

Abstract

This Thesis addresses consumer protection against damages posed by defective industrial products. It examines the legal grounds, on which consumer protection stands within the framework of contractual and omissive liabilities. Elaborating on a set of relevant rules provided by certain Arab regulations as well as by the Palestinian Draft Civil Law, the Thesis refers to solutions devised by the French judicial system in order to provide more protection to consumers in their relationship with producers.

The Thesis examines the liability for concealed defects and explains whether respective regulatory rules are compatible to compensating consumers for material and physical damages incurred. Additionally, it explores inadequacies of liability rules and how the French judicial system, supported by jurisprudence, has managed to adapt rules on concealed defects by matching a professional salesperson to one of bad faith. The French judiciary establishes a presumption against the professional salesperson's awareness of defects in their products in view of their professionalism, experience and capability of detecting defects of sold objects. It has been evident that solutions created by the French judiciary are inapplicable under provisions of the Palestinian Draft Civil Law as the latter does not differentiate between a salesperson who is aware of defects of sold merchandise and another who does not. Based on an examination of the general rules of contractual liability, it is established that the 'grave error' rule provides for compensating an affected person for all expected and unexpected damages. Physical and material detriments are beyond doubt the most salient of unexpected

damages. In order to realise the desired protection, the professional salesperson shall be presumed to have committed the grave error as they sell defective products. Accordingly, the Palestinian judiciary is advised to establish a simple judicial presumption that will assist consumers in this connection.

In light of omissive liability rules, Chapter II addresses the protection of consumers from damages effected by defective products. Rules of liability for the personal act are scrutinised under several legal systems. Content and advantages of the theory of borne consequences are also highlighted. Adopted by the Islamic jurisprudence, the theory of borne consequences has played an effective role in protecting consumers. Finally, liability for objects is investigated. The French judiciary theorises that guardianship is partitioned into one of usage and one of composition. As a guardian of internal ingredients of the product, a producers' liability for damages posed by their products will be established. Having presented the relevant position of Arab judiciary and jurisprudence, the author expresses his opinion on the potential application of such position under the Palestinian legal system, refusing that it be adopted for several legal and practical considerations.