A COMPARISON OF THE ACTIONS ABOUT DEFECTIVE PRODUCTS UNDER THE CONSUMER PROTECTION ACT 1987 AND COMMON LAW ACTIONS ABOUT NEGLIGENTLY MANUFACTURED PRODUCTS IN THE UK

İngiltere'de 1987 Tarihli Tüketicinin Korunması Kanununa Göre Ayıplı Mallara İlişkin Açılan Davalarla İçtihat Hukukuna Göre İhmal Sonucu Üretilmiş Mallara İlişkin Açılan Davalar Arasında Bir Karşılaştırma

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ÖZET

İngiliz içtihat hukukunun ilk zamanlarında, alıcıların satın almış oldukları ürünlerdeki ayıplara karşılık gerçek anlamda bir korumaları bulunmamaktaydı. Zaman içinde, İngiliz hukukundaki gelişmelere bağlı olarak, davalının kusuru bulunmak kaydıyla, ayıplı olarak üretilmiş mallar açısından, alıcının haksız fiil sorumluluğunun işletebileceği kabul edilmiştir. 1985'ten önce, Avrupa Birliği üye devletlerinin ürün sorumluluğu hukukları birbirlerinden farklı idi ve bu farklılıklar, Avrupa Birliği dahilindeki ticaret açısından önemli zorluklara yol açmaktaydı. İşte bu çeşit zorluklardan kaynaklanan problemleri çözmek için, 1985 yılında, Ürün Güvenliği hakkındaki Direktif 85/374/AET kabul edildi. Ne yazık ki, Ürün Güvenliği hakkındaki Direktifin içeriği ciddi eleştirilere maruz kalmıştır. Sonunda, üye devletlerin belli noktalarda Direktiften ayrılabilmesi, dolayısıyla da, iç hukuklarında daha fazla tüketici korunması sağlanmasının kabul edilmesiyle, söz konusu eleştiriler önemli ölçüde ortadan kaldırılmıştır.

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Ürün Güvenliği hakkındaki Direktif, İngiliz hukukuna, Tüketicinin Korunması Kanunu 1987 ile adapte edilmiştir. 1987 tarihli bu kanun ile, ayıplı mallar açısından kusursuz sorumluluk getirilmiş, ancak, önceden uygulanagelen haksız fiil sorumluluğu ortadan kaldırılmamıştır. Bu noktada, Tüketicinin Korunması Kanunu 1987 ile getirilmiş olan kusursuz sorumluluğun, tüketiciler için çok daha iyi bir koruma sağlayacağı, hatta İngiliz Tüketici hukukuna büyük yenilikler getireceği düşünülmüş olmakla birlikte, sonradan gürülmüştür ki, aslında kusursuz sorumluluk ile sağlanan tüketici korunmasının, haksız fiil sorumluluğu ile getirilen korumadan çok büyük bir farkı yoktur. Hatta, bazı noktalarda içtihat hukukunun daha geniş, daha kapsamlı bir korumayı tüketiciye zaten sağladığı anlaşılmıştır.

ABSTRACT

Under the early English case law, the buyer's had no real protection against the defects in the product they bought. But, due to the developments in the English tort law, it was accepted that if the defendant had fault, then there was tort liability in respect of harm caused by a negligently manufactured product. Before 1985, the product liability laws in European Union Member States were different from each other and the differences were causing important difficulties to trade within EU. In order to solve these problems, the Directive on Products Liability 85/374/EEC was adopted in 1985. Unfortunately, the details of the Directive on Product Liability have been criticized heavily for some time. By allowing Member States to derogate from the Directive on some issues, a consensus was achieved.

The Directive on Product Liability was adapted to English Law by the Consumer Protection Act 1987. The 1987 Act brings strict liability regime which is not dependent on the fact of the defectiveness of the products purchased. But the Act does not replace common law rules. So in English law, both strict liability and tortious liability can be used for defective products. It was thought that strict liability could bring a better protection for the consumers as there

was no need to prove the fault of the defendant but subsequent cases showed that at some points, common law provides greater consumer protection than 1987 Act. Actually, an action for damages in respect of harm caused by a defective product under the 1987 Act differs very little from a common law action for damages in respect of harm caused by a negligently manufactured product.

I. The Legal Practice in Early English Law About Negligently Manufactured Products

In the early English law, it was the buyer's duty to protect himself against the defects in a product he purchased due to the "*caveat emptor*- let the buyer beware" rule. According to this principle, the buyer could not recover for the defects on the property that rendered the property unfit for ordinary purposes, from the seller[1].

Upon a sale of goods, the general rule with regard to their nature or quality was *caveat emptor,* so that, in the absence of fraud, the buyer had no remedy against the seller for any defect in the goods not covered by some condition or warranty, expressed or implied. It was beyond all doubt that, by the general rules of law, there was no warranty of quality arising from the bare contract of sale of goods and that where there had been no fraud, a buyer who had not obtained an express warranty, took all risk of defect in the goods, unless there were circumstances beyond mere fact of sale from which a warranty might be implied[2]

In the beginning of the 19. century, English courts replaced "*caveat emptor*" rule with the implied warranty of quality. Then, tort

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1 *Caveat emptor: qui ignorare non debuit quod ius alienum emit.* "Let purchaser beware: who ought not to be ignorant that he is purchasing the rights of another". [Hob 99; Broom: Co. Litt. 102 a; Taunt 439] See **SWAGLER,** Roger. M: Caveat Emptor! An Introductory Analysis of Consumer Problems, Cornell Unv., 1975.

2 Bottomley v Bannister [1932] 1 KB 458.

liability is accepted in English products liability law[3]. According to this, fault of defendant has to be proven.

* Duty of care,

* Breach of that duty

* Actionable harm caused by the breach of duty and which is a reasonably foreseeable consequence of the breach have to established[4].

Under the Sales of Goods Act, "an implied term about the goods must fit for the purpose intended", is included. If the victim had bought the defective product he could sue the commercial seller for his physical loss caused by the product under the strict obligations as to quality set out in the warranties implied under the Sale of Goods Act. However, because of the doctrine of privity of contract no action for damages could be brought by a third party even when it was foreseeable that a defective product would cause him harm[5].

The doctrine of privity of contracts means that only a party to a contract can claim rights under that contract and be subject to obligations arising from that contract. The doctrine of privity can have both horizontal and vertical effects. In the context of a product liability action, vertical privity exists between one person and his predecessor or successor. This doctrine in fact is a major restriction on the consumer protection[6].

Hence, British courts remained loyal to the "classical" contract requirement of privity and were reluctant to tackle its neglect of the impact of contracts on third parties. Those who were not in privity

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3 **OWEN,** David G: "The Evolution of Products Liability Law" (2007), 26 *The Review of Litigation*, I. 4, p. 959.

4 **STAPLETON,** Jane: *Product Liability (Law in Context)* (Butterworths, 1994), p. 37. (1994).

5 **OUGHTON.** David & **Lowry.** John: *Textbook on Consumer Law* (2. Ed. Oxford University Press, 2000), p. 103.

6 **Oughton** &**Lowry**, p. 104.

with the defendant were not allowed to sue under these warranties, whether they were mere bystanders or the victims increasingly favoured by developing US doctrine, the consumer buyers and mere users[7]. But this problem was solved with the decision given in Donoghue v Stevenson case[8].

"Duty of care" is determined clearly in Donoghue v Stevenson case[9]. This decision brings "the narrow rule" which states that the manufacturers owe a duty of care in negligence to the ultimate consumers of the safety of their products[10]. The decision of the House of Lords in Donoghue v Stevenson case is a landmark in the field of consumer protection. It provides that a manufacturer owes a duty of care to consumers in respect of the safety of his product. Difficulties have arisen in determining how far the duty extends. The case was concerned with a negligent act which caused physical harm to the person. Then it was taken into consideration in English case law, whether a manufacturer owes any tortious duty to a defective product itself[11].

II. The Legal Practice in the United Kingdom During the 1960s About Negligently Manufactured Products

During the 1960s, the rise in public concern about consumer protection across a wide range of situations, brought controversy and change in British law relating to product injury. Sales law was subjected to vigorous law reform review in the light of modern mass marketing practices and was reshaped to an extraordinary degree by Parliament bent on protecting the consumers[12].

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7 Daniels and Daniels v White & Sons Ltd and Tarbard [1938] 4 All ER 258.

8 Donoghue v. Stevenson [1932] A.C. 562; **GRIFFITHS,** Lord & **De VAL,** Peter & **DORMER,** R. J: "Development in English Product Liability Law: A Comparision with the American System" (1987-1988), 62 *Tulane Law Review*, p. 356.

9 Donoghue v. Stevenson [1932] A.C. 580.

10 **Oughton** &**Lowry**, p. 153.

11 **Oughton** &**Lowry**, p. 154.

12 **Stapleton**,(1994), p. 39.

The main concern of the consumer movement in the late 1950s and early 1960s was the ease and increasing frequency with which manufacturers and sellers of goods were excluding- often under the guise of "guarantees" –the statutory sales warranties with respect to quality[13].

The issue of privity was on hold at the beginning of the 1970s. Neither the Molony Committee nor the Law Commissions in their first report on exemption clauses were centrally concerned with personal injury compensation[14].

Defective building cases may also give rise to the question whether a "producer" or builder can be held responsible for a negligent omission to act as opposed to a positive act which results in harm. For such cases it was accepted that, since there was no general duty in English law that a man must act so as to improve the position of the plaintiff[15].

III. The Legal Practice in the United Kingdom About Defective Products Before 1988 Relating to the Legal Arrangements of the European Union

Before 1988, while it was based on law of tort in UK[16], the product liability laws in Member States were different from each other. This difference was creating barriers to trade within the European Union. Some consumers were getting better protection due to their national laws than the others. In order to solve these problems, the Directive on Products Liability 85/374/EEC was adopted in 1985[17]. There seemed to be serious divisions within the

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13 **Stapleton**, (1994), p. 40.

14 **Law Com Working Paper** *The Exclusion of Liability for Negligence in the Sale of Goods*, No 39 (1972).

15 **Oughton &Lowry,** p. 155.

16 see D& F Estates Ltd v Church Commissioners for England [1989] AC 177; Murphy v Brentwood District Council [1991] 1 AC 398.

17 **HOWELLS,** Geraint: "Implications of the Implementation and Non-Implementation of the EC Product Liability Directive" (1990), 41 *Northern*

Member States in the detail of the new proposed liability[18]. By allowing Member States to derogate from the Directive on three issues, a somewhat reluctant consensus was achieved in 1985 and a final Directive was adopted by the Council of Ministers[19].

The Directive provides that where a person can prove that his personal or private property has been physically injured by the defective condition of a product which had been put into circulation in the course of business, he can sue its manufacturer, importer, own brand supplier or unless he can name his own supplier, a mere supplier, without having to prove negligence against any specific party or that the defendant caused the defect. There are special time limits for claims and contributory negligence is a defence, but the new claim does not replace existing remedies and it is non-excludable. Member States can choose to depart from provisions of the Directive by imposing financial limits on claims, by including game and unprocessed agricultural produce and/or by excluding its development risk defence[20].

There had been serious arguments on the Directive, one of which was on its legal basis. It was said that the Directive has an insufficient legal basis in the Treaty of Rome is that since the Directive at best achieves no harmonization of laws and at worst increases diversity of rules on product liability between Member States, it is *ultra vires*. Some divergences are created by the various domestic acts of implementation of the Directive because each displays minor variations from the Directive's actual terms[21].

Ireland Legal Quarterly No. 1, p. 22; **BURROWS** Paul: "Products Liability and the Control of Product Risk in the European Community" (1994), 10 *Oxford Review of EconomicPolicy*, I. 1, p. 69.

18 **Stapleton**, p. 47.

19 **STAPLETON,** Jane: "A Personal Evaluation of the Implementation of the EEC Directive (85/374/EEC) on Product Liability" (1993) 11 Torts Law Journal, pp. 98.

20 See **KELLY,** Patrick **&ATTREE,** Rebecca: *European Product Liability,* (2. Ed.,Tottel 1997), p. 120.

21 **Stapleton**, (1994), p. 54.

Also, the Directive creates divergences by omission. The provisions of the Directive and the local rules of the Member States differ in causation, remoteness of damage, standard of proof, contributory negligence, procedural and discovery rules, rules relating to the possible suspension or interruption of the limitation period (Article 10 (2)), laws governing rights of recourse (Article 5), assessment rules governing set-offs and non-material damage (Article 9). And, there is a large potential for variation in the way local law courts interpret concepts such as "movable" and "put into circulation"[22].

Another argument on the Directive was the no impact on competition and free movement argument. It was said that the measures to harmonize product liability laws, has itself no legal basis in the Treaty of Rome. What is not clear in the Directive is that the variation in the of product liability rules between Member States results in significant variation in costs relative to other factors affecting costs.

However the doubts about the legal basis of the Directive have been erased in time. In 1985, The European Court of Justice decided that the environmental protection was one of the Community's essential objectives, supporting the argument that the European Community had a social dimension authorizing legislation the Directive[23]. Also, in 1986 a new Article 100a of the Treaty of Rome was added by the Single European Act[24].

IV. The Legal Practice in the United Kingdom About Defective Products Under the 1987 Consumer Protection Act

1987 Consumer Protection Act (came into force on 1 March 1988) was brought to give effect to provisions of this Directive. As the

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22 **Stapleton**, (1994), p. 55.

23 Case 240/83: Procureur de la République v Association de Défense des Bruleurs d'Huiles Usagées [1985] ECR 531.

24 Suppl 2/86 of Bull of EC The Single European Act explicitly amended the Treaty of Rome to encompass environmental issues: Article 130r to 130t.

1987 Act brings strict liability regime. With this new liability regime, liability for defective products is not dependent on the fact of defectiveness of the products purchased[25]. The 1987 Act does not replace common law rules. In fact at some points, common law provides greater consumer protection than 1987 Act[26].

The Act's wording may seem complex and the layout does not follow that of the Directive[27]. Also the title of the Act can be misleading, as it protects not only a 'consumer' but anyone who suffers injury or damage as a result of a defective product[28]. The product[29] and the producer of the product are defined in CPA 1987[30]. Prior to 4 December 2000, primary agricultural products and game were excluded from the Act. But with 1999/34/EC amendment, this exception is removed.

Under CPA 1987, an injured person can take actions against the producer or the importer into EU or the own-branders[31]. Liability under this Act is joint and several. It is not possible to exclude liability by means of any contract term[32].

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25 **NEWDICK,** Christopher: "The Future of Negligence in Product Liability"(1987), 104 *Law Quarterly Review,* p. 288.

26 **GRIFFITHS,** Lord & **DE VAL,** Peter & **Dormer**, R: "Developmentt in English Product Liability Law: A Comparision with the American System", (1987-1988) 62 *Tulane Law Review*p. 364.

27 **FLOUDAS,** Demetrius Andreas: "Some Aspects of Liability for Defective Products in England, France and Greece After Directive 85/374/EEC" http://www.intersticeconsulting.com/documents/Product_Liability_EU.pdf, p. 7.

28 **CLARK,** Alistair: "The Consumer Protection Act 1987" (1987), 50 *The Modern Law Review* I. 5, p. 36 for a person to use property for both and business and so long as it is mainly put to private ıse14;

29 CPA 1987 s.1 (2) (c).

30 CPA 1987 s.1 (2) **CARDWELL,** Kathleen: "Legislation- The Consumer Protection Act 1987" (1987), 50 *The Modern Law Review*, I. 5, p. 616.

31 CPA 1987 s.2 (2).

32 **Floudas**, p. 7.

Law of negligence covers losses in the form of personal injury, death and damage to property other than the defective product itself. It is less likely to impose liability for psychological injury losses or pure economic losses[33]. As it is strongly policy-based, while determining the duty of care, the courts consider foreseeability of harm, proximity and if it is fair and reasonable to impose a duty[34].

The losses recovered under the CPA are death or personal injury or any loss of or damage to any property but not economic loss in the form of diminution in value of the defective product itself[35].

The Act does not specify how damages on death and personal injury are to be assessed. Here, the ordinary principles of the law of tort apply, in which case the plaintiff will be able to recover consequential losses such as lost earnings and an award may be made in respect of pain and suffering[36].

Section 5(3) defines the meaning of property damage. It is provided that a producer will only be liable for damage to property which at the time of damage is of a type ordinarily intended for private use, occupation or consumption[37]. The effect of this is that a producer will not be liable for damage to business property. Section 5(3)(b) means that the plaintiff must have intended to put the property mainly to private use and so property used by a company in the course of will be excluded. However, it is possible under s. 5(3) for a person to use property for both business and private use, it will be covered by the Act.

As a result of the definition of damage, economic loss is not recoverable except in so far as consequential economic losses are recoverable if ordinary tort principles apply. Furthermore, s. 5(2)

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33 **Oughton** & **Lowry**, p. 231.

34 **ROGERS,** W. V. H: *Winfield and Jolowicz on Tort* (16. Ed. Sweet and Maxwell, 2002), pp. 10-18.

35 CPA 1987 s. 5 **Cardwell**, p. 618.

36 Product Liability Directive art. 9.

37 CPA 1987 s.5(3)

specifically provides that damage to or loss of the defective product itself (or anything supplied with or comprised in it) is not remediable. This might mean that the damage caused by the explosion of a defective battery fitted to a car manufactured by the defendant is not remediable. However, that conclusion might be questioned on the ground that the battery was not comprised in the car[38].

There is a defective product, if the safety of the product is not such as persons generally are entitled to expect[39]. This definition of "defect" is not confined of being dangerous to health, but includes risk to property and products damage and inconvenience. The notion of 'defect' in the Act leaves some points unclear. It does not bring an objective standard against which a manufacturer can ensure the safety of his product. It can be said that, CPA 1987 does not bring big changes on the definition of defect[40].

The defectiveness is tested by the expectations of safety which should apply to it in all circumstances: (a) the manner in which and purposes for which the product has been marketed, the use of warnings or instructions (b) what might reasonably be excepted to be done with or in relation to the product; (c) the time when the product was supplied by its producer to another[41].

In product liability cases, manufacturing defects, design defects and failure to provide adequate warning of danger must be taken into consideration. These elements involve consideration of the conduct of the manufacturer in relation to the product he has product. But CPA 1987 concentrates on the question whether the product reaches the standard safety that a reasonable person can expect.

A breakdown in the process of construction or assembly of the product or its container or an unintended ingredient is considered as

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38 **Oughton &Lowry**, p. 231.

39 CPA 1987 s.3(1).

40 **Cardwell**, p. 614.

41 CPA 1987 s.3 (2).

manufacturing design[42]. In manufacturing defect cases, the manufacturer is held liable under the strict liability[43]. Under the common law, the goods failure to comply with the standards that the manufacturer has himself established is a sufficient evidence of their defective quality[44]. Also, under common law, the manufacturer is liable for latent defects of the goods[45]. This approach and the willingness of the courts to act on circumstantial defects give rise to a presumption of negligence on part of the manufacturer either personally or on behalf of his employees under the principle of vicarious liability. The plaintiff does not have to find the exact person who was responsible or to show clearly what he did wrong. Negligence is accepted to exist with the existence of the defects[46]. Shortly it can be said that there is no big difference between the strict liability principle to manufacturing defects and the fault principle[47].

Design defects are the unintended defects in a product established for its manufacture but failed to provide the operational performance expected of it. Under common law, there is an implied term that the supplier will carry out the services with reasonable care and skill[48]. If the contract is not achieved, and if he has no negligence, he can benefit from a defence[49]. But actually, the defence that the service was supplied with reasonable care and skill, mostly applies for contracts in which goods played no part. As a general rule, the absence of fault on the part of the supplier of goods and services will not absolve him from liability and this approach is also applicable to

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42 **Newdick**, (1987), p. 289.

43 **Oughton**& **Lowry**, p. 226.

44 **Newdick**,(1987), p. 290.

45 Young& Marten v McManus Childs Ltd. [1986] 2 All E.R. 1169, 1180.

46 Grant v Australian Knitting Mills Ltd. [1936] A.C. 100; Hill v James Crowe (Cases) Ltd. [1978] 1 All E.R. 812; Schandloff v City Dairy Ltd. [1936] 4 D.L.R. 712.

47 **Newdick**, (1987), p. 291.

48 Supply of Goods and Services Act 1982 s.13.

49 Eyre v Measday [1986] 1 All E.R. 488; Thake v Maurice [1986] 1 All E.R. 497.

the services of the designer[50]. In the case of unforeseen and unintended defects of both manufacturing and design, the courts have imposed a standard of care on producers that, for many cases, the strict liability system does not bring any important change[51].

Inevitable dangers in many products may not cause manufacturer's liability if he used adequate warning notices or directions. "Determination of whether a product defect exists because of an inadequate warning requires the use of an identical standard. When liability turns on the inadequacy of a warning, the issue is one of reasonable care, regardless of whether the theory pled is negligence, implied warranty of strict liability"[52].

Under CPA 1987, the producer of a defective product is liable for damage caused by that product, unless he can rely on one of the defences. Thus, the system focuses on the condition of the product instead of the conduct of its producer[53]. The proof of causation rests on the plaintiff. [54]. The plaintiff must show (a) damage, (b) defect in the product, and (c) a causal link between the two[55]. In a negligence action, the plaintiff must also prove the existence of a duty of care and its breach. In practice, this is not an additional burden on the plaintiff because of the "*res ipsa loquitur*" rule in common law[56].

To avoid imposing an unreasonable burden on industry, the 1987 Act does not bring absolute (full) strict liability[57]. It allows for so many defences. The defences are found in section 4 of the Act. A

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50 **Newdick**, (1987), p. 293.

51 **Newdick**, (1987), p. 294.

52 Sale of Goods Act 1979 s.14 (6). **Newdick**, (1987), p.308.

53 **Griffiths& De Val&Dormer**, p.353.

54 **GRIFFITHS,** Lord: "Development in English Product Liability Law: A Comparision with the American System" (1988) Tulane Law Review, p.353.

55 Guide to the Consumer Protection Act, Consumer Affairs Directorate, Product Liability and Safety Provisions, Department of Trade and Industry, (2001), p. 5. http://www.bis.gov.ul/files/file22866.pdf

56 **Griffiths& De Val& Dormer**, p. 374.

57 **Newdick**, (1987), p. 289.

producer or importer can avoid liability if he can prove any of the six defences. At first sight, the strict liability regime appears to be more consumer protective than the fault regime. But in fact because of the defences brought by the strict liability, the two systems do not have big differences[58].

When we think about the prevention and deterrence of future personal injuries, as the system in 1987 CPA is not an absolute strict liability, both fault regime and strict liability regime lead to the same results[59].

Although the responsibility of the manufacturer does not depend on fault, proof of causation is still on the claimant and the Act does not change the burden of proof rules. CPA 1987, s. 4(1) (e) provides development risk defence: the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control.

In some situations, if the producer proves that he complies with the duty of care that is expected from him in manufacturing and supplying the product and the defect probably did not exist at that time, he is not held liable. In fault liability, the question is whether the producer's conduct was reasonable. The question of what constitutes reasonable conduct can only be answered in the context of the state of actual and constructive knowledge of the defendant of the relevant time which in turn involves consideration of the discoverability of the problem. The same concepts of knowledge and discoverability therefore arise under both fault and strict liability.

According to the development risk defence, if the producer can prove that his failure of discovery is excusable, he is not held liable. Albeit with the burden of proof reversed, this approach is similar to

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58 **Oughton** & **Lowry**, p.154.

59 **STAPLETON,** Jane: "Product Liability Reform- Real or Illusory" (1986) 6 *Oxford Journal of Legal Studies*, I. 3, p. 395.

the duty of care in negligence[60]. In the law of negligence, ignorance of the producers may be excused if they could not reasonably have been expected to have learned of the research until a later date[61]. (The nature of the defence and its implementation in the UK has provoked controversy[62], and the European Commission has accused the UK of allowing too broad a scope for the defence, contrary to the 1985 Directive[63].)

The availability of the development risk defence is highly problematic. A producer confronted with absolute liability for unforeseeable defects will obviously not risk marketing any new products because of the cost of potential liability and the danger of damage to reputation in the event of successful proceedings against him[64]. This approach presupposes that insurance will not be available for development risk liability. It becomes a matter of strategy thereafter given the availability of insurance- whether it is advisable to allow the development risks losses to fall upon the individuals or whether it is more desirable to require all consumers to contribute to the costs of insurance when making their purchases. Even if a development risks defence is included, however, this will not mean that the manufacturer will be able to avoid development risk liability altogether[65]. Strict liability regime spreads loss equitably through society[66]. The producer ought to be familiar with the foremost scientific developments in his field. Given the time it takes for

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60 **NEWDICK**, Christopher: "The Development Risk Defence of the Consumer Protection Act 1987" (1988) Cambridge Law Journal, p. 473; **NEWDICK,** Christopher: "Risk and Uncertainty and "Knowledge" in the Development Risk Defence" (1991) Anglo American Law Review, p. 310.

61 **Newdick**, (1991), p. 319.

62 **HOWELLS**, Geraint: "Europe's Solution to the Product Liability Phenomenon" (1991) Anglo American Law Review, p. 205.

63 **Newdick**, (1988), p. 455; **Newdick**, (1991), p. 310.

64 **MERKIN,** Robert: *A Guide to Consumer Protection Act 1987* (Financial Training Publications, 1987), p. 35.

65 **Merkin**, p. 36.

66 **Merkin**, p.4.

research findings to be verified and accepted by the relevant scientific community, it would be inexcusable to fail to possess the knowledge of the most advanced researchers. This is the in negligence, art 7 (e) of the Directive and s.4(1) (e) of the CPA[67].

CONCLUSION

All these explanations above show that an action for damages in respect of harm caused by a defective product under the 1987 Act differs very little from a common law action for damages in respect of harm caused by a negligently manufactured product. As mention above, the Consumer Protection Act 1987 Part I introduce a regime of strict liability into the field of product liability law. But, this new regime does not result in any substantial change in the position of a consumer harmed because of a defective product. Even, at least one of the defences brought by the 1987 Act and the definition of defectiveness made by the Act can not be accepted as a reform. These have been already existed in the fault-based English system. In certain circumstances, manufacturers and retailers are under a statutory duty to comply with basic safety standards: The Food Safety Act 1990 brings a duty not to prepare food which is injurious to health or which does not comply with safety requirements and the General Product Safety Regulations 1994 (SI 1994/2328) impose a duty to comply with the general safety requirement. Although these wide statutory standards impose criminal liability on traders who fail to comply with their requirements, there is sometimes an available action in tort for damages for breach of a statutory duty. However, the requirements for the tort are demanding and very few statutory standards give rise to an action for damages in favour of consumers, usually on the ground that consumers as a class constitute a group of potential plaintiffs to warrant the protection of tortious principles.

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67 **Newdick**, (1991), p. 326.

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