and the distributors of a good. Still, due to the general restrictions applying to consequential damages under Egyptian law, product liability pursuant to article 67 (1) may be somewhat limited compared to other jurisdictions. Furthermore, article 8 (1) EGY-CPL introduced certain additional consumer rights. These are, however, of little relevance in respect to product liability.

Where the specific provisions of the EGY-CTL do not apply, compensation may only be sought under contractual or tortious liability. Liability under both regimes is, however, more narrow than under article 67 (1) EGY-CTL. Contractual liability only applies in relations between buyer and seller and consequential damages may only be recovered where such damages are a natural conse-

quence of the particular breach of contract and they were foreseeable at the time the underlying agreement was made. Tortious liability is considerably wider. Both the seller and the manufacturer may be held responsible and any person harmed is – in principle – entitled to compensation under tort. Nevertheless, tortious liability – unlike product liability – is not strict. Thus, where a person cannot claim compensation under article 67 EGY-CTL, its recourse against the seller and the manufacture is somewhat limited.

Whether a person who suffered harm may demand compensation under tort or contract is not entirely clear. Egyptian civil law is strongly influenced by French law. Egyptian courts, therefore, often consult French doctrine as well as decisions of French courts when interpreting Egyptian law.<sup>29</sup> Pursuant to the Principle of *non cumul des responsabilités* – or non-concurrence of actions – French law provides for the precedence of contractual over tortious liability.<sup>30</sup> This means that where harm was sustained due to a breach of contract the party injured is barred from seeking compensation under tort and may only do so under contract. Egyptian doctrine and jurisprudence, however, do not strictly follow this principle and consider the injured party to have the right to choose whether it

<sup>28</sup> International Law Commission: Survey on Liability Regimes Relevant to the Topic of International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law: Study Prepared by the Secretariat (UN Doc. A/CN.4/471)', in: Yearbook of the International Law Commission II.1 (1995), p. 69.

<sup>29</sup> See i. e. K. Bälz: Europäisches Privatrecht jenseits

von Europa? Zum fünfzigjährigen Jubiläum des ägyptischen Zivilgesetzbuches, in: Zeitschrift für Europäisches Zivilrecht 51 (2000), p. 61.

<sup>30</sup> D. Tallon: Contract Law, in: G.A. Bermann / E. Picard: *Introduction to French Law*, Kluwer 2008, p. 231; French Court of Cassation (*Cour de Cassation*), Civil Chamber (*Chambre Civile*) 2, decision of 09.06.1993, Appeal No. 91-21650.

will seek compensation under tort or contract.<sup>31</sup>

Article 8 (1) EGY-CPL explicitly provides for its application alongside of other claims under contract or law. Thus, where a consumer returns a defective product, he may claim a refund under article 8 (1) EGY-CPL as well as additional damages under contractual or tortious liability or article 67 (1) EGY-CTL. Whether a manufacturer or distributor may be held liable pursuant to article 67 (1) as well as under contractual and tortious liability is, however, not entirely clear. In the opinion of the author the same conditions as in respect to tortious and contractual liability should apply; thus the harmed person should have the right to choose whether he seeks compensation according to article 67 (1) EGY-CTL, contractual or tortious liability.<sup>32</sup>

#### 4. Product Liability under Qatari Law

Qatari law does not comprise a specific product liability law. There are, however, some provisions that are relevant in this regard; in particular, article 3 Qatari Consumer Protection Law, Law 8/2008 (QAT-CPL)<sup>33</sup>. In addition the liability regime under tort and con-

tract established by the Qatari Civil Code, Law 22/2004 (QAT-CC),<sup>34</sup> will be relevant.

#### 4.1 Product Liability under the Consumer Protection Law

Prior to 2008 provisions on consumer protection were rather scarce and spread over different laws and regulations. With the introduction of the QAT-CPL the Qatari legislator largely consolidated the existing consumer protection regime into a single law and established additional standards. The law comprises a number of provisions regulating the conduct of manufacturers and distributors. For instance, where a good is found to be defective article 5 QAT-CPL compels the supplier to recall such goods against a refund or exchange or repair the defect. Should a supplier violate his obligations under the QAT-CPL, he may be penalized with fines ranging from 3,000 Qatari Riyal to 2,000,000 Qatari Riyal (article 17 QAT-CPL), closure of his business premises (article 18 QAT-CPL) and seizure and destruction of the defective goods as well as the materials and tools used in their production (article 21 QAT-CPL).

Moreover, the QAT-CPL furnishes consumers with certain rights including *inter alia*

<sup>31</sup> Egyptian Court of Cassation, decision of 1. 1. 1948.

<sup>32</sup> This interpretation appears to be shared by Stovail: Product Liability in Egypt, pp. 286 ff.

<sup>33</sup> Arabic original text available at [www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=ar](http://www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=ar) (last access 4. 4. 2016). Unofficial English translation available at [www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=en](http://www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=en) (last access 4. 4. 2016).

<sup>34</sup> Arabic original text available at [www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=ar](http://www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=ar) (last access 4. 4. 2016). Unofficial English translation available at [www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=en#Section\\_8977](http://www.almeezan.qa/LawView.aspx?opt&LawID=2559&language=en#Section_8977) (last access 4. 4. 2016).

recourse in case of harm sustained due to defective goods. In particular, the supplier of a good may be held liable for harm sustained by a consumer due to him purchasing or using a defective good pursuant to article 3 QAT-CPL.

#### 4.1.1 Elements of Claim

Article 3 QAT-CPL provides for three elements of claim: (1) defect (2) harm caused to himself or his assets (تَلْحَقُ بِهِ أَوْ بِأَمْوَالِهِ)<sup>35</sup> and (3) causal link between the two. A defect is defined as:

any flaw in a good or service that diminishes its value or restricts its intended or customary utilization so that the persons using it is – wholly or partially – deprived of the benefit deriving from such use, including flaws caused due to improper handling and storage.<sup>36</sup>

Such a flaw is, however, not considered a defect, if it was caused by the consumer.

Pursuant to article 3 QAT-CPL the supplier is liable to the consumer for “fair” (عادل) compensation. What is fair in this regard is not clarified by the statute. Considering the liability regime established by the QAT-CPL and, in particular, the obligation to make good any defects comprised in its article 5

one might argue that the obligor’s liability under article 3 QAT-CPL should go beyond mere compensation for the monetary loss sustained due to the relevant good being defective. This is further supported by the phrasing of article 3 QAT-CPL, which affords the obligee compensation not only for harm caused due to him purchasing but also due to him using the defective good. While harm sustained by purchasing a defect good will comprise monetary loss incurred due to owning a defective rather than a flawless good, damage suffered due to using a defective good will likely comprise consequential damages<sup>37</sup> – i. e. damage caused to other items or loss of profit – as well as damages for bodily injury. The construction of article 3 QAT-CPL with respect to the law as a whole, therefore suggests that the restriction imposed by limiting compensation to a “fair” amount merely excludes excessive and purely punitive damages.<sup>38</sup> Still, for lack of available clarification by jurisprudence or the competent authority no final statement can be made as to the standards applied in determining the extent of compensation.

Fault of the obligor is not explicitly required by article 3 QAT-CPL. Thus, considering the wording its, liability under article 3

<sup>35</sup> The unofficial English translation of the QAT-CPL provided by the government online service Al Meezan (see [www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=en](http://www.almeezan.qa/LawView.aspx?opt&LawID=2647&language=en), last access 4. 4. 2016) translates the relevant passage as “property and financial damage”. This translation is, however, not accurate. Since the inaccuracy is so significant that it will have an impact on the interpretation of article 3 QAT-CPL, the translation provided for on Al Meezan should not be considered in this regard.

<sup>36</sup> Article 1 QAT-CPL.

<sup>37</sup> Consequential damages – including loss of profits – may be sought under Qatari law, provided that the damages were a reasonably foreseeable consequence of the relevant breach of contract or wrongful act (articles 201, 202 263(2) QAT-CC).

<sup>38</sup> Punitive damages as e. g. provided for by U.S. law cannot be recovered under Qatari law; cf. articles 263, 264 QAT-CC.

QAT-CPL should be strict. This would be in line with internationally accepted standards of product liability. Still, for lack of relevant court practice or official clarification by the competent authorities no final statement can be made on this issue.

The QAT-CPL does not make any reference to the burden of proof. Hence, following the general rule established by article 211 Qatar Civil and Commercial Procedure Law, Law 13/1990 (QAT-CCPL) the burden of proof to establish the elements of the claim lies with the obligee. However, the obligor may exculpate himself from his liability under article 3 QAT-CPL by establishing that the defect was caused by the obligee.

#### 4.1.2 Obligor and Obligee

Obligee of article 3 QAT-CPL is the consumer, thus any person who bought or used a good for personal or domestic purposes (article 1 QAT-CPL). Obligor is the supplier of the good. Article 1 QAT-CPL defines him as

any person who provides a service or manufactures, distributes, trades in, sells, exports or imports a good, or is in any way involved in its production or distribution or deals in it in any way.

#### 4.1.3 Statute of Limitations

The QAT-CPL does not comprise specific provisions on limitation periods. Hence, in line with the general provisions on limitation in civil law, it should be 15 years as of the date

the defect was caused (article 403 QAT-CC).

## 4.2 Product Liability under Contract

Like in Egyptian contract law the principle remedy under Qatari contract law is specific performance (article 245 QAT-CC). However, in a contract of sale, restitution in rem is not available where the defect is not so severe that it renders the good unusable (article 451(2) QAT-CC). Furthermore, the buyer may choose to keep the good purchased despite it being defective (article 451(2) QAT-CC). In these cases, the buyer may claim compensation under article 455 QAT-CC. According to this provision the seller is liable to the buyer for compensation for defects in the good sold. A good is considered to be defective within the meaning of article 455 QAT-CC if – at the time of delivery – a flaw in the good (1) diminishes its value or (2) renders it unfit for its intended or common use. The seller is liable regardless of whether he was aware of the defect or not (article 455 QAT-CC). However, where the seller can establish that he was not aware of the defect at the time of the sale, his liability under article 455 QAT-CC is limited to the purchase price paid to the seller by the buyer (articles 451(3), 450(2) QAT-CC).

Notably – unlike article 447 EGY-CC – article 455 QAT-CC does not explicitly state that a good not having the properties warranted or commonly associated with the good concerned as a defect.<sup>39</sup> Thus, under a

<sup>39</sup> See i. e. article 447 EGY-CC, which provides for lack of warranted or common properties as a defect.

strict reading of article 455 QAT-CC compensation cannot be claimed for loss sustained due to the good sold not having the warranted or common properties. However, decisions of the Qatar Court of Cassation (محكمة التمييز) confirm that lack of warranted or common properties constitutes a defect within the meaning of article 455 QAT-CC.<sup>40</sup>

In addition, article 455 QAT-CC makes no reference to fault. In fact, no provision of the QAT-CC explicitly establishes fault of the obligor as an element of contractual liability. Still, article 259 (1) QAT-CC does so implicitly. It provides that contractual liability may be excluded, except for liability arising out of intentional or gross negligent conduct. Such a provision only makes sense if contractual liability under Qatari law does generally require fault.

Article 455 QAT-CC primarily serves to compensate the buyer for loss sustained due to the value or use of a good being diminished due to a defect. Similar to Egyptian law contractual liability under Qatari law is primarily limited to direct damages and loss of profit as far as these are a natural consequence of the relevant breach of contract; i. e. mal-performance. However, consequential damages may be recovered to the extent they were reasonably foreseeable or were contemplated by the parties at the time the underlying agreement was concluded (article 263(2) QAT-CC).

Since contractual liability under article 455 QAT-CC only applies between vendor and purchaser and requires fault on behalf of the obligor, it fails to establish a comprehensive product liability regime. However, strict liability may be established by agreement where the seller provides a guarantee (article 464 QAT-CC).

### 4.3 Product Liability under Tort

#### 4.3.1 Liability for Wrongful Acts and Omissions

Liability for wrongful acts and omissions is established by article 199 QAT-CC, which provides that “[a]ny person who commits an act that causes harm to another person shall be liability for compensation for such harm”. While article 199 QAT-CC explicitly only establishes liability for wrongful acts, it is generally understood as also providing for liability for omission.<sup>41</sup>

Liability under article 199 QAT-CC does not require the obligee to establish fault on behalf of the obligor in a claim for compensation. This approach is in line with Islamic law. According to Islamic law liability for harm caused by one person to another by act or omission attaches *prima facie* due to the fact that harm was caused by such act or omission. Whether the harming person was at fault or not is immaterial. However, the obligor may exculpate himself from or limit

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<sup>40</sup> See i. e. Qatari Court of Cassation, Civil and Trade Division, contestation No. 143/2007, Session of 4. 8. 2007.

<sup>41</sup> See i. e. Qatari Court of Cassation, Civil and Trade Division, contestation No. 190/2010, Session of 28. 12. 2010.

his liability in certain circumstances – i. e. by proving that he could not prevent harm from being caused by his action due to circumstance that were beyond his control. Thus, under Islamic law a claimant proving that he sustained injury or damage due to a person's act or omission will suffice to establish liability. It is then upon the obligor to absolve himself from or limit his responsibility.<sup>42</sup> Essentially this is a shift in the burden of proof. While, in principle, the burden of proof to establish the elements of claim is upon the claimant, under Islamic law it is upon the obligor to establish that he was not at fault. A similar approach is taken by Qatari law.

Article 199 QAT-CC comprises three elements of claim: (1) act or omission, (2) damage or injury and (3) causal link between the two. For lack of specific provisions concerning the burden of prove the elements of the claim are to be established by the obligee (article 211 QAT-CCPL). The obligor may, however, exculpate himself by proving that the injury or damage incurred was in fact caused by circumstances beyond his control (article 204 QAT-CC)<sup>43, 44</sup>.

A claim for compensation according to ar-

ticle 199 QAT-CC may be brought by any – natural or legal – person that sustained injury or damage and any – legal or natural – person may be held liable under article 199 QAT-CC. Thus, where a defect in a good causes injury or damage, the manufacturer and the distributor may be held liable under article 199 QAT-CC. However, where a claim is based on a production defect, a distributor will usually be able to prove that the harm was incurred due to circumstances beyond his control and thereby be able to avoid liability pursuant to article 204 QAT-CC. The same will be true in respect of the manufacturer where harm was incurred due to a defect caused by the distributor – i. e. by inadequate handling or storage.

Compensation pursuant to article 199 QAT-CC is limited to the actual loss incurred by the harmed person as well as the profit forgone due to the wrongful act or omission (article 201 (1) QAT-CC). Furthermore, only those damages that are a “natural consequence” (نتيجة طبيعية) of the wrongful act or omission are recoverable. Pursuant to article 201 (2) QAT-CC this is the case where the harm caused could not be averted with reasonable efforts by the person injured.

<sup>42</sup> For an overview on tortious liability under Islamic law see i. e. A. B. B. Mohamad: *Islamic Tort Law*, in: M. Bussani / A. J. Sebok: *Comparative Tort Law. Global Perspective*, Cheltenham 2015), pp. 441 ff.; id.: *Strict Liability in Islamic Tort*, in: *Islamic Studies* 39.3 (2000), pp. 450 ff.; S.M. Al-Zarqa: *الفعل الضار والضمنان فيه* [On Tort and Compensation], Cairo 1988, pp. 76 ff.

<sup>43</sup> Furthermore, Qatari law provides for a justification defence, which is of little relevance in respect to product liability. A person is not liable for damage or

injury caused in the reasonable defence of “himself, his reputation or his property or another person, that person's reputation or property” (article 205 QAT-CC). Notably article 205 QAT-CC does not require that the harmed person poses the threat to the legally protected right(s).

<sup>44</sup> The same approach to tortious liability was implemented i. e. in the United Arab Emirates (UAE); see articles 282, 287 UAE Civil Code, Federal Law 5/1987.

### 4.3.2 Vicarious and Custodial Liability

Liability for injury or damage caused by objects is established by article 212(1) QAT-CC. It specifies that a person who has custody over an object that is inherently dangerous and, therefore, requires special precaution to prevent harm, shall be responsible for harm caused by the object. As in case of article 199, QAT-CC fault does not have to be established when claiming compensation under article 212(1) QAT-CC and liability pursuant to article 212(1) QAT-CC may be averted by the obligor where he establishes that the harm occurred due to a cause beyond the obligor's control. Still, article 212 QAT-CC will be of little relevance in respect of product liability. As its counterpart in Egyptian law, article 212(1) QAT-CC only establishes liability of the custodian of a dangerous object, which – in most cases concerning product liability – will not be the manufacturer or distributor.

Vicarious liability attaches pursuant to article 209 QAT-CC where the actions of a third party cause harm and this third party acted in furtherance of a duty of the obligor. Thus, under Qatari law a manufacturer or distributor may be liable for damage or injury caused by persons in his employ or entities he retained to conduct his business. Still, in these cases the obligor may have recourse against such third party according to article 210 QAT-CC.

## 4.4 Conclusion

With article 3 QAT-CPL Qatari law comprises a rudimentary product liability regime. Yet,

only consumers are eligible to claim compensation under article 3 QAT-CPL. Furthermore, the amount of compensation available according to this provision may also be restricted. Article 3 QAT-CC explicitly confines compensation to a “fair” amount. While neither statute nor available jurisprudence define what would be a fair compensation within the meaning of article 3 QAT-CPL, the liability regime established by the QAT-CPL suggests that this restriction is merely intended to serve to exclude claims for excessive or punitive damages. Accordingly, in conclusion Qatari law provides consumers with similar product liability rights as Egyptian law.

Where article 3 QAT-CPL is not applicable – i. e. where the party that sustained harm is not a consumer – compensation may be sought under contractual or tortious liability. Still, contractual and tortious liability will not cover what is considered product liability by this analysis. Contractual liability is relevant only in the relationship between purchaser and vendor. Furthermore, the seller's responsibility is limited to damages that are a natural consequence of the particular breach of contract and were foreseeable at the time the underlying agreement was made. Tortious liability is considerably wider. Under the Qatari tort regime fault of the obligor does not have to be established by the obligee. The obligor may, however, exculpate himself from or limit his liability by proving that he was not at fault. Unlike contractual liability, which may be restricted or extended by agreement, tortious liability may

not be excluded or limited pursuant to Qatari law.<sup>45</sup> A person who has a contractual relationship with the person who harmed him, may choose whether he seeks compensation under contract or tort.

## 5. Product Liability under Iranian Law

With the Iranian Law on Protection of Consumer Rights of 2009 (IRN-CPL)<sup>46</sup> Iran established a rudimentary consumer protection regime. Yet, since the IRN-CPL comprises few provisions on liability of manufacturers and distributors, compensation may only be sought under the general provisions concerning contractual and tortious liability comprised in the IRN-CC and the Iranian Civil Liability Law of 1960 (IRN-CLL)<sup>47</sup>. Furthermore, the Iranian Penal Code of 1991 (IRN-PC)<sup>48</sup> includes some provisions on obligation to make compensation for bodily injury caused.

### 5.1 Product Liability under the Consumer Protection Law

The IRN-CPL does not provide for the right of the consumer to claim compensation of injury or damage sustained due to a defect in a good. Provided that the defective item is a

fungible good, a consumer may demand from the supplier exchange of the defective good against a flawless product (article 2 IRN-CPL). The IRN-CPL defines defect as a deviation of the general quality that reduces the monetary value of a good or service. Consumer within the meaning of the IRN-CPL is any person who uses a product or retains a service for private purposes. Supplier as referred to in the IRN-CPL is the manufacturer, importer, distributor, retailer and provider of a good or service. Still, since the IRN-CPL does not comprise an obligation of the supplier to compensate for harm caused by a defective good, the IRN-CPL is of little relevance to product liability.

### 5.2 Product Liability under Contractual Liability

In principle, the contractual liability regime established by the IRN-CC provides for the strict precedence of restitution in rem (article 227 IRN-CC). However, where a defect in a sold product is discovered after the transfer of risk has occurred, the purchaser may either withdraw from the sale and purchase agreement or keep the defective good and claim damages (articles 422, 423 IRN-CC). The elements of a claim under articles 422,

<sup>45</sup> According to article 259 (2) QAT-CC tortious liability can only be restricted where liability for third party acts or omissions is concerned.

<sup>46</sup> Farsi original text available at [www.ilo.org/dyn/natlex/docs/ELECTRONIC/91717/106515/F-1409549671/IRN91717.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91717/106515/F-1409549671/IRN91717.pdf) (last access 4. 4. 2016).

<sup>47</sup> Unofficial English translation available at [policy.](http://policy.)

[mofcom.gov.cn/GlobalLaw/english/flaw!fetch.action?libcode=flaw&id=83a23796-812e-401c-a516-e543c7675029&classcode=431](http://mofcom.gov.cn/GlobalLaw/english/flaw!fetch.action?libcode=flaw&id=83a23796-812e-401c-a516-e543c7675029&classcode=431) (last access 4. 4. 2016).

<sup>48</sup> Farsi original text and unofficial English translation available at [www.unodc.org/tldb/showDocument.do?documentUid=9598&node=docs&cmd=add&country=IRA](http://www.unodc.org/tldb/showDocument.do?documentUid=9598&node=docs&cmd=add&country=IRA) (last access 4. 4. 2016).

423 IRN-CC are: (1) defect, (2) harm and (3) causal link between the two. A product is defective in this respect where the concerned item cannot be used for its common purpose or does not have the characteristics common to a good of its kind (article 426 IRN-CC).<sup>49</sup> Harm as referred to in article 422 IRN-CC exists where the value of the item sold differs from the common value of a good of the same kind. The burden of proof to establish the elements of the claim lies with the buyer.<sup>50</sup> Fault on behalf of the obligor does not have to be established by the obligee when seeking compensation under article 422, 423 IRN-CC.<sup>51</sup> Nonetheless, the obligor may exculpate himself from his liability by proving that he did not cause the relevant defect intentionally or negligently (article 436 IRN-CC).

Compensation under articles 422, 423 IRN-CC is limited to the difference between the market price of the good concerned without defect – not the price actually paid by the buyer – and the price that would be paid for the defective good; thus its actual market value. The market price for the good with

and without defect shall be determined by an expert (article 427 IRN-CC).

Obligor of articles 422, 423 IRN-CC is the seller of a product, thus the person who entered into an agreement with the purchaser. Obligee is the buyer.

Pursuant to article 435 IRN-CC an action under to article 422, 423 IRN-CC has to be brought without undue delay upon the obligee becoming aware of the elements of the claim. A precise definition of what constitutes undue delay within the meaning of article 435 IRN-CC is provided neither by the IRN-CC nor by jurisprudence. Whether a delay is undue or not will have to be determined based on the particular circumstances of each individual case. Still, it is safe to say that the relevant time will generally be rather short. A general statute of limitation is not stipulated by the IRN-CC.<sup>52</sup>

However, article 740 Iranian Civil Procedure Code of the Public and Revolutionary Courts of 2000 (IRN-CPC) states that a court will not hear a claim after the expiry of two years after the underlying contract was concluded. Thus, while compensation under ar-

<sup>49</sup> Lack of warranted properties or a good not being useable for a warranted purpose are not defects under article 426 IRN-CC. Where such warranties are not fulfilled, a buyer may not request damages. The IRN-CC only allows for the possibility to either withdraw from the sale and purchase agreement or accept delivery of the good as a valid discharge of the seller's obligations; article 410 IRN-CC where the purchaser bought the good solely relying on its description and had no chance to inspect it, or articles 444, 234, 235 IRN-CC in all other cases.

<sup>50</sup> P. Bagheri / K. H. Hassan: The Application of the Khiyar Al-'Aib (Option of Defect) in On-line Contracts

and Consumer Rights, in: *European Journal of Law and Economy* 33.3 (2012), p. 570.

<sup>51</sup> Ibid.

<sup>52</sup> Provisions on statute of limitations were originally included in the IRN-CC. Religious scholars in Iran, however, objected to the regulations because in their opinion remedies under Islamic law did not expire. Consequently, in an amendment made to the IRN-CC after the Islamic Revolution in 1979 the provisions on time bars were eliminated from the IRN-CC; A.-V. Jaeger / G.-S. Hök: *FIDIC. A Guide for Practitioners*, Heidelberg 2010, p. 67.

ticles 422, 423 IRN-CC has to be sought without undue delay after the obligee becoming aware of the elements of claim, in any case a claim will not be heard by the competent courts two years after the underlying contract was made.

Considering that compensation under contractual liability may only be sought for the reduced value of the defective merchandise, contractual liability under Iranian law is of little relevance in respect to product liability. In addition, articles 422 et seq. IRN-CC only apply between vendor and purchaser.

### 5.3 Product Liability under Tortious Liability

Tortious liability under the IRN-CC is very narrow. Where a person intentionally causes damage to the property of another person, that person shall replace the damaged good or its value (article 328 IRN-CC). The same liability attaches where the harm is caused indirectly (article 331 IRN-CC) or by another person retained to conduct the harming action (article 332 IRN-CC). Neither of these provisions affords the obligee with the right to recover compensation for additional physical damage or bodily injury caused. These provisions were seen as inadequate by the

Iranian legislator, who in 1960 reacted by issuing the IRN-CLL.<sup>53</sup>

#### 5.3.1 Liability for Wrongful Acts and Omissions

The central liability provision of the IRN-CLL is its article 2, which provides that any person who intentionally or negligently harms the life, health, property, freedom, personal or commercial reputation or any other right bestowed on a person by law, and as a result causes that person materially or moral loss, shall be liable for compensation for damages caused by his action. Thus, article 2 IRN-CLL comprises five elements of claim: (1) wrongful act, (2) harm to a legally protected right or interest, (3) monetary or moral damage, (4) causal link between the three previous elements of claim and (5) fault on behalf of the obligor.

Article 2 IRN-CLL only refers to liability for “acts”. Thus, under a strict reading of article 2 IRN-CLL compensation for harm incurred due to the inaction of another person is not available. However, considering tort under Islamic law, which comprises liability for omissions,<sup>54</sup> and the influence of Islamic law principles on Iranian law, liability for omission should be comprised by article 2 IRN-CLL. This interpretation is supported by the doctrine.<sup>55</sup> However, liability for omis-

<sup>53</sup> Cf. A. Zakeri: Damages Arising from Physical Injuries and Compensation Methods in Iranian Civil Liability Law, in: Research Journal of Recent Sciences 4.3 (2015), p. 116.

<sup>54</sup> Cf. i. e. Mohamad: Islamic Tort Law, pp. 456 ff.; Al Zarqa: الفعل الضار والضمنان فيه, pp. 76 ff.

<sup>55</sup> Cf. Zakeri: الفعل الضار والضمنان فيه, p. 116; Bagheri/Hassan: The Application of the Khyar Al-‘Aib, p. 570. A.P. Dezfuli: Comparative Study of Medical Negligence in India and Iran, Delhi 2014, pp. 110, 126.

sion only attaches where the obligor omitted an act that is required by law or custom to protect another person's rights.<sup>56</sup>

Liability under article 2 IRN-CLL further requires that harm is caused to a right or interest legally protected by article 2 IRN-CLL. These are: life, health, property, freedom, personal or commercial reputation or any other right bestowed on a person by virtue of law. This approach was modelled after the German tort law provisions.<sup>57</sup> In line with the interpretation of the relevant provisions of German Law (§ 823 (1) German Civil Code)<sup>58</sup> a right bestowed on a person by law within the meaning of article 1 IRN-CLL should be understood as comprising only absolute rights – thus rights that are effective towards any other person – as opposed to also including individual rights – such as claims.<sup>59</sup> Still, what these absolute rights would be is not conclusively defined by Iranian statute, jurisprudence or doctrine. Compensation under article 1 IRN-CLL is limited to monetary and moral loss.

All three elements of claim mentioned above have to be connected by causal link. In addition, article 1 IRN-CLL explicitly requires fault – intent or negligence – by the obligor.

Obligor of article 1 IRN-CLL is any person

who caused harm to another person. Obligee is any harmed person.

The IRN-CLL does not make any provisions as to limitation periods. Consequently, the general limitation period of article 740 IRN-CPC applies, which is two years may apply. However, article 740 IRN-CPC expressly refers to contractual claims. Consequently, it is not clear whether it can be applied to claims under tort.

### 5.3.2 Vicarious or Custodial Liability

Vicarious liability under the IRN-CLL is limited to the liability of the employer for acts of his employees (article 12 IRN-CLL). Thus a manufacturer or distributor will only be liable for a person who is employed by him and not for acts committed by external persons or entities providing a service or work to him. Custodial liability for damage or injury caused by objects is not covered by the provisions of the IRN-CLL.

### 5.4 Liability under the Iranian Penal Code

In 1982 book 4, which relates to blood money – thus compensation for death and bodily injury to be paid to the victim of his heirs – was included in the IRN-PC.<sup>60</sup> Articles 300

<sup>56</sup> Ibid.

<sup>57</sup> Cf. Zakeri: Damages Arising from Physical Injuries, p. 116.

<sup>58</sup> German original text available at [www.gesetze-im-internet.de/bundesrecht/bgb/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/bgb/gesamt.pdf) (last access 4. 4. 2016).

<sup>59</sup> For an overview see i.e. M. Wandt: Gesetzliche Schuldverhältnisse. Deliktsrecht, Schadensrecht, Berei-

cherungsrecht, GoA, Munich <sup>7</sup>2015, pp. 286 ff.; A. Röthel: Schuldrecht BT/2. Gesetzliche Schuldverhältnisse, Munich <sup>2</sup>2012, pp. 128 ff.

<sup>60</sup> Z. Cahanani / F. Saeidi: Civil Liability of Physicians in Iran and Egypt, According to Iran's New Islamic Penal Code Act of 92, in: Nature and Science 13.11 (2015), p. 95.

et seq. IRN-PC provide for the obligation to pay blood money for certain felonies such as murder (articles 300 and 301 IRN-PC) and different injuries as for example loss of eye sight (article 459 IRN-PC) or other injuries (article 483 IRN-PC). The obligation to pay blood money attaches where the obligor is convicted of a relevant crime – for example murder or assault. Consequently, a manufacturer or distributor may for instance be compelled to pay blood money where he is convicted of assault pursuant to article 614 IRN-PC.

Like compensation for bodily injury in other jurisdictions, blood money is not specifically defined. The amount to be paid will be defined by the competent judge in the individual case. In doing so, the judge will only consider what he deems to be a fair compensation for the injury sustained. Other issues such as cost of medical treatment will not be considered.<sup>61</sup>

## 5.5 Conclusion

While the Iranian legislator has passed a consumer protection law, this law does not afford consumers with any recourse for harm or loss sustained due to defective products. It only allows for the exchange of defective goods. Contractual and tortious liability is, therefore, the only way for a consumer to claim compensation.

Still, under the Iranian contractual liability regime, compensation may only be recovered for loss of value due to having been provided with a defective rather than a flawless product. Additional damages or indemnity for bodily injury cannot be claimed pursuant to articles 422, 423 IRN-CC. In addition, tortious liability according to the IRN-CC is limited to responsibility for intentional acts. Article 2 IRN-CLL, however, provides for an additional provision on which a compensation claim can be based that only requires fault of the harming person. Thus, it falls short of the (strict) liability generally established by product liability provisions. Hence, manufacturers or traders selling their goods in Iran are held to a lesser liability standard than in other MENA countries. Still, where they are found to be at fault for bodily injury, they may be compelled to pay blood money under the IRN-CP in addition to compensation under the IRN-CC and IRN-CLL.

Under Iranian law the fact that the obligee may seek compensation under contract does not exclude him from seeking compensation under tort. Thus, the obligee has the right to choose whether he basis his claim on contract or tort.<sup>62</sup>

## 6. Conclusion

Both Egypt and Qatar enacted specific regulations providing for the right to claim compensation from the manufacturer, distributor

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<sup>61</sup> Cf. Zakeri: Damages Arising from Physical Injuries, p. 116.

<sup>62</sup> Dezfuli: Comparative Study of Medical Negligence in India and Iran, p. 99.

or service provider for damage or injury sustained due to defective products or services. Both provisions are, in principle, quite similar. They, however, differ in one key aspect. While article 67(1) EGY-CTL allows for any private or commercial person or entity to request compensation, article 3 QAT-CPL only applies to consumers. Iranian law on the other hand does not provide for similar recourse in respect of defective products or services. Iran has – like Egypt and Qatar – recently passed a consumer protection law. Yet, the IRN-CPL does not entitle a person – consumer or otherwise – to claim compensation for injury or damage sustained due to a product or service being defective. It merely allows a consumer to demand exchange of a defective good against a refund. Similar provisions are established by Egyptian and Qatari consumer protection laws.

Since Iranian law does not comprise a specific regulation allowing for a product liability claim, compensation can only be sought under contractual or tortious liability. Contractual liability as established by the IRN-CC only allows the obligee to recover the difference between the value of the defective good and the value of an unblemished good of the same kind. Still, liability under articles 422, 423 IRN-CC is strict; thus, fault on behalf of the obligor does not have to be established as an element of claim. The obligor may, however, exculpate himself from his liability by proofing that he was not at fault for the harm caused. Tortious liability under the IRN-CC on the other hand is extremely limited. In particular, the IRN-CC

only provides for tortious liability for intentional conduct. Additional and more comprehensive regulations on tort are comprised in the IRN-CLL. Compensation under article 2 IRN-CLL can, however, only be claimed where the harming party was at fault.

Relying on contractual or tortious liability will be less important in product liability claims under Egyptian and Qatari. Especially article 67(1) EGY-CTL establishes a broad product liability regime. Under Qatari law contractual and tortious liability will be more relevant, since article 3 QAT-CPL only applies to consumers. While contractual liability is rather similar under both legal systems, tortious liability differs in particular in respect to fault. Under Egyptian law tortious liability requires fault of the obligor as an element of claim to be established by the obligee. Pursuant to article 163 QAT-CC, on the other hand, a person is eligible for compensation without having to prove fault of the obligor. Fault is relevant only insofar as the obligor may establish that he was not at fault and, thereby, exclude or limit his liability.

In all three jurisdictions, there is no strict precedence of contractual over tortious liability. Thus, where a contract exists between obligor and obligee the obligee may choose to seek compensation either under contract or under tort.

Both Egyptian and Qatari consumer protection laws comprise penalties for manufacturers and traders infringing consumer protection regulations. These penalties are significantly harsher under the QAT-CPL, which provides for fines of up to 200,000

Qatari Riyal and the closure of the obligor's business premises. Still, the fact that infringements of the EGY-CPL may be sanctioned by publication of the relevant infringement bears considerable weight as well. Iranian consumer protection law does not comprise similar penalty clauses. However, under the IRN-PC a manufacturer or trader may be compelled to pay compensation in form of blood money in addition to compensation under civil law where he is found guilty of criminal conduct – for instance assault.

Thus, in conclusion, when selling goods or services in or to Egypt and Qatar, specific product liability laws will have to be considered. In particular, the strict liability established by these product liability regimes requires manufacturers, service providers and distributors to make provisions for possible damage claims. Still, in Qatar such provisions will only have to be made for business to consumer transactions. In Iran on the other hand product liability is not a relevant issue. Here liability will, in all cases, follow general contractual and tortious liability.

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