The Romanian Product Liability System

1. Is there a distinction between contractual law, tort law and product liability law (strict liability and fault liability)?

Currently, there are three theories by which a product liability claim may be brought in Romania:

- strict liability;
- tort liability;
- contractual liability.

Strict liability

There are three important laws regulating product liability matters in Romania:

1. **Law No. 240/2004** is in relation to the producer's liability for damages caused by defective products and implements European Directive 85/374/EEC regarding producers' liability ("Law 240").

   Law 240 sets out the standards for strict liability in relation to products. Under Article 3 of this law, "the producer shall be liable for the actual and future damages incurred by the defects of such producer's products".

   We should note that the stated standard is very similar to that set out in Article 6 of European Directive 85/374/EEC.

2. **Government Ordinance No. 21/1992** covers consumer protection issues ("GO 21")

3. **Law No. 245/2004 ("Law 245")**, which sets out the rules for product safety.

Tort and contractual liabilities

In addition, the **Romanian Civil Code** (the "Civil Code") regulates the general law and rules applicable to tort and contractual liabilities.

**Tort liability** follows the general principles in the Civil Code, which states that an individual who negligently or wilfully causes another person "damage", may be held liable to "repair" or remedy such damage.

In order to recover, the claimant must prove the damage, the negligence and the causal nexus between the two.

The Civil Code also sets out the general principles in relation to **contractual liabilities**. These may only arise in cases when a contract has been formed between the respective parties and one of the parties does not fulfil or improperly fulfils (either through action or inaction) its obligations under the respective contract.

Unlike **tort liability** under the Romanian Civil Code, which is fault-based, **product liability** is strict. Thus, Law No. 240/2004 provides that the person incurring the damage caused by a defective product only needs to prove the damage, the defect of the product and the causal nexus between the damage and the defect of the product. No fault must therefore be proven by the claimant.

Procedural distinctions between liabilities

**I**

In Romania, trials regarding **product liability** are civil proceedings. Consequently, there is not a pre-trial stage and litigation starts immediately after filing a claim.

However, for trials arising out of a **contractual relation** between two or more commercial professionals (e.g. producers, suppliers, merchandisers etc.), the Civil Procedure Code requires direct conciliation before appearing in a court of law.

**II**

The time limits for bringing or issuing proceedings depends on whether the liability is tort, strict or contractual based.

For **tort liability**, Romanian law provides a three-year time limit from the date the damage occurred for a claim to be filed.

Under **strict liability**, article 11 of Law 240 provides that a product liability claim is subject to a three-year statute of limitations from the date the claimant knew or should have known about the existence of the damage, the defect and the identity of the producer. However, a claim may not be filed within more than ten years after the respective product was introduced on the market.
For liability arising from *contractual* obligations, Law No. 449/2003 regarding product warranty, states a claim must be filed within two years of the delivery date of the noncompliant product. Moreover, the consumer must notify the producer with respect to the noncompliant product within two months from the discovery of the defect.

### III

Under the provisions of Law 240 there is not a difference between defects hidden by negligence and defects hidden intentionally.

Under the general provisions of the Civil Code regarding *contractual liability*, in cases regarding the sale of assets, the buyer may file a claim against the relevant seller within six months from the discovery of a defect of the acquired asset. However, if the relevant defect proves to be intentionally concealed, the statute of limitations is extended from six months to three years from the discovery of the concealed defect which cannot occur later than one year from the acquisition of the relevant asset.

If the concealment is proved to have been done by fraud then the provisions of the Criminal Code could become applicable, in which case the term of such limitations might change.

### IV

The general principles of *tort liability* grant the claimant the right to recover monetary and non-monetary damages (including bodily injury, mental damage and damage to property).

*Strict liability* regimes follow the same principles as tort liability. However, there are small differences. Law 240 provides that the term "damage" may represent a bodily injury, illness or death of a person. In addition, damage may mean the destruction of a good, other than the defective product, provided that the respective good is normally and privately used by the respective consumer and has a value of more than RON 200.00 (approximately EUR 65.00).

However, Law 240 states that pecuniary damage does not exclude compensation for non-monetary damage. In addition, if the destroyed goods or the injured or deceased person was insured, insurance companies have the right to an action in recourse against the faulty producer.

### V

Although it is not a common practice, under the general principles governing *tort liability*, concerned authorities may step into court proceedings relating to tort liability as civil parties. Moreover, according to article 313 in Law No. 95/2006 regarding healthcare reform, “any person who by its own deeds brings damage to another person’s health shall be fully liable and bound to repay damages towards the medical services supplier representing the expenses supported by such medical services supplier with the victim of such deeds.”

2. *Is there any jurisprudence providing a shift of the burden of proof concerning the fault of the producer in tort law?*

As an application of the Roman law principle "*probatio incumbit actor*", the claimant has the burden of proof in relation to both fault/defect and damage i.e. the burden of proof falls on the invoking party.

However, according to the Civil Code, there are cases when the fault is presumed, i.e. the defendant has the burden of proof of its lack of fault. In tort law, such cases are connected to the liability for the goods in general and only related to the owner of good, possessor or person which possess the good temporarily.

As a consequence, Law No.240 prevails and entails to be applied.

3. *Is there a definition of the term "defect" in either legislation or jurisprudence? What does it say? Does it differ in contract, tort and product liability law?*

According to the provisions of the Law 240, a product is “defective” when the product: […] does not offer the safety which a person is entitled to expect, taking all circumstances into account, including:

1. the presentation of the product;
2. the use to which it could reasonably be expected that the product would be put;
3. the time when the product was put into circulation.
With respect to contractual liability law, according to art. 1352 of Civil Code, the defect of a sold product is being represented by any lack, flow or incapacity that makes the good to be unfit for use upon its properties or that it decreases in value so that it can be assumed that if being informed, the acquirer would not have bought the good or would have paid a lower price.

4. Is there a definition of the term "damage" in either legislation or jurisprudence? What does it say? Does it differ in contract, tort and product liability law?

Law 240 provides that the term damage may represent a bodily injury, illness or death of a person. In addition, damage may mean the destruction of a good, other than the defective product, provided that the respective good is normally and privately used by the respective consumer and has a value of more than RON 200.00 (approximately EUR 65.00).

According to the Romanian doctrine of tort law, damage represents the negative pecuniary and/or non-pecuniary consequence of a violation of subjective rights and legitimate interests of an individual.

In contractual law, the pecuniary damage is represented by actual incurred damage (damnum emergens) and lost benefits (lucrum cessans) deriving from the breach of contract by the seller of the product (art. 1084, Civil Code).

5. Is there a liability of the supplier?

Under the provisions of Law 240, the “producer” bears responsibility for a defective product. It broadly defines the term “producer” as follows:

1. the entities who manufacture a final product, raw materials or parts of a product;
2. any person that presents itself as a producer and attaches to products its name, its brand name or other distinctive characteristics;
3. any person importing a product in Romania with the intention to re-sell, lease, buy or commercially transfer the product ownership in any manner.

Moreover, in case the actual producer of a product cannot be identified, each supplier of the product will be construed to be the producer, provided that the respective supplier does not inform the injured person, within a reasonable period of time, of the identification of the actual producer or the person who supplied him the product.