

PRODUCT LIABILITY AND CONSUMER PROTECTION MECHANISMS IN RELATION TO TRANS-BORDER TRANSACTIONS IN THE UNITED KINGDOM: LESSONS FOR NIGERIA

By

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Abstract

In Nigeria, with respect to product liability in relation to consumer protection in trans-border transactions, it appears that there is no specific statute that governs product liability regime. However, the sector specific approach is hinged on adopting consumer protection statutes, which provide remedies and impose duties and obligations that affect product liability claims. The Nigerian Laws, which provide for consumer protection do not cover the aspect of extra-territoriality in which a manufacturer in a foreign country would be held liable for defective products imported into another country. The United Kingdom had established a formidable legal regime towards the protection of consumers of products. This article examines the product liability regime of the United Kingdom in relation to trans-border transactions and recommends that if the UK model is adopted in Nigeria, consumers who are domiciled in Nigeria will be more confident in trans-border transactions.

Keywords: Product, Liability, Consumer Protection, Trans-Border Transactions.

1.0 Introduction

The main source of law relating to product liability in the United Kingdom is Part 1 of the Consumer Protection Act¹. The Act provides for the rights of consumers. These rights are not exclusive of other rights, and persons who suffer damage as a result of defective products may also have rights under common law principles of tort and contract.

Furthermore, consumer rights with respect to defective products are set out in the Consumer Rights Act². The introduction of the Consumer Rights Act led to the consolidation of many existing laws, and also facilitated the expansion of the powers of the authorities and also gave a more detailed duties to the manufacturers. A consumer who suffers some form of injury from the consumption

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¹ Consumer Protection Act, 1987

² Consumer Rights Act, 2015

of defective products could rely on a cause of action in relation to product liability claim under the Consumer Protection Act³, common law action for negligence and breach of contract. These will serve as a bane of the legal regime for product liability in the United Kingdom which will serially be looked into. In Nigeria, with respect to product liability in relation to consumer protection, it appears that there is no specific statute that governs product liability litigation⁴ However, the sector specific approach is hinged on adopting consumer protection statutes, which provide remedies and impose duties and obligations that affect product liability claims.

2.0 Product Liability and Consumer Protection in the UK

The Consumer Protection Act is consistent with the EU Product Liability Directive, the Act imposes strict liability on a producer for damage caused by a defective product. This means the claimant does not need to prove fault on the part of the producer. Instead, all the claimant needs to prove to succeed in a claim are thus; that the product was defective, that the claimant suffered damage, and that there was a causal relationship between the defect in the product and the damage suffered.

Section 3 of the Consumer Protection Act provides that a product is defective if the safety of the product is below that which consumers are generally entitled to expect. Section 3 sets out the factors to be taken into account when determining what persons are generally entitled to expect in relation to a product, that is, all the circumstances including:

- a) The manner in which, and the purpose for which, the product has been marketed.
- b) Any mark used in relation to the product or its instructions for use or warnings.
- c) What might reasonably be expected to be done with or in relation to the product.
- d) The time when the product was supplied (that is, a product is not unsafe just because a safer product was subsequently developed, or because industry safety standards were raised after the product was supplied).⁵

There is an increasing body of case law in the UK on the principles for determining a defect in a product for these purposes of liability. One of such is the case of *Wilkes v DePuy*⁶ in which the court considered the determination of a defect in a product and provided guidance for understanding section 3 of the Consumer Protection Act. The key points of this judgment were summarized that the focus should be on ascertaining whether there was a defect in the product, and if so what that defect might be (rather than first identifying the harmful characteristic that

³ (n.1)

⁴O. Ajumogobia ‘ In Brief: The Sources of Product Liability Law in Nigeria’ (2019)
<<https://www.lexology/gtdt/workarears/product-liability>>accessed 15 October 2020.

⁵ Section 3, Consumer Protection Act, UK

⁶[2016] EWHC 3096 (QB)

caused injury, as was also the case in *A v National Blood Authority*⁷ Where the court upheld that the level of safety that persons generally are entitled to expect is an objective test in relation to a consumer's legal entitlement, as opposed to the actual expectations of the consumer in question, or of a notional group of consumers. The test requires 'no gloss' and should not be conflated with a test of legitimate expectations. The court further held that there are no restrictions on the relevant circumstances which should be taken into account in assessing the level of safety which persons generally are entitled to expect and that any assessment of a product's safety will necessarily involve a balancing of risks and benefits of the product. Just because a risk materialises, this does not mean that a product is defective. It was concluded that claimants do not have to establish the cause of the defect, although in many cases they may do so to make out defect. However, claimants must always prove that there is a causal link between the defect and damage.

The approach taken in *Wilkes v DePuy*⁸ was subsequently endorsed by the judgment in *Colin Gee & orsv DePuy International Ltd*⁹ where the court reaffirmed that 'defect' was a strictly objective concept but noted it should maintain a flexible approach to the standard of safety and could take into account relevant circumstances such as the compliance with regulatory requirements, the existence of a learned intermediary and the warnings provided with the product. The court held that a harmful characteristic which is part of the normal behaviour of the product will not necessarily constitute a defect, but that if the incidence of that harm, either in nature or degree is not normal then the product could be defective.

A claim under the Consumer Protection Act is time-barred, the general rule is that a claimant must bring an action against a defendant within three years of either: The date on which the cause of action came into existence, the date of knowledge of the claimant or of any person in whom the cause of action was previously vested, if earlier.

There is an absolute long-stop for bringing claims of ten years from when the defective product was first supplied. Generally, 'supplied' is accepted to mean when the product is taken out of the manufacturing process and enters the marketing process in the form in which it is to be offered to the public to be used or consumed.

The Consumer Rights Act implies certain warranties into any contract between a business and a consumer which include an implied term that the goods supplied under the contract are of satisfactory quality and an implied term that the goods supplied are fit for a particular purpose, if that purpose has been made known to the supplier expressly or by implication. The Consumer

⁷(2001] EWHC QB 446).

⁸ (n.5)

⁹(2018] EWHC 1208 (QB)

Rights Act affords consumers certain minimum statutory warranties, which cannot be contracted out of, for example, that they be of satisfactory quality, fit for a particular purpose and as described. Consumers are afforded the right to reject the product for a full refund in the first 30 days from taking delivery and ownership of the goods, where the product does not meet the minimum statutory warranties.

After the short-term right to reject has passed, or for other breach of contractual terms, consumers also have the right to require the relevant retailer to repair or replace a defective product. Within the first six months after the goods had been delivered to the consumer, the onus is on the retailer to prove that the product is not defective. At the expiration of this period, the onus shifts to the consumer to prove that the product was defective at the time of purchase.

The rights to repair or replace are subject to the terms not being unfairly disproportionate on the retailer, or simply impossible to implement. For instance, a retailer can replace a defective product rather than attempt to repair it if repair would be unreasonably expensive. If repairing or replacing the product is impossible, the retailer's one attempt at repair is ineffective, or the replacement is also defective, the consumer is entitled to a refund or, if they wish to retain the product, a price reduction. A refund may be subject to a deduction for use after six months (or earlier for certain goods, such as motor vehicles).

3.0 Negligence as a Cause of Action for Product Liability and Consumer Protection in the United Kingdom

A claimant who has suffered loss, for example personal injury or property damage, as a result of a defective product can bring a claim for negligence against persons owing them a duty of care. To establish the defendant's liability, the claimant must prove the following; that a duty of care was owed by the defendant, that the defendant breached that duty (on the balance of probabilities), that the breach caused the damage in question (on the balance of probabilities) and that the damage was reasonably foreseeable.

In relation to liability in negligence where the exact cause of the arising injury is indeterminable, the court held in the case of *Heneghan v Manchester Dry Docks Limited*¹⁰ that the appropriate apportionment of liability was to be judged based on the contribution of each defendant to the risk of the disease developing, rather than their actual contribution to the development of the disease. This is a much lower threshold for a claimant to satisfy and makes it difficult for defendants to avoid liability in its entirety. The tort of negligence not only imposes liability on producers/manufacturers, but in certain circumstances can extend liability to cover retailers, wholesalers, those who assemble or repair products and those who hire products out.

¹⁰(2016) EWCA Civ 86

4.0 Regulatory Oversight of Product liability and Consumer Protection

Product liability laws in the UK are derived from the law of contract, common law of tort and legislation. Where two or more parties have entered into a contract, their relationship is governed by the express terms of their agreement. In contracts for the sale of goods, the express terms are supplemented by terms implied by the Sale of Goods Act¹¹ which governs transactions in relation to business-to-business contracts and the Consumer Rights Act¹² in relation to business-to-consumer contracts.

The second source of product liability law as earlier mentioned is the common law of tort. Those involved in the manufacturing, importation and sale of products are under a general duty to avoid causing harm to those who might reasonably be affected by their negligence. The duty extends, but is not limited to, consumers and users of products. Manufacturers are also under a duty not to make deceitful or misleading representations in connection with the sale of their products.

The third is legislation, deriving predominantly from the European Union and constructed around the two pillars of the Product Liability Directive of 1985 and the General Product Safety Directive of 2001. Those Directives were implemented into English law by the Consumer Protection Act 1987 (CPA) and the General Product Safety Regulations 2005 (GPSR), respectively. The CPA creates a strict liability compensation scheme in respect of defective products and the GPSR requires consumer products to be safe. The CPA and GPSR remain in force notwithstanding the UK's departure from the European Union, although they have been amended and supplemented by several Statutory Instruments, such as the Product Safety and Metrology Regulations 2019 (the PSM Regulations)¹³

5.0 Requirements for Product Safety for Consumers

Although there is a large volume of legislation that applies to specific products falling within specific sectors, the general requirements of product safety are set out in the GPSR.

The GPSR applies to all products that are intended for or are likely to be used by consumers,¹⁴ and requires that those products be safe. GPSR defines a safe product as one that, under normal or reasonably foreseeable conditions of use, does not present a risk, or poses only the minimum risk that is compatible with the product's use, considered to be acceptable and consistent with a high

¹¹1979 (SOGA)

¹²Consumer Rights Act 2015 (CRA)

¹³ Product Safety and Metrology etc. (Amendment etc.) (EU Exit) Regulations 2019/696.

¹⁴Regulation 2 GPSR 2005, as amended

level of protection for the safety and health of persons¹⁵. GPSR also governs the recall of unsafe products¹⁶. The discovery of an unsafe product must be notified to Trading Standards which is the government body that enforces product safety legislation in England and Wales. Trading Standards decides which steps should be taken. Since Brexit, this no longer includes notifying RAPEX.¹⁷ Instead, the PSM Regulations require the Secretary of State to establish and operate its own database containing information relating to market surveillance and product safety.¹⁸

Any person who places an unsafe product on the market is in breach of GPSR. This includes a manufacturer within the United Kingdom; a company placing its name on the product; a company that reconditions the product; where the product is not manufactured in the United Kingdom, the importer of that product into the United Kingdom; and any professional in the supply chain whose activities might affect the safety of a product.¹⁹

Breach of GPSR constitutes a strict liability criminal offence that is punishable with a maximum of 12 months' imprisonment or a fine of £20,000, or both.²⁰ The authorities have discretion as to whether to prosecute and will take into account any steps that the company has taken to remedy or mitigate the risk posed by the unsafe product.

GPSR imposes several other obligations on producers and distributors of products, including the obligation on a distributor not to advertise or supply a product that it knows, or ought to know, is unsafe.²¹ Again, the maximum penalty is 12 months' imprisonment or a £20,000 fine, or both. A person in breach of GPSR can escape liability by demonstrating that all reasonable steps were taken to avoid committing the offence.²² In practice, however, this is a high threshold.

6.0 Enforcement of Product liability and Consumer Protection Regime

Product liability cases are heard in the first instance in either the High Court or the County Court depending on the track to which the particular case is assigned. Judges allocate defended claims to one of three procedural tracks at an early stage; which are the Multi-track, the Fast track and the Small claims track.

¹⁵ (n.3)

¹⁶ Regulation 7(3)(b) and Regulation 15 GPSR 2005

¹⁷ Rapid Exchange of Information System

¹⁸ Regulation 33 GPSR 2005, as amended.

¹⁹ Regulation 2 GPSR 2005, as amended.

²⁰ Regulation 20 GPSR 2005.

²¹ Regulation 8(1)(a) GPSR 2005.

²² Regulation 29 GPSR 2005

Multi-track claims can be heard in either the High Court or the County Court. However, claims worth less than £50,000 that have been commenced in the High Court are generally transferred to a County Court unless there is a specific reason for them to be tried in the High Court (such as a particularly difficult question of law or an unusually great public interest in the outcome). Fast track and small claims are typically heard in the County Court because the value and complexity of the claims assigned to these tracks are low. Civil claims are heard by a judge alone in the first instance, but there are multiple judges in any appeal proceedings. Jury trials are not available in product liability cases.

7.0 Constituents of Product Liability and Consumer Protection Proceedings

Parties can initiate proceeding in accordance with the provisions stipulated under the English Civil Procedure Rules (CPR) before proceedings are commenced, litigants are generally expected to participate in pre-action exchanges of correspondence and, in some cases, evidence, according to prescribed procedures (pre-action protocols). There is a specific pre-action protocol for personal injury claims which may be relevant in this context.²³ When a party fails to comply with these pre-action protocols there could be some ramifications for the defaulting party and the court can; take the failure to comply into consideration when awarding costs or apply sanctions against the offending party or stay proceedings entirely until there is pre-action compliance. Following this pre-action phase (assuming no settlement is agreed) proceedings are started by the claimant issuing and serving their claim form (in the prescribed format) on the defendant(s).

7.1 Burden of Proof on Product Liability and Consumer Protection Claim

The burden of proof lies on the claimant to prove the elements of the claim. In civil matters, the standard generally is to prove the case against the defendant on the balance of probabilities. This standard is lower than the criminal standard, which is that the case must be made out beyond all reasonable doubt.

The judgment in *Hufford v Samsung Electronics (UK) Limited*²⁴ showed the threshold that claimants must reach to prove that a product was defective under section 3 of the Consumer Protection Act. The claimant could show that a destructive fire began around the product in question but could not prove that the product itself was the catalyst for that fire. The court found in favour of the defendant, as this was deemed to be insufficient evidence to discharge the claimant's burden to show the product was defective.

²³ Civil Procedure Rules of UK <(https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pick>accessed 27 January 2022

²⁴(2014) EWHC 2956 (TCC)

The CPR makes provisions for how evidence could be given which provides that at hearings taking place before trial, evidence is usually given in writing, for example, in a written witness statement. At trial, any witness evidence that a party wishes to rely on must have been served in the form of a written witness statement before trial. A witness will then usually give oral evidence as well, though the court may give directions limiting evidence, or which witnesses are called.

Where witnesses give oral evidence, their witness statement will stand as their evidence in chief unless a court orders otherwise. With the court's permission, a witness may amplify their witness statement and or present evidence in relation to new matters which have arisen since the witness statement was served on the other party or parties. A witness providing oral evidence will generally be subject to cross examination, which is designed to challenge the witness's evidence.

Any documentary evidence that is intended to be relied on is typically served as an exhibit alongside the relevant witness statement in which it is referred to.

When the proceeding is ongoing, parties can rely on expert opinion evidence, but only that which is reasonably required to resolve the proceedings. Expert evidence can only be submitted with the permission of the court and there has been a recent trend for courts to limit the number of experts to control costs more tightly in relation to expert evidence, as part of a general reform across the civil litigation system. The CPR sets out the procedure for expert opinion evidence. Where relevant, Part 7 of the Pre-action Protocol for Personal Injury Claims also addresses experts. The expert evidence must be in the form of a written report unless the court directs otherwise. The other side can put written questions to the expert.

In some cases, the court may exercise its power to appoint a single joint expert for both parties. Experts are expected to be impartial in their analysis and must acknowledge their duty to act independently when preparing their report. Concerning Pre-trial disclosure, the CPR provides for pre-trial disclosure in civil proceedings. Standard disclosure requires parties to disclose all documents that; they intend to rely on at trial, adversely affect their own case, adversely affect another party's case and support another party's case. Cases in the High Court may be subject to a pilot scheme aimed at reducing disclosure to only those documents that are required to resolve the dispute.

When searching for documentation for disclosure, all parties are under an ongoing duty to perform a reasonable search for any such documentation. The court may also make an order for specific disclosure, either relating to a specific identified document or a category of documents believed to be in the party's control. Prior to the commencement of proceedings, the pre-action protocols (including the Pre-action Protocol for Personal Injury Claims) and the Practice Direction on Pre-action Conduct and Protocols encourage parties to voluntarily disclose relevant documents.

If documents are not forthcoming on a voluntary basis, it is also possible for parties to seek pre-action disclosure, by order of the court²⁵. However, before seeking an order of the court for disclosure where disclosure is not voluntary, it is usually appropriate for the party seeking documents to make a written request either under any applicable pre-action protocols or the Practice Direction on Pre-action Conduct and Protocols.

Penalties are proscribed where evidence are willfully destroyed. When there is a failure to preserve all potentially disclosable documents, and potentially relevant products, at the time litigation is contemplated, this can give rise to very serious sanctions, including: Costs sanctions, the striking out of a party's particulars of claim or defence (or part thereof), the drawing of adverse inferences as to the contents of those documents. Prior to the commencement of a full trial, the court can grant interim reliefs. There are a lot of interim applications that can be awarded by the court before the full trial commences, including: Injunctions to preserve the status quo, extensions of time, summary judgment and orders for security for costs.

The CPR makes provisions for a non-exhaustive list of potential interim remedies.²⁶ There are different thresholds of proof and evidence for each type of interim application, as the severities of the orders fluctuate. The CPR provides the guide for any type of application.

8.0 Cost Recovery Model of Product Liability and Consumer Protection

Concerning cost recovery, the general principle in English law is that the losing party pays the costs of the successful party, subject to the court's wide discretion to order otherwise. However, this general principle does not always apply in practice. Costs recovery is extremely limited in small claims and subject to restriction in fast-track claims.

In addition, in any personal injury claims, a regime of qualified one-way costs shifting²⁷ applies. What this means is that if the claimant wins the case (or any aspect of it), the claimant can recover and enforce costs, but if the claimant loses the case (or any aspect of it), costs can only be enforced against the claimant up to the extent of any damages and interest awarded to the claimant. There are certain limited exceptions to these rules for example if the claim is found to be fundamentally dishonest.²⁸ In case there is need to appeal, appellants require permission to appeal a County Court or High Court judgment. The application for permission is generally heard without an oral hearing (meaning the application is considered solely on the basis of the parties' written submissions) unless the judge deems that the application cannot be fairly heard without an oral hearing. Tight

²⁵CPR Part 31.16

²⁶CPR Part 25

²⁷(QOCS)

²⁸CPR Part 44.14

deadlines apply to appeal applications, so a decision to appeal usually needs to be made quickly after judgment.

The appellant must show that the judgment of the court is wrong or unjust because of a serious procedural or other irregularity. A judgment is considered "wrong" for the purposes of an appeal, if it can be shown that there is an error of law, an error of fact or an error in the exercise of the court's discretion. Appeals made on the basis of an error of fact are less common than the other available grounds. Permission to appeal on this ground is rarely granted, as the appellate courts generally do not interfere with a finding of fact that was open to the first instance court.

8.1 Alternative Basis of Settlement on Product Liability and Consumer Protection Issues

Parties could choose to settle their differences on an alternative basis before trial, especially if the claims or injury is minor or it involves a class action. Most product liability cases in the UK are settled before trial, due to the significant costs of litigating these disputes and the public nature of UK Court litigation. Settlement can be conducted confidentially without allegations concerning defect or liability becoming public knowledge. In general, the UK has a 'loser pays' principle which means the losing party to litigation must pay the winning party's costs. This can be an incentive for parties to settle proceedings at an early stage. Where product liability claims concern personal injury, a regime of qualified one-way costs shifting²⁹ applies, meaning that claimants will usually not have to pay the defendant's costs, even if they are unsuccessful in their claim. This means that, in practice, defendant companies will not usually recover costs in product liability claims brought by consumers, including in group actions. This may be a strong incentive for a company to settle claims, especially if there are no other good reasons to defend the claim in court.

Product liability settlements are subject to the usual considerations for settlement. While true 'class action' proceedings are not available for product liability claims, there are procedural mechanisms available that enable claims to be considered in a grouped fashion. The court can use its broad case management powers to do so, or claims can be consolidated through the issue of a Group Litigation Order.³⁰

Any number of claimants or defendants can be joined as parties to a claim, and these can then be consolidated by the court using its discretion under the CPR. For a party to take part in a consolidated claim, they must show that they have the same interest at all stages of the proceedings and not just at the final date of judgment.³¹ A judgment on the group register in relation to one or

²⁹QOCS

³⁰GLO

³¹*Emerald Supplies Ltd v British Airways plc* [2010] EWCA Civ 1284.

more GLO issues is binding on the parties to all other claims that are in that group. GLOs are not always final as they are sometimes used to address only specific issues common to related claims series. In such cases, after judgment there may be other court proceedings to apply the findings to different claims series.

9.0 Remedies for Product Liability and Consumer Protection Claims

The remedy available to a successful party is limited to compensatory damages only, with very few exceptions. The courts do not generally award punitive damages. Damages are separated into monetary loss (damage or destruction of property and lost profits) and non-monetary loss which has to do with death or personal injury.

On calculation of damages, the main principle for the calculation of damages in tort is that the claimant should be compensated for the damage caused by the tortfeasor. In other words, the claimant should be restored, as far as is possible, to the position they would have been in had the tort never occurred. These principles are also generally applied in claims under the Consumer Protection Act. The general principle is similar for a claim grounded in breach of contract, where the claimant should be placed in the same position as if the contract had been performed. Punitive damages are exceedingly rare, as the general motive behind damages is to compensate the claimant rather than punish the defendant. Punitive damages are reserved for cases involving deliberate torts where the defendant has calculated that the money to be made from the wrongdoing exceeds the damages payable. Punitive damages are not established as an available remedy for breaches of contract.

The courts can award exemplary damages where a defendant's conduct has been particularly outrageous³² although this is extremely rare in product liability cases. In product liability case under a tortious claim, liability can be joint, several, or joint and several. Parties are considered joint tortfeasors where the cause of action against each is the same (that is, the evidence and facts support the same action against each party) and concurrent tortfeasors where each party is responsible for separate torts but those torts combine to produce the injurious result.

In both of those cases, the tortfeasors are jointly and severally liable, meaning that the defendant can claim the full value of their damages from one of the parties, who may then recover a proportion from all the other tortfeasors. The contribution from each party is determined under the Civil Liability (Contribution) Act 1978 which states that their contribution will be according to what is just and equitable having regard to the extent of their responsibility for the damage in question. Therefore, a party who is only partially responsible for the damage would make less of

³²*AXA Insurance UK plc v Financial Claims Solutions Ltd and others* [2018] EWCA Civ 1330),

a contribution to the total damages paid than a party who committed a fundamentally negligent action.

9.1 Compensation Model and Punishment

As mentioned earlier, in the UK product liability regime, Punitive damages are exceedingly rare, because the general motive behind the award of damages is to compensate the claimant rather than punish the defendant. Punitive damages are reserved only for cases involving where a tort is deliberate and where the defendant has calculated that the money or gains to be made from the wrongdoing will be more than the damages payable. The compensation awarded to an injured party in a product liability regime in the form of compensation.

The damages that can be awarded in a product liability claim are categorized into four, which are;

- a) general damages,
- b) special damages;
- c) punitive damages; and
- d) exemplary damages.

Punitive and exemplary damages are rarely awarded because the general approach is that damages are compensatory. The courts draw a distinction between losses that have arisen from property damage or personal injury (consequential losses) and those that have not (pure economic losses, such as loss of profit). The recoverability of these types of loss is dependent on the cause of action.

Damages in contract are awarded on the basis of expectation – to put the claimant in the position they would have been if the contract had been performed as expected. This is subject to the rules on the remoteness of damage, which limit the scope of recovery to losses:

- a. that arise naturally from the breach; or
- b. whose existence in the event of breach should have been within the reasonable contemplation of the parties when the contract was made.³³

If the tests for remoteness are met, damages for the following losses are recoverable: personal injury; property damage; pure economic loss; and loss of enjoyment (in limited cases). However, the recoverability of damages can be excluded or limited by the express terms of the agreement between the parties.

Furthermore, damages in negligence are awarded with a view to restoring the victim of negligence to their former position had the negligence not occurred. Damages for property damage and personal injury are most routinely awarded in negligence. Damages for pure economic losses are

³³*Hadley v. Baxendale* 156 ER 145

generally not recoverable unless a special relationship has arisen between the parties. This is rare but occurs where the defendant has used their expertise to give advice and:

- a. the advice was required for a specific purpose of which the defendant was aware;
- b. the defendant knew that the claimant was likely to act on the defendant's advice for that purpose; and
- c. the claimant reasonably did so to their detriment.

The recoverability of losses also depends on the losses being reasonably foreseeable³⁴.

Damages for deceit and misrepresentation are recoverable for property damage, personal injury and pure economic loss. The rules of remoteness, however, differ from those in negligence. In relation to deceit, the defendant will be liable for all losses that flow directly from the deceit – whether or not they are foreseeable. This means that, where losses have been exacerbated by an unforeseen event, they will still be recoverable from the defendant. This is, however, subject to the claimant's duty to mitigate their potential losses.³⁵ Compensation under the CPA of UK are also in the form of damages, as in tort, are intended to restore the injured party to the position they would have been in had the product not been defective. There is no provision for the award of punitive damages. Damages for personal injury and property damage are recoverable only where the loss exceeds £275³⁶. The following are not recoverable:

- a. pure economic losses (this includes damage to the defective product itself);
- b. where the product is a component of a bigger product, damage to the greater product; and
- c. damage to business property³⁷.

It is thought that the test of reasonable foreseeability would apply to the remoteness of loss under the CPA.

10.0 Lessons for Nigeria

In the United Kingdom, all that the claimant needs to prove to succeed in a claim relating to defective product is that the product was defective, that there was a causal relationship between the defect in the product and the damage suffered. This means that liability is strict on the part of the producer. This model could be adopted in Nigeria. Also, the cost recovery model of the United Kingdom, a regime of qualified one-way cost shifting is adopted, if this is also adopted in Nigeria, it will serve as an indicator on the manufacturers to adhere to required standard.

³⁴*Overseas Tankship (UK) Ltd v. Morts Dock and Engineering Co Ltd (The Wagon Mound)* [1961] AC 388

³⁵*Downs v. Chappell* [1997] 1 WLR 426.

³⁶Section 5(4) CPA

³⁷Section 5(4) CPA

Conclusion

Nigeria does not have a formidable legal regime for the protection of consumers in a defective product in trans-border transactions issues, a consumer who with the click of a mouse imports a product into Nigeria would be left without any legal remedy if the product turns to be a defective product which may cause injury or hazards to the consumer. However, if the product liability regime of the United Kingdom as detailed above is adopted in Nigeria, a more formidable legal regime relating to product liability in trans-border transactions would have been established in Nigeria.