

# Liability for damage caused by goods in terms of section 61 of the Consumer Protection Act (No.68 of 2008)

## Introduction

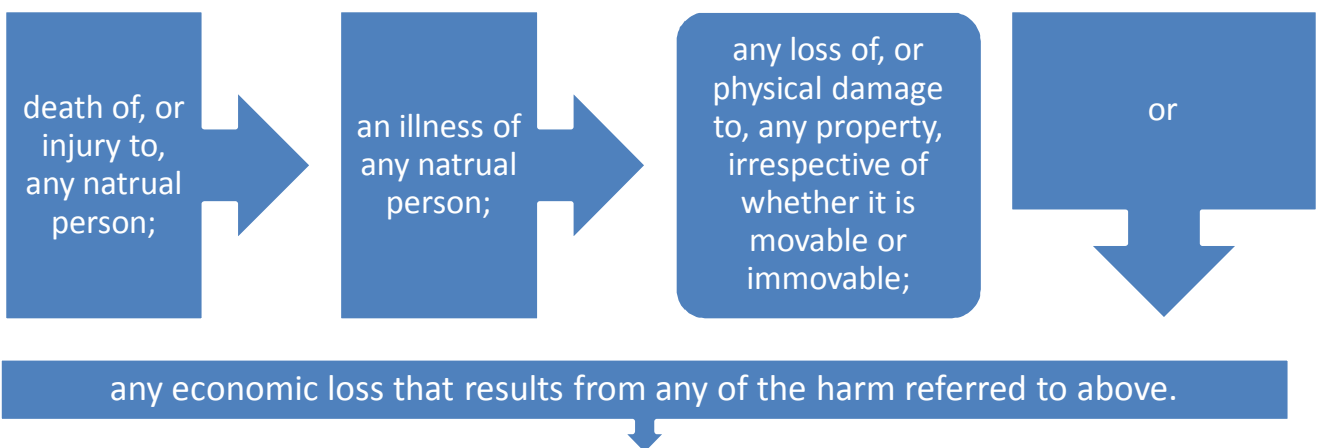
The general effective date of the Consumer Protection Act, 2008 (“the CPA”) was 01 April 2011. However the provisions of section 61 regarding the liability for damage for goods was effective from 24 April 2010. The introduction of the CPA provides a “Bill of Rights”, as some have referred to it, for consumers.

## Scope of Publication

The scope of this publication is to consider the impact of section 61 of the CPA.

A producer, importer, distributor or retailer of goods may be liable for any harm suffered by a consumer.

The "Harm" that a producer, importer, distributor or retailer may be liable includes:



In order for a producer, importer, distributor or retailer to be liable to the consumer the harm must be caused **wholly** or **partly** as a consequence of:

unsafe goods;

a product failure,  
defect or hazard in  
any goods; or

inadequate instructions or  
warnings provided to the  
consumer pertaining to any  
hazard arising from or associated  
with the use of the goods,

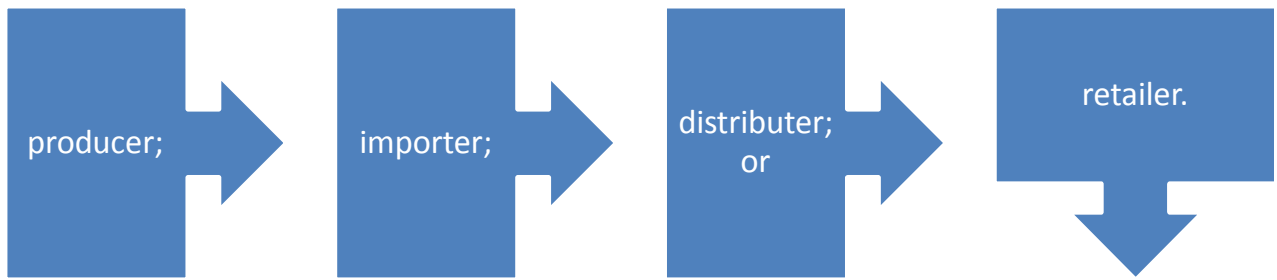
"unsafe" means that, due to a characteristic, failure, defect, or hazard, particular goods present an extreme risk of personal injury or property damage to the consumer or to other persons.

"failure" means the ability of the goods to perform in the intended manner or to the intended effect.

"defect" means - (i) any material imperfection in the manufacture of the goods or components, or in the performance of the services, that renders the goods or results of the service less acceptable than persons generally would reasonably expect in the circumstances; or (ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.

"hazard" means a characteristic that - (i) has been identified as, or declared to be, a hazard in terms of any other law; or (ii) presents a significant risk of personal injury to any person, or damage to property, when utilised.

irrespective of whether the harm resulted from any negligence on the part of the:



However any of the aforementioned parties will not be liable if:

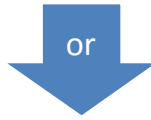
the unsafe product characteristic, failure, defect or hazard that results in harm is wholly attributable to compliance with any public regulation;

the alleged unsafe product characteristic, failure, defect or hazard:

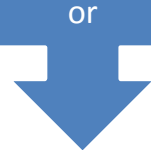
(Block A)  
did not exist in the goods at the time it was supplied by that person to another person alleged to be liable;

or

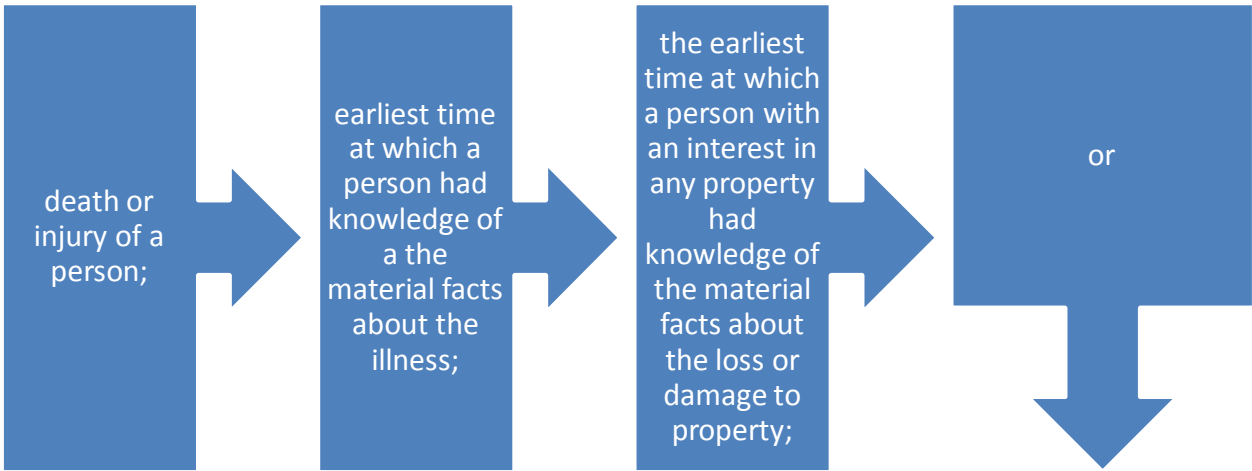
was wholly attributable to compliance by that person with instructions provided by the person who supplied the goods to that person, in which case Block A will not apply;



it is unreasonable to expect the distributor or retailer to have discovered the unsafe product characteristic, failure, defect or hazard, having regard to that person's role in marketing the goods to consumers;



the claim for damages is brought more than 3 years after the -



the latest date on which a person suffered any economic loss as a result of any of the above.

We trust that this has been of assistance.

**VAN DER MERWE ATTORNEYS**

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For more advice on the Consumer Protection Act, 2008 and the implementation thereof please feel free to contact either Piet van der Merwe or Jason Dorning at **Van Der Merwe Attorneys, Corporate and Commercial Attorneys.**

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