

# Consumer Protection Bill

section 61: liability for damage caused by goods

# rationale

1 April 2005: DTI: The Consumer Policy Framework

- basic standards for product safety and product liability for unsafe products
- this is a key feature of any consumer protection regime (it is a basic right)
- it is needed to enhance confidence re consumers & marketplace
- RSA markets now flooded with new products

- product safety is vital esp. re vulnerable consumers
- generally no safety standards (except: medicines, foodstuffs etc) and no consumer right to safe products
- no recourse for consumers where unsafe products cause damage
- special concern: hazardous chemicals and substances (used in homes)

- product information and labelling is vital
- some products inadequately repackaged
- therefore: need to legislate the consumer's right to product safety and manufacturer's liability for unsafe products

# what is the position in common law?

- prove all 5 elements of delict where consumer has been harmed
- *locus classicus*: Wagener v Pharmacare (2003) (SCA): argued that strict liability should be imposed for defective products in delict

# 3<sup>rd</sup> version of the Bill: s 61 (was s 68)

- strict liability despite changes to wording
- main clause:

'61(2): Except to the extent contemplated in subsection (5), the producer or importer, distributor or retailer of any goods is liable for any harm, as described in subsection (6), caused wholly or partly as a consequence of -

- (a) supplying any unsafe goods;
- (b) a product failure, defect or hazard in any goods; or
- (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods

irrespective whether the harm resulted from any negligence on the part of the producer, importer, distributor or retailer, as the case may be.'

# what does the rest of the section say?

- section is in part on: right to fair value, good quality and safety
- look at definitions first: very broad definitions: goods, defect, hazard, failure, unsafe
- new exclusion: GMO

- joint & several liability
- 4 x defences (subsection (5)):
  1. unsafe characteristic etc due to compliance with public regulation
  2. unsafe characteristic etc did not exist when goods supplied, or was attributable to compliance with instructions

3. unreasonable to expect distributor/retailer to have discovered defect etc having regard to:

- that person's role in marketing goods AND
- state of scientific & technical knowledge at time goods under control of that person

4. claim prescribed (3 years)

# extent of liability?

harm for which a person may be liable includes:

- death/injury to person
- illness of any person
- any loss of or physical damage to property (immov/moveable), AND
- any eco loss that results from harm above

# court

- court to assess whether harm proven and adequately mitigated
- determine quantum of damages incl eco loss
- apportion liability

# impact on business

- distributor/producer/importer/retailer/  
supplier of services could be liable
- increase costs: insurance premiums increase,  
cost eventually carried to consumer
- small business impact
- class actions possible & damages award for  
collective injury to all or a class of consumers  
generally (s 76)
- consumer could enforce rights ito s 69
- admin fine: 10% annual t/o / R1 000 000

# conclusion

- balance needs of consumer and business
- nothing can replace good customer relations & communication
- laudable aims of the Bill but.....it goes too far