

Arundel McDougall and Prashant Popat Q.C. (eds)

International Product Law Manual

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Edited by

Arundel McDougall

Prashant Popat Q.C.



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About the Editors

Arundel McDougall

Arundel McDougall is head of Ashurst's Product Liability practice and joined Ashurst as a Litigation Partner in 2000. Before joining Ashurst, he specialized in product liability as a partner at Rowe & Maw for 14 years. Over his career, he has been active on some of the best known group actions in the English courts, including the defence of the Norplant and Sabril Group Actions and the DMF litigation. Arundel is highly rated by clients and in the legal directories for his work within the life sciences sector. He is recommended in Chambers 2010 as 'a tried-and-tested winner in this area' and is recognized as having an 'excellent reputation for his product liability work' and 'always at the forefront of the most interesting cases'. Arundel is a member of the International Associate of Defence Counsel, DRI (Europe), European Justice Forum and the City of London Law Society Litigation Subcommittee. He has published widely on pharmaceutical product liability issues.

Prashant Papat Q.C.

Prashant Papat Q.C., was called to the Bar of England and Wales in 1992 and took 'silk' in 2008. He practices from Henderson Chambers in London and for more than a decade he has specialized in product liability and regulatory claims. He has been involved in most of the significant product liability actions, particularly group actions in respect of pharmaceutical products, in that period. He has experience in product liability litigation in all courts in England and in the European Court of Justice. He is recommended by all legal directories as a leader in this field. He read Jurisprudence at Oxford. He was a Judicial Assistant to the Master of the Rolls. He is a co-author of 'A Guide to Civil Advocacy' and a contributing editor of Halsbury's Laws of England – Civil Procedure.

Preface

This Product Liability handbook is nothing less than a product in its own right: the result of the endeavours of many contributors. We hope that it will prove fit for its purpose.

That purpose is to produce a practitioner's guide to essential elements of the laws of product liability across a number of jurisdictions, which can be dipped into selectively and which will be updated regularly. The key questions we expect the readers of this manual to ask are: what is the law in relation to liabilities and responsibilities arising in connection with a potentially 'defective' product in such and such a jurisdiction, and what should I do if confronted with a problem related to a product? Our intended audience is legal practitioners world wide who need a quick, utilitarian search tool to find the answer. There are many sophisticated academic works, comparative analyses across jurisdictions and countless commentaries on the law of individual jurisdictions. We believe nowhere is there a convenient 'one stop shop' collation of the necessary practical information relating to liabilities in connection with products in most of the major jurisdictions. We hope this manual will be a step into that gap.

A challenge facing the editors of any international handbook is to make its scope and design manageable. If the international canvas is too diffuse it becomes an unrealistic task for the authors and uninviting for the reader. We have therefore balanced necessary coverage with utility. In doing so we have chosen certain jurisdictions over others.

Thus, we have chosen contributions from the United States, China, the European Union and Australia, and a summary overview of the Canadian system. It will rightly be asked, why omit from the scope of the work, the law of any South American country, or of Africa, India, Japan or Russia? Products 'go wrong' in those countries as they do anywhere else, and lawyers need to know how to deal with issues arising.

The simplest answer to this question is that there is not space to accommodate a global review of the law of every jurisdiction in one manual. The practical answer is that the law of product liability in the countries chosen,

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with the exception of China, is universally recognized as more fully developed than anywhere else. As for China, its emerging industrial influence on the rest of the trading world and its nascent product liability laws, make it essential to consider.

The other major dilemma was whether to capture the product liability laws of each of the twenty-seven Member States of the European Union. We have not done so but not only because of space. Other publications of merit are available which tackle product liability on a Member State-by-Member State basis. We therefore do not feel the reader is deprived of the necessary information by concentrating, here, on the over-arching European (or Community) law. We acknowledge that in future editions of this publication, it may be necessary to address some of the individual jurisdictions within the European Union where product liability law has become recognizably more developed.

We have structured this book by starting with summaries of the law in each of the four selected jurisdictions, to which we have added Canada. We have then broken down key areas of law where product liability issues arise in practice: contract, tort, statute and regulation, in each of the four chosen jurisdictions, and the leading case law underpinning the principles in play. We have supplemented this skeleton with topics demonstrating the application of the law in practice. Thus we have addressed the legal implications and demands of product recalls in each of the four jurisdictions, product liability insurance from legal and industry perspectives, forum shopping and product risk management. We perceive these to be indispensable components of an understanding of how the product liability systems of the jurisdictions covered actually work.

From the scope and design of this work, follows the selection of our contributors from across the world. Most lawyers in practice will be involved in product liability issues of one type or another at some stage in their career but would not profess themselves to be specialist in the field. This work is written for them, and by those who *are* specialists in the field. We are delighted by the eminence of the authors who have contributed and by the quality of their reviews. They are many of the best known practitioners in the field. To the lawyer approaching the subject for the first time, they may not be known as the 'usual suspects', so mini-biographies of each contributor are provided at the start of every chapter.

Lastly, we would like to thank the team behind us for the energy and persistence in bringing this work to fruition. A collective effort on this scale from so many contributors in different parts of the world over the last two years has required an abundance of organization skills, and resilience. They have liaised with the contributors, coordinated deadlines and helped to review a massive data bank constantly under development during the writing stage. We therefore acknowledge, with gratitude, the efforts and dedication of Victoria Bates, Peter Grayson, Eliza Dunn, Robert Meade, Alexa Seagroatt, Helen Taylor and Noel Dilworth. They have certainly had an opportunity to become adequately indoctrinated with the subject matter!

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