

Q & A on Consumer Protection and Product Liability in GCC 2020-2021

STA



Q&A on Consumer Protection and Product Liability in Bahrain and Oman

Sources of law

Q1. What are the principal legislation and regulation pertaining to product liability?

The main areas of law and regulation relating to product liability are:

I. Oman

Product liability is regulated by the:

- i. *Consumer Protection Law (Royal Decree No 66 of 2014)*, which sets out liabilities for providers and advertisers.
- ii. *Commercial Agency Law (Royal Decree No 26 of 1977, as amended)* under which registered agents must pass on the benefit of manufacturers' warranties to consumers

II. Bahrain

In Bahrain, product liability is regulated by the Civil Code, *Consumer Protection Law No 35 of 2012* for protection of the consumer and Executive Regulations via *Resolution Number 66 of 2014*. The seller must provide the buyer with all the necessary information about the item being sold. The seller shall be liable to the consumer for selling the defective goods.

The *National Committee for Consumer Protection (NCCP)* provides for oversight over such instances.

Q2. How to establish liability under the most causes? When is a product said to be defective? Does strict liability apply in certain circumstances?

In almost all GCC nations, to establish liability, the consumer may file the case on the grounds of a tort, liability under the contract and breach of the relevant consumer protection legislation.

The following must be established to prove liability in tort:

- i. duty of care from the supplier / manufacturer towards the consumer.

- ii. Breach of that duty of care due to manufacture, defective design, or warnings or instructions.
- iii. Causation link between the defect in the product and the damage that customer faced.

As per Oman Royal Decree 66 of 2014 defect is defined as any reduction in the value of a commodity/service for the purpose it was manufactured or produced and that prevents the consumer from benefiting from it or render the same unfit for the intended purpose in a manner that is beyond the control of the consumer.

According to Bahrain's Resolution Number 66 of 2014: Any mistake in designing, manufacturing, producing, or storing the commodity that would lead to harm to the consumer, or to depriving him completely or partially of their benefit, or a decrease in their value or benefit.

Product liability claims are based on strict liability claims, and hence manufacturers are liable irrespective of that fact they were negligent or not.



Q3. Who is shall be liable for a defective product? What duties do they have and towards whom?

The liability for defective products falls on both manufacturers and suppliers.

Under Oman Royal Decree 66/2014, **Article 22** lays down that despite the legal guarantees/ agreements for the protection of the customer, the provider of goods and services shall

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"Competition is not only the basis of protection to the consumer, but is the incentive to progress."

– Bernie Sanders

guarantee the quality delivered to the customer as per the standards of health, safety and environmental conditions. Under Bahrain Executive Regulations, A written declaration issued by the supplier or his representative, that the product subject to the warranty is free from defects and conforms to the specifications approved by law, and his pledge to fix any defect or damage to it within a specified period

Excluding/limiting liability

Q4. How can supplier limit its liability for defective products and any statutory restrictions on a supplier doing this? Is there a mandatory warranty period for the products?

A supplier may limit its liability for defective products by inserting relevant warnings on products, for example, but this will not necessarily protect it. The relevant Consumer Protection Authorities and the courts of the GCC nations are rather pro-consumer when it comes to consumer complaints.

In Oman, the law is silent on this point, and the court shall determine such questions with regards to such question, but the courts generally resort to principles of law laid down in Oman's Civil Code and Civil Transaction Law.

In Bahrain, **Article 11** lays down that the supplier shall bear the costs of transporting the defective product, as well as the costs of sending technicians to replace or repair the defective part of it, and all costs of recovering the product. The Executive Regulations lays down that the provider shall be exempted from the liability if he is not the manufacturer of that product.

Product Liability Litigation

Q5. Which courts are competent to try product liability cases?

In Oman, the Public Authority for Consumer Protection (PACP) is empowered to oversee and enforce the consumer protection law in Oman. The complaint is usually resolved either through amicable resolution between the consumer and the trader or in case the consumer does not accept PACP's decision, then PACP refers the matter to the public prosecution for framing charges against the trader/dealer/manufacturer of goods and services.

In Bahrain, Consumer Protection Directorate Services under the Ministry of Industry, Commerce and Tourism, receives and responds to the consumer complaints.

Q6. How are proceedings commence?

In Oman, the consumers can log complaints to Public Authority for Consumer Protection (PACP) through PACP E-Portal, call center, smartphone app, social media sites, or in person at the PACP Hall. The PACP has designed different complaint forms for different commodities-electronic devices, vehicles, mobiles, construction, fashion and jewellery and others.

In Bahrain, the aggrieved consumer can file complaints through email address, contact centre telephone number and Tawasul, i.e. National Suggestions And Complaints System with a copy the receipt, warranty or agreement.

Q7. Who has the burden of proof and the extent of such liability?

The claimant has the burden of proof and must prove that:

- i. The defendant breached his/her duty of care.
- ii. The breach caused harm to the claimant.

The Oman Royal Decree Number 66 of 2014, Article 18 mentions that the consumer may prove the defects in the purchased commodity by all available methods of proof.

*"Every man is a consumer, and ought to be a producer.
He is by constitution expensive, and needs to be rich."*

– Ralf Waldo Emerson



Bahrain's Executive Regulations Number 66 of 2014 is silent as to who has burden of proof but **Article 23** to **Article 32** deals with how the consumer complaint regarding the product shall be examined.

In product liability matters, defendants have strict liability. The defendant's intention is not relevant.

Q8. Can parties rely on expert opinion evidence?

Parties can rely on expert opinion evidence and consumers generally appoint technical court experts to assist them with their claim.

Under Oman Royal Decree No 66 of 2014, the PACP may request to examine any commodities the government or non-government approved laboratories and the provider shall bear the cost of the inspection in the event that commodity was unfit for consumption.

Under Bahrain Executive Regulations Number 66 of 2014, **Article 23** to **31** discusses how sample about which the consumer has complained to be examined in the laboratories licensed by the government.

Hence, in both countries the competent authorities and parties can rely on expert opinion for appropriate adjudication of the case.

Q9. What kind of interim relief are available before a full trial?

The relevant consumer protection authority shall resort to the remedies and penalties listed in the respective consumer protection laws of Oman and Bahrain when these laws have been breached by a supplier.

In Oman, Chapter Four of Royal Decree Number 66 of 2014, **Article 34** provides that public prosecution may decide to temporarily shutter the premises or suspend the activity unless the lawsuit is adjudicated.

In Bahrain, **Article 23** to **31** of the Executive Regulations provides that the competent authority shall be empowered to take three samples from the suppliers/manufacturers' premises pertaining to which consumer has complained, if the sample proves defect in the commodity, the competent authority shall make a decision to cease or rectify the safety and production process of the commodity.

Class actions/representative proceedings

Q10. Are class actions in product liability cases available? Are they commonly used?

Class actions are not recognized for the consumer cases in Oman and Bahrain Law.

Remedies

Q11. What remedies are available to the aggrieved party in a product liability claim?

In Oman, the remedies are monetary in nature, but **Article 38** of the Royal Decree Number 66 of 2014 provides that there shall be no restriction on the nature of punishment and even such consumer aggrieved shall have recourse to Oman Penal Code without prejudice.

Bahrain's Executive Regulation Number 66 of 2014 in similar vein provides that there is no restriction on application of Bahrain's Penal Code while punishing contraventions under the consumer protection law.

Q12. How are damages calculated? Are punitive or exemplary damages available?

Damages in tort are calculated based on the actual damage suffered by the consumer and any consequential losses flowing from the tortious act.

Contractual damages are based on what has been agreed to in the consumer's contract.

There is no legislative provision covering punitive damages.



*"Instead of gutting consumer protection,
we should be expanding it."
-Hillary Clinton*

Q13. Are liability joint and several/how is liability apportioned?

A manufacturer and a supplier can be jointly liable for a defective product, especially if the manufacturer is located in that country. The Consumer Protection Laws state that providers are liable for faulty products, and the definition of providers includes anyone who is involved in the circulation of the product. Partially responsible entities that are not a party to the proceedings can be held liable.

Product safety

Q14. What are the principal legislations and regulations for product safety?

There is no specific legislation addressing product safety, but this area is covered by the Consumer Protection Laws (see Question 1).

Product recall

Q15. What are the regulations for product recall and other corrective actions? Any criteria mentioned in law related to it?

In Oman, **Article 27** provides that once a defect in commodity or service is discovered that may prove harmful to the consumers, the competent authority shall recall the defective commodity from the market.

In Bahrain, the Federal Law and related Executive Regulations are silent with regards to recalling of the defective commodity, but in the absence of such provisions, the recourse is from Bahrain Legislative Decree Number 12 on Civil and Commercial Procedures Act, 1971.



*"Many people want the government to protect the consumer.
A much more urgent problem is to protect the consumer from the government."*

- Milton Friedman

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