1. INTRODUCTION

Belgian Products Liability Law is considered as very similar to French Products Liability Law, if only because the Belgian Civil Code reproduces for historical reasons many provisions of the French Civil Code. There exist however some differences between the two.

Basically, a person injured by a defective product can base his claim either on the general provisions of contract or tort law, or on the specific provisions of the Product Liability Act of 25 February 1991, which translated the 1985 Directive into Belgian Law. These various regimes will be described (2 & 3), as well as some practice and procedural aspects applying to products liability claims in Belgian Law (4).

2. GENERAL PROVISIONS WHICH CAN APPLY TO DAMAGES CAUSED BY PRODUCTS

Depending on the circumstances, the general provisions of tort law or contract law are liable to apply when a product causes damages to persons or property. On the relationships between tort-based and contract-based claims in Belgian law, see infra 4.1.

Belgian courts have long since recognized the existence of a duty to warn, resting on the person who sells or supplies a dangerous product. This duty to warn exists whether or not the supplier has entered a contractual relationship with the plaintiff. When the violation of this duty to warn causes injuries, the supplier’s liability will be in contract or in tort, depending on the existence of a contract. In both cases, the plaintiff must prove this violation, his damage, and the existence of a causal link between these two elements.

The exact nature of the liability in such cases is of little impact, since the rules governing liability in contract and liability in tort are to a large extent similar. In particular, all types of losses, including pure economic loss, can in principle be recovered, both in contract and in tort. On the limitation periods applying to the various claims, see infra 4.3.

2.1 Contract

3 The existence of this duty to warn has been explicitly confirmed by the Legislator as far as relationships between professionals and consumers are concerned, in accordance with the 2001 Directive on General Products and Services Safety (article 7 § (1) of the February 9, 1994 Act). This Act also imposes post-marketing duties such as recall and withdrawal, see 4.6.infra.
4 When the plaintiff’s claim is based on the violation of a contractual duty to warn, the general rules of contractual liability apply. This means that the specific provisions of the Latent defects warranty do not apply, and in particular the “brief period” rule: see infra 3.1.
The Hidden defects warranty (garantie des vices cachés) is a particular set of contractual rules which are most likely to apply when a product causes damage.

Article 1641 Civil Code provides that “the seller is held to a guaranty against latent defects in the thing sold which render it unsuitable for the use for which it is intended, or which so diminish such use that the buyer would not have purchased it, or would have given only a lesser price for it, had he known of them”.

This rule only applies to contracts of sale.

The defect must have existed at the moment of delivery, while remaining unnoticed by the buyer at the time. The burden of proof theoretically rests on the buyer. If the buyer could have discovered the defect through a reasonable inspection of the goods but did not raise any objection at the time of delivery, he will be considered to have accepted the defect.

The latent defect, as interpreted by judges, can be a “structural” or a “functional” defect. A structural defect can be defined as the one that affects the product intrinsically. A functional defect is a defect that renders the product unfit for the purpose for which the buyer intended to use it, and the the seller was aware or should have been aware of this purpose.

When the defect causes death, person injury or damage to any property other than the defective product itself, the buyer can get compensation from the seller only if the latter knew of the defect at the time of the sell (article 1645 Civil Code). The Civil Code provides for specific remedies to compensate for the economic loss resulting from the product’s defectiveness. The buyer basically has the choice between getting a price reduction or nullifying the sale (article 1644 Civil Code). This is not too harsh a requirement on the buyer, since the Belgian Supreme Court (Cour de cassation) deems manufacturers and professional sellers to know the defect of their products. This presumption can only be rebutted if the manufacturer or professional seller proves that it was totally impossible for him to detect the defect. In applying this standard, a distinction must be made between manufacturers and specialised sellers on the one hand and retailers on the other hand. The latter can escape liability by showing that it was impossible for a professional person at their stage in the distribution chain to discover the defect.

Theoretically, the seller of the good can stipulate a provision limiting his liability or exempting him from liability, but such a clause is neutralised whenever the seller knew or is deemed to have known of his good’s defectiveness. Besides, in consumer sales, such limitation or exemption clauses will very often be considered as unfair contract terms.

To succeed in a claim based on latent defects, the buyer must bring his action within a “brief period” which is determined by the judges according to the facts of the case. On this requirement, see infra 4.3.

5 Besides, the September 1st, 2004 Act, which incorporates the 1999 Directive on Consumer Goods Guaranty into Belgian Law, has added a new set of remedies which apply to Consumer Sales. But these new provisions do not allow for the compensation of the damage caused by the defective good to the buyer’s person or properties.

When acting on the Hidden defects warranty, the buyer can sue any of the previous sellers of his good, even if he has not entered any contract with that person. It is only necessary that the defect existed at the time when that seller parted with the good and that the seller had, or can be deemed to have had, knowledge of the defect. This solution is based on the concept that any seller transfers, together with the goods he sells, his claim for hidden defects against the preceding seller.

2.2 Tort

Article 1382 to 1386 of the Belgian Civil Code set out the general principles of tort liability.

2.2.1. Negligence-based liability: article 1382 & 1383 Civil Code

According to article 1382 Civil Code: “Any act whatever of man which cause damage to another obliges him by whose fault it occurred to make reparation”. The fault may consist in negligence according to the terms of article 1383 which provides that “each one is liable for the damage which he causes not only by his own act but also by his negligence or imprudence”.

To obtain compensation, the plaintiff must demonstrate the existence of a fault, of damage and of a causal link between the fault and damage. Fault, however, is quite easy to demonstrate. Belgian courts consider that to put into circulation a product which is liable to injure persons or property amounts to negligence. The manufacturer or professional seller can escape liability only if he demonstrates that he was absolutely unaware of the existence of the defect. Besides, there is negligence per se if a manufacturer does not respect technical or safety standards contained in a legal or regulatory provision.

2.2.2. Strict Liability: article 1384 Civil Code

Article 1384 §1 Civil Code is a strict liability provision. According to it, one incurs liability for damages caused by things that one has in his keeping. Unlike article 1382 which explicitly requires a fault and accordingly its demonstration, article 1384 §1 rests on a non-rebuttable presumption of fault. In support of his claim, the injured person must prove damage, the defectiveness of the thing, and the existence of a causal relationship between the defect and damage. A defect can not be

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8 These provisions include those set out by the 1994 Act on Product Safety, which implements in Belgian Law the provisions of the 2001 Directive on Product Safety.

9 The other paragraphs relates to specific persons. Article 1384 §2: “the father and mother are liable for damage caused by their minor children”; article 1384 §3: “Master and employers, for damage caused by their servants and employees in the functions for which they have been employed”; article 1384 §3: “Teachers and craftsmen, for the damage caused by their pupils and apprentices during the time when they are under their surveillance”.

inferred from the mere fact that the product has caused damage. Since 1971, the Belgian Supreme Court defines the defect as “an abnormal characteristic of the thing which makes it liable, under certain circumstances, to cause damage”.

This liability is very strict, as defences available under article 1384 §1 are limited, namely the force majeure (i.e. an event independent of the custodian’s will, unpredictable and unavoidable), the victim’s contributory fault or negligence, the act of a third party or an external cause. However, liability under article 1384 §1 has limited relevance in matters of product liability. It rests on the custodian of the thing, whom the Supreme Court defines as the persons who exerts physical control over the thing. Thus, it is only in very rare circumstances that the manufacturer or the professional supplier of the thing will be considered as its custodian and will incur liability on the basis of article 1384 §1.

3. THE PRODUCTS LIABILITY ACT


The Belgian PLA sets out the principle according to which the producer shall be liable for damage caused by a defect in his product (article 1). The Act sticks closely to the 1985 and 1999 Directives, as its various provisions show.

3.1 Product

‘Product’, as defined by article 2 PLA, means all corporeal movables, even though incorporated into another movable or into an immovable ("immeuble par destination"). It includes electricity. Agricultural products and game were originally excluded but are now considered as products, since the provision of the directive excluding them from its scope has been repealed in accordance with the 1999 Directive.

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13 Cour de Cassation, ., 25 mars 1943, Pas., 1943, 1, p. 110: the keeper is “celui qui, pour son propre compte, use de la chose, en jouit ou la conserve, avec pouvoir de surveillance, de direction et de contrôle”.

It must be noticed that PLA specifies that products can only be tangible movables. On this point, PLA is stricter than the Directive, which does not explicitly exclude intangible goods from its scope.

3.2. Producer

‘Producer’, under article 3 PLA, means the manufacturer of a finished product, the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer. This is exactly the definition of the producer given by the Directive.

In accordance with the Directive, article 4 PLA extends the liability to importers into the European Community (art. 4 §1). Suppliers may also be liable but only if the producer cannot be identified or if they fail to inform the injured person of the identity of the producer or the importer “within a reasonable time” (art. 4 §2.).

3.3. Putting into circulation

The Belgian PLA distinguishes itself from the 1985 Directive in that it defines the putting into circulation of the product. According to article 6, ‘putting into circulation’ means the first act embodying the producer’s intention to bestow upon the product the usage (“affectation”) which he intends for it, through the transfer of the product to a third party or the use of it for the benefit of that person.

Many authors have criticized the definition of “putting into circulation” given by the 1991 Act as unclear, but to this date, there is no reported Belgian case law on Article 6 of the PLA.

3.4. Defect

The definition of the defect given by the PLA is exactly that of the Directive. According to article 5: “A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:
(a) the presentation of the product;
(b) the use to which it could reasonably be expected that the product would be put;
(c) the time when the product was put into circulation.
A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation”.

Although there is still little case law relating to the 1991 Act, some courts have had the occasion to flesh out the meaning of this provision.

15 See e.g. Tribunal de Commerce (Commercial Court) of Hasselt, 3rd division (Rechtbank van Koophandel te Hassel, 3de Kamer) 8 November 1999, published in Limburgs rechtsleven, 2000 p. 138.
In the case *S.A. Tabruyn v. General accident Fire and life assurance P.L.C.*\(^{17}\), the employee of a bakery had had his fingers cut by blades rotating in a funnel in which he has put his hand. The insurer of the employee reproached the manufacturer with the absence of a safety grating over the funnel and claimed that the funnel was thus defective. The Court of Appeal of Namur, taking into account the fact that the employee was experienced and qualified and that the funnel was so difficult to reach that he had climbed on a chair or a tool to be able to put his hand into it, reached the conclusion that the rashness of the employees was the exclusive cause of his injuries and that the absence of a safety grating was not to be considered as a defect.

In the case *Ets Leone v. R.J. and others*\(^{18}\), the Supreme Court gave a severe interpretation of what can be considered as a defect. A child had injured his eye while trying to take off his dental face mask.\(^{19}\) The Supreme Court held the producer of the face mask liable for the bodily injuries caused by the product. Although the device had been correctly fitted by a dentist, complied with a European directive and was recommended by a University, the Supreme Court particularly stressed that “the use of rubber bands (to fasten the facebow) presented danger for children” and “the use of the product could cause a reasonably predictable damage as it was intended in particular to children who are usually not able to estimate the risks of use.” Obviously, in this particular case, the fact that the product was to be used by children increased the level of safety which the product had to display. That there would have been no damage if the child had taken off correctly his facemask was not exclusive of the facemask’s defectiveness. It is an illustration of the fact that the defect must be appreciated taking into account “the use to which it could reasonably be expected that the product would be put”. In the present case, the facemask’s misuse by the child was foreseeable by the producer and should have been considered by the producer when designing the product\(^{20}\).

### 3.5. Damage

Art. 11 PLA defines “damage” as damage caused to the person including pain and suffering, and damages to property (if used for private purposes), but excludes damage caused to the defective product itself. It covers in particular bodily injuries, loss of income, esthetical damages. Relatives may also claim for their suffering resulting from the damage caused to the primary injured person. Damages to property are subject to a lower threshold of 500 Euros. The PLA does not make use of the possibility offered by the 1985 Directive to limit the producer’s total liability for damages resulting from death or personal injury and caused by identical items with the same defect.

It must be noticed that the PLA explicitly provides for the compensation of non-material damages, a point which the Directive had left to the Member States’ discretion.

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\(^{17}\) Tribunal de premiere instance (first instance Court) of Namur, 6\(^{th}\) civil section, 14 November 1997, registration number 643/96, published in *Revue de jurisprudence de Liège, Mons et Bruxelles (JLMB)*, 1998/15 p.664.

\(^{18}\) Cour de Cassation, 1st section, 26 September 2003, registration number C.02.0362.F. Available at the website of the Belgium Supreme Court, [www.juridat.be](http://www.juridat.be), link Jurisprudence. A short summary is also published in *Journal des Tribunaux (J.T.)* of 6 December 2003 n° 6117 p. 841, court decision n° 03-156.

\(^{19}\) A face mask is a dental appliance used for treatment of maxillary insufficiencies, mandibular prognathism and cleft palate.

\(^{20}\) The Cour de cassation, however, did not disapprove the Court of Appeal’s decision in that it had considered that the child should bear of 50% of her damage, since the fault she had committed when taking off the facemask had contributed to the damage.
3.6. Proof of defect, damage and causation

In accordance with the Directive, article 7 of the LPA provides that the injured person is required to prove the defect, the damage and the causal relationship between defect and damage.

It has been held by the Court of Appeal of Namur (Alain R. vs S.A. Schweppes Belgium\(^{21}\)) that the claimant does not have to prove “the exact nature of the defect regarding in particular its technical aspects” but that the defect can be inferred from the “abnormal behaviour of the thing”. However, damage is not by itself the proof of the defect, since the damage can result from the product’s misuse (see for example the case of a wallpaper stripper which burnt its user\(^{22}\)).

3.7. Defences

3.7.1. Statutory defences

Article 8 PLA reproduces the defences listed in article 7 of the Directive. Thus, the producer shall not be liable as a result of the Act if he proves:
(a) that he did not put the product into circulation; or
(b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or
(c) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; or
(d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or
(e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or
(f) in the case of a manufacturer of a component or of a raw material, that the defect is attributable to the design of the product in which the component or the raw material has been fitted or to the instructions given by the manufacturer of the product.

The only difference with the wording of the Directive concerns this last defence. Whereas the Directive only provides for the exoneration of the producer of a component part when the defect of the product is not attributable to that component part, the PLA also provides for the exoneration of the producer of a raw material when that material is not in itself defective.

In the case Alain R. vs S.A. Schweppes Belgium\(^{23}\), the Schweppes Company was sued by a person injured by the explosion of a glass bottle of “Schweppes Indian tonic”. Schweppes tried to demonstrate that the explosion was attributable to a defect of the glass but not of its drink. As Schweppes was not the manufacturer of the glass but only the producer of the drink, it claimed that it was not responsible for the damages, given the exemption of liability applicable to the manufacturer of a component part. However, the judge held that Schweppes had the duty to ensure

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21 Tribunal de premiere instance of Namur, 5\(^{th}\) civil section, 21\(^{st}\) November 1996, registration number 1931/95, published in *Revue de jurisprudence de Liège, Mons et Bruxelles (JLMB)*, 1997/03 p.104.
23 Tribunal de premiere instance of Namur, 5\(^{th}\) civil section, 21\(^{st}\) November 1996, registration number 1931/95, published in *Revue de jurisprudence de Liège, Mons et Bruxelles (JLMB)*, 1997/03 p.104.
that its drinks put into circulation were free from defect, even if it was not the producer of the defective part of the product. Moreover, the judge considered that the controls of quality operated by Schweppes were insufficient to prove it was totally impossible for it to detect the existence of the defect and thus to benefit from the liability exemption based on the “state of the art and technology” (article 8 §5).

Another case of statutory defence is set out by article 10 §2 PLA which allows the judges to exclude or reduce the producer liability when the damage is caused both by a defect in the product and the fault of the injured person or any person for whom the injured person is responsible.

3.7.2. Contractual defences

Article 10 §1 PLA prohibits contractual provisions reducing or exempting the producer from its liability.

3.8. Limitation periods

See infra 4.3.

3.9. Other provisions

In accordance with the 1985 Directive, the PLA provides that where several persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions concerning the right of recourse (article 9).

Besides, the PLA does not affect any rights which an injured person may have according to the rules of the law of contractual or non-contractual liability (article 13), which means that the person injured by a defective product can still exert a claim on the basis of article 1641 or 1383 Civil Code, depending on the cases. However, the new regime does not apply to injury or damage arising from nuclear accidents, which is covered in Belgian Law by an Act of 22 July 1985.

4. Practice and Procedural Aspects

4.1. Relationship between tort- and contract-based claims

Since a decision of the Belgian Supreme Court delivered on 7 December 197324 by which it overruled its previous case law, a party to a contract does not have the choice between an action in tort and in contractual liability. This party has to sue the other contracting party on a contractual basis, unless the damage caused by the co contracting party’s fault is unrelated to the contract. In the case referred thereto, a wooden container lifted by an agent hired by a freighter crashed on a pier. The shipper brought his claim in tort against the agent as the latter was not part to the shipping contract. The Cour de Cassation first held that the agent hired by the shipper to perform the whole or the part of the shipping agreement was not a third party with regard to the performance of the shipping contract and with respect to the co contracting party of the shipper.

The *Cour de cassation* also ruled that the agent who takes part in the performance of the contractual obligation of a party incurs liability in tort only if his alleged fault constitutes the violation not of the contractual obligation, but of an obligation laying upon everybody and only if this fault caused a damage other than the one resulting from the poor performance of the contract.25

There is one exception to this rule: when the violation of contract also constitutes a criminal offence, the plaintiff can sue either in contract or in tort.

According to M. H. Bocken “apparently, the court wanted to strengthen the protection given to contracts by preventing parties from bypassing exemption clauses by suing their counterpart in tort rather than in contract or by suing the latter’s organs, servants or other auxiliaries, against whom obviously no contractual claim is possible […]. Although the decisions of the Cour of Cassation are worded in terms of fault liability, contract law prevails also over strict liability rules. There is one major exception. If the act constitutes a breach of a contract at the same time qualifies as criminal offence, the action in tort remains possible both against the contractual counterpart and his organs, servants and auxiliaries.”26

4.2. Right to institute proceedings

4.2.1. Individual action

According to article 17 Judicial Code, a claim is not allowed if the claimant does not have the capacity and an interest to bring her claim. In other words, the claimant shall be the holder of the right to act and have a direct and personal interest to bring an action. This interest “shall be actual and present” but a preventive action before courts is allowed to avoid the infringement of a right (article 18 Judicial Code).

However, two or more persons may jointly bring a claim before the same court if the claims of these persons are related (article 701 Judicial Code). This will be the case when several people have been injured by the *same and unique* product. On the contrary, if several persons have been injured by identical products manufactured by the same manufacturer, these persons cannot sue this manufacturer jointly and must act separately.

4.2.2. Collective action

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25 See also *Cour de cassation*, 28 September 1995, *Pas.*, 1995, I, p. 856: a contracting party may incur liability in tort due to a fault committed within the execution of the contract, as long as this fault does not constitute a violation of contract, but a violation of the general duty of prudence or of a duty of care imposed by a norm (“la responsabilité d’une partie contractante peut être engagée, sur le plan extracontractuel, du chef d’une faute commise lors de l’exécution d’un contrat, pour autant que la faute qui lui est imputée constitue un manquement non à une obligation contractuelle, mais à l’obligation générale de prudence ou à une obligation, imposée par une norme, de s’abstenir ou d’agir d’une manière déterminée et que cette faute ait causé un dommage autre que celui qui résulte de la mauvaise exécution du contrat”).

A collective action covers two kinds of actions: the defence of an association’s own interest (a) and the defence of a collective interest ("action d’intérêt collectif"), namely the defence of a public interest or of the sum of the individual interests of the association’s members.

a. An association’s own interest

Courts accept this kind of action provided that the association has acquired a legal status. In particular, the Cour de Cassation held in 1982\(^{27}\) about a non-profit association that “the personal interest of a legal entity of which the latter has to prove to bring an action before court only covers what pertains to the existence of this legal entity, its intangible and tangible assets, especially its honour and reputation”.

b. Collective interest

**Principle:** a collective action does not meet the requirement of article 17 Judicial Code (capacity and personal interest). The same decision of 1982 ruled the principle that “Unless otherwise provided by law, the action brought by a legal entity or a natural person shall not be admitted if the claimant does not have a personal and direct interest, that is to say an interest proper to it; a general interest does not constitute, within this meaning, a personal interest”. This principle was reaffirmed by the Cour the Cassation in 1996\(^{28}\): “The mere fact that a legal entity or a natural person pursues an aim, even if laid down in its articles of association, does not lead to the rise of a proper interest which this person has to prove in order to bring an action before court”.

The defence of the sum of the individual interests of the members of an association is not allowed either.

Finally, “class action” (understood as an action brought by a person acting on behalf of persons having similar interests but without a mandate from these persons), is not possible under Belgian Law. According to M. H. Bocken\(^{29}\): “the principle remains, that one cannot, without his consent, invoke in court somebody else’s interest. Consequently, nobody can, at his own initiative, act as a representative for a large class of people with a similar claim. A counterpart of the American class action does not exist in Belgian Law”.

**Exception:** Notwithstanding the provisions of articles 17 and 18 Judicial Code, article 98 §1-4 of the Act on fair trading\(^{30}\) allows certain associations “to take proceedings for the defence of their collective interests as defined in their Articles of Association”. Associations to which article 98 refers must

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\(^{30}\) Act on commercial practices and information and protection of consumer, 14 July 1991 published in the *Moniteur Belge* of 29 August 1991 and amended several times afterwards.
have a legal personality, be represented at the Belgian council for protection of consumers (Conseil de la consommation) or approved by the Ministry of Economical Affairs. These association are also entitled to ask the President of a Commercial Court to order cessation of a practice infringing the provisions of the fair trading Act (articles 98 §1 and 95 fair trading Act). Other Acts also entitle association or bodies to bring an action for particular purposes but these provisions are not relevant to products liability matters. 31

4.3. Limitation periods

4.3.1. PLA-based claims

The PLA regime (article12) lays down the two limitation periods provided by the 1985 Directive. The first limitation concerns the right to obtain compensation for damage and is set at 10 years as from the date when the defective product which caused the damage was put into circulation. It means that if the defect appears after 10 years, no claim brought under the PLA regime will be accepted. The second limitation is 3 years from the date on which the claimant became aware or should have been aware of the damage, the defect and the identity of the producer. This 3-year period applies to the action of the plaintiff.

4.3.2. Contract-based claims

In principle, claims based on a contractual ground are barred after 10 years (article 2262bis §1). However, under the specific regime of latent defect (article 1641 et seq. Civil Code) claims must be brought within a “brief period”. As previously said, the Civil Code does not lay down the length of time of this period nor its starting point; these matters are left to the judge’s discretion. For example it has so been held by the Court of Appeal of Liege32 that a period of 57 days complies with the “brief period” requirement. Case law sometimes accepts to consider that the passing of the brief period is suspended when parties are negotiating to settle their dispute, and starts again if these negotiations fail; the Commercial Court of Hasselt33 has so held that a period of 7 months after the failure of negotiation exceeded the “brief period”. These are only examples, however, and no general rule can be inferred from them, as the appreciation of the “brief period” must be made on the particulars of the case.

4.3.3. Tort-based claims

Tort-based claims (articles 1382 & 1383 Civil Code) are subject to two time limits: first, the action must be brought within 5 years from the day following the day on which the aggrieved person became aware of the damage (or its worsening) and of the identity of the responsible person; second, the right of action extinguishes itself 20 years from the day following the day on which occurred the fact that cased the damage (article 2262bis §2 & 3 Civil Code).

31 For example: Act of 31 march 1898 (professional associations), Act of 12 January 1993 (environmental protection). association
4.4. **Expert opinions**

In order to prove the existence of the defect or to assess the damages, a party may on his own motion have recourse to an expert. The judge may also appoint one or more judicial experts (article 962 Judicial Code). Obviously, the report made by a judicial expert will tend to be considered as more objective. The cost of expertise are recoverable by the claimant if the judge so decides.

4.5. **Disclosure of documents and evidences**

The judge may order to any party to the proceedings to produce any piece of evidence in his possession (article 871 Judicial Code). Moreover, the judge may make an order for disclosure of a document held by a party or a third party where there are “serious, precise and concordant presumptions” that this document contains evidence of a pertinent fact (article 877). If the party to the proceedings or the third party fails to provide this document, the judge may sentence them to damages (article 882).

Facts can be proved in any way, but proofs of obligations are regulated. In effect, article 876 provides courts must rule according to evidence rules applicable to the nature of dispute. Regarding civil disputes, allowed forms of evidences are documentary evidence, oath and admission of a party; oral testimony is also admitted against an legal act if the amount in question is less than 375 Euros (article 1341 Civil Code). In contractual claims, oral testimony is possible but only if documentary evidence does not exists and if the amount in play does not exceed 375 Euros and if there is no written evidence. Another kind of evidence are “presumptions” which are instituted by statute or established by judges (in this latter case, presumption shall be serious, accurate and concurrent). Presumptions are regulated by the same regime as that applicable to oral testimony. In commercial matters (i.e. when evidence is produced against sellers, manufacturers…), oral testimony and presumptions are allowed even above the threshold of 375 Euros (article 25, 1st paragraph Code of Commerce).

The above rules are subject to exception where there exists a commencement of proof in writing (any instrument in writing which emanates from the person against whom a claim is brought, or from the person he represents, and which renders the alleged fact probable) or where one of the parties either did not have the material or moral possibility to procure a written proof (articles 1347 and 1348 Civil Code).

4.6. **Post - marketing duties**

The Act of 9 February 1994 on Product and Service Safety whose article 2 provides that producers must only place safe products and services on the market enables the minister in charge of the consumer safety to order, after consultation with the producer, the withdrawal from the market of an unsafe product or a service which presents a risk. He can also require the recall of products or services already put in circulation with a view to be modified, exchanged, destroyed or partially or totally repaid.