

Chapter 6

HONG KONG

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Introduction

Simply defined, 'product liability' is the responsibility which the law places on those concerned with the sale of products (including their design and manufacture) for loss or injury caused by 'defects' in them.

In recent years the Hong Kong government has shown increasing interest in the field of product liability. This, coupled with a growing consumer lobby, has resulted in new legislation, much of which restricts if not reverses the old concept of *caveat emptor*.²

Hong Kong's legal system is based on English law. Until July 1997 the key constitutional documents of Hong Kong were Letters Patent and Royal Instructions issued by the British Crown. The Governor, who administered Hong Kong, was appointed under these documents and presided over both the Executive Council (known as 'Exco') and the Legislative Council (known as 'Legco').

The Governor made laws called Ordinances 'with the advice and consent' of the Legco. However, the Crown reserved the right to disallow any such laws as well as to make laws itself directly. Ordinances and subordinate legislation were subject to periodic revision. Hong Kong's product liability law is based on the common law, the rules of equity and Ordinances. Common law and equity are enforced in Hong Kong in 'so far as they are applicable to the circumstances of Hong Kong or its inhabitants'. This was subject 'to such modifications as such circumstances may require', under the *Application of English Law Ordinance*. Some Ordinances mirror equivalent English statutes to a large extent. For example, the *Sale of Goods Ordinance* and the *Control of Exemption Clauses Ordinance* are based largely on the English *Sale of Goods Act* and *Unfair Contract Terms Act* respectively.

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2 Translation: 'let the buyer beware'.

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