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Preview of Problems in Product Liability: U.S. and Mexico

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The Mexican and United States legal systems have developed from distinct cultural roots. For instance, twenty years ago, I went to the United States to study English and to enroll in a masters program and had a blood pressure problem, so I went to the doctor. He put me through a lengthy examination. When I asked him if he knew what I had, he said, "Don’t worry, you are okay; take this and you’ll feel better.” Being a Mexican attorney and a Mexican national, I did not understand him. After an hour-and-a-half of examination, he did not know what I had. If I were in Mexico, the doctor would have said you have this or you have that after only a few minutes.

Another example of the cultural differences is the great number of complicated disclaimers used in the United States. In Mexico, everybody distrusts everybody, whereas in the States, everybody trusts everybody. To a Mexican, it is difficult to understand why everything in the U.S. is so complicated. The reason is product liability or strict tort liability.

The area of product liability has developed for one hundred years in the United States, whereas Mexico has only had product liability for a few decades. It is very rare in Mexico to find product liability cases, because the situation is quite different. Mexico has caps on liability, found in the Ley Federal de Trabajo (Federal Labor Law). Product liability cases are extremely rare in Mexico because it is a foreign concept for Mexicans. However, the legal notion of anti-trust was virtually unknown in Mexico until the 1993 Competition Law was enacted. Assuming that both product liability and anti-trust were part of the Mexican legal culture, why is anti-trust law commonly used by Mexican practitioners and product liability seldom is?

An example illustrating the elements of product liability in the U.S. would be when a U.S. manufacturer launches a new product in the U.S. and a customer claims that he suffered bodily injury from the explosion of that product. After several meetings and discussions, the victim decides to make a tort claim in court. The U.S. victim would typically allege that he or somebody else bought a product and, while coming into contact with the product, it exploded and injured him. The concept of strict liability merges the concept of implied warranty, in which negligence is not required, with the tort concept of negligence, in which contractual privity is not
required. Therefore, if the product was unreasonably dangerous or defective, given the technology and the knowledge in existence when the product was made and sold, the manufacturer and/or designer are per se liable. It is not necessary for the victim to prove a manufacturer acted carelessly or made a mistake in the production of the product. The victim has to only prove that the product has a defect which caused his or her injury.

Strict liability is liability without proof of fault and is predicated on several policy objectives, including that the manufacturer can best prevent defects in its product and thus should bear the brunt of liability if a defective product injures a consumer and, further, that the manufacturer can distribute the economic burden across the marketplace more efficiently.

The victim could also allege negligence and failure to warn, claiming the product was designed or manufactured negligently. To succeed on these claims, he would have to prove that the manufacturer acted carelessly or unreasonably in failing to prevent a defect. Raising negligence with strict liability would help the plaintiff discover and introduce proof of an error or omission by the manufacturer and create a favorable scenario for the highest possible monetary award from the jury, that of punitive damages.

The breach of implied warranty is based on the notion that the product did not live up to the consumer's expectations or customary standards in the industry. A manufacturer can be held liable if its product fails to live up to the warranties, express or implied. In the U.S., a plaintiff may claim compensatory damages, which are property damages, if any, medical expenses, lost wages, and pain and suffering. In other words, the plaintiff would attempt to prove a dollar amount to compensate for physical as well as emotional injury. The amounts encompassed in the compensatory damages will be calculated from the date of the accident to the present and will be further projected into the future based on the victim's expected life span.

5. See id. at § 1 cmt. a and § 2(a).
6. See id. at § 2:
   § 2. CATEGORIES OF PRODUCT DEFECT.
   A product is defective when, at the time of sale or distribution, it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product:
   (a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product;
   (b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe;
   (c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe.
7. See id. at § 15.
8. See id. at § 2 cmt. a.
9. See id. at §§ 2(b) and (c).
10. See id. at § 2 cmt c, illus. 15.
11. See id. at § 1 cmt a.
Besides compensatory damages, the victim will claim extra amounts added to the award to punish particularly egregious conduct on the part of the manufacturer, known as punitive damages. The amount of punitive damages is normally related to the severity of the defendant's conduct, or to its wealth, and can reach the tens or hundreds of millions of dollars. However, U.S. product liability is a matter of state law and some states have placed caps on punitive damages.

What then will be the case if a defective product is manufactured in Mexico, the victim use the product in Mexico, and when he comes into contact with the product he gets injured by an explosion? There are very few such cases in Mexico. Product liability draws primarily from two sources of law – the Ley Federal de Protección al Consumidor (Federal Consumer Protection Law) and the Código Civil para el Distrito Federal (Civil Code for the Federal District). Although the area of product liability, as well as that of torts, is regulated state-by-state in Mexico, most of the state civil codes in Mexico are patterned after the Federal Code. Article 82 of the Federal Code Consumer Protection Law states the consumer may request rescission, or termination of the contract, or a price reduction. In both cases, compensation for damages and losses are available when the product has defects or hidden defects that make it improper for uses for which it was manufactured. The Consumer Protection Law has been in place since 1976. An official at the Consumer Protection Agency stated that less than 1% of all the cases they take on a regular basis deal with product liability. The members of that Agency find that whenever there is an injury, the injured person contacts the manufacturer or distributor who suggests the victim go to the Consumer Protection Agency. The apparent reasons for referral to Consumer Protection Agency are, first, that Agency policy requires the parties must participate in a conciliation process through the Agency ombudsman with a goal of settlement. Second, any settlement is reduced to writing, which shields manufacturers from future lawsuits. As a result, less than 1% of the cases the Consumer Protection Agency handles are adjudicated.

The amount of compensation for such an injury is established by Federal Labor Law, which sets the standards for occupational injuries and caps compensatory damages to the equivalent of U.S.$35,000 In Mexico, victims usually do not need an attorney to obtain awards of that amount.

The other source of liability is the Civil Code for the Federal District. Article 1910 of that Code states:

15. L.F.P.C., art. 82.
16. See, e.g., L.F.T., arts. 495 ("If the injury results in the worker's permanent total incapacity, the compensation shall consist of an amount equal to 1,095 days' wages.") and 502 ("If the worker dies, the compensation payable to [his or her family] shall be an amount equal to 730 days' wages, without deduction of any compensation paid to the worker during his period of temporary incapacity.").
17. For calculation, see infra.
Whoever, in acting illegally or against good customs, causes injury to another is obliged to repair it, unless he proves that the injury occurred as the consequence of the fault or inexcusable negligence of the victim.\textsuperscript{18}

Under this provision, the manufacturer has a possible absolute defense of contributory negligence, exempting it from liability. All the civil codes of the thirty-one states, with the exception of the Civil Code of Quintana Roo, have this provision. If the manufacturer is not able to prove it was the victim's fault, Article 1915 of the Civil Code for the Federal District,\textsuperscript{19} which is applicable throughout the country in federal matters, requires that the repair of the injury consist of restoration to the \textit{status quo ante}, when this is possible, or the payment of damages and losses, at the election of the injured party. When the injury causes temporary partial incapacity, temporary total incapacity, permanent partial incapacity, permanent total incapacity, or death, the amount of the indemnity is determined according to the provisions of the Federal Labor Law.\textsuperscript{20} To calculate the appropriate indemnity, the highest minimum daily wage in the region is multiplied by four and extended by the number of days indicated in the Federal Labor Law for each of the incapacities listed.\textsuperscript{21}

However, the parties can dispute which highest minimum daily wage is applicable. The Mexican Commission on Salaries establishes daily minimum wages. For unskilled workers it is close to 35 pesos (about $3.77\textsuperscript{22}). However, there are about eighty different categories of professions with established higher daily wages for skilled or expert workers. For example, the highest minimum professional salary is the graphic reporter, which is set at 103.50 pesos (about $11), whereas the daily minimum salary is 3.50 pesos (about 37¢). Consequently, the indemnity resulting from a professional's death would be worth about 110 pesos, times four (totaling about $48), multiplied by 730 days, totaling about $35,000, the figure noted above.

The issue of punitive or moral damages\textsuperscript{23} is difficult as it has not been clearly decided by the courts. However, according to the general principles of loss, in addition to compensatory damages a victim could get "damages and losses." The Federal Civil Code, in Article 2108,\textsuperscript{24} defines "damages" as the loss for the duration suffered by the property through failure to fill an obligation. "Losses" are defined in Article 2109\textsuperscript{25} as the deprivation of any lawful gain which should have been obtained from the fulfillment of the obligation. Damages and losses must be proven to be the immediate and direct consequences of the tortious act.

Because of Mexican cultural emphasis on conciliation and due to the fact that product liability damages are tied to labor laws occupational indemnity standards, it is unlikely that Mexico would adopt U.S. product liability theories and awards.

\begin{itemize}
  \item \textsuperscript{18} C.C.D.F., art. 1910.
  \item \textsuperscript{19} \textit{Id.}, art. 1915.
  \item \textsuperscript{20} L.F.T., arts. 477-480, 484-486, 491-502, 513-514.
  \item \textsuperscript{21} C.C.D.F., art. 1915.
  \item \textsuperscript{22} All currency exchange rates as of March 9, 2000.
  \item \textsuperscript{23} The concept of "punitive damages" in U.S. law is roughly equivalent to "moral damages" under Mexican Civil Law.
  \item \textsuperscript{24} C.C.D.F., art. 2108.
  \item \textsuperscript{25} \textit{Id.}, art. 2109.
\end{itemize}
To adopt U.S. standards, Mexico would have to amend the labor law, effecting compensation for occupational injuries unwanted by the business community.

In summary, cultural differences between Mexico and the U.S. underlie the distinct differing implementations of Mexican and U.S. law. Mexican culture places great weight on conciliation and settlement, and thus product liability damages are tied to limits similar to Mexico's occupational disabilities standards. U.S. culture, on the other hand, puts more emphasis on litigation of disputes where damages are awarded according to the fact finder's holdings as to actual damages, as well as, often, an amount meant to punish the manufacturer in egregious circumstances.