

**Japan – PL Law Case Notes
(for Judgments from 1999-2007)**

Dr Luke Nottage, with assistance from Joel Rheuben
(University of Sydney)

© Reproduced with permission of CCH Asia Pty Ltd, from Luke Nottage & Masanobu Kato, "Product Liability and Safety Regulation", *CCH Japan Business Law Guide* (looseleaf, Singapore, 2000-1 and 2007 updates) para 85-750; reprinted in **Business Law in Japan, Vol. 1** (CCH Tokyo, <http://www.cch-japan.jp/site/business/08BLJ>).

Notes:

- The references in each case abbreviation in square brackets, eg [PL Law Case No 1], are to the above-mentioned chapter's "Table 2" Listing of all cases known to have been filed under Japan's PL Law of 1994, through until September 2005. That Listing (also available via <www.law.usyd.edu.au/anjel/content/anjel_research_pub.html>) partly draws on and significantly updates the Appendix in Luke Nottage, 'Comparing Product Liability and Safety in Japan: Path Dependent Globalization' in Harry Scheiber & Laurent Mayali (eds) *Emerging Concepts of Rights in Japanese Law* (Berkeley – Robbins Collection, 2007) 159-84.
- The references in normal brackets, eg (1025 Hanta 85) for [PL Law Case No 4], are to judgments reported by major commercial publishers (eg Hanrei Taimuzu), where available. Unfortunately, Japanese courts do not yet comprehensively make available online even such judgments, and many are not reported at all.
- Source material for each case commentary comes primarily from:
 - the reported judgments themselves,
 - the publications cited in the Listing (particularly: Michiaki Abe, 'Seizobutsu Sekinin ni yoru Hanrei no Doko [Trends in PL Law Litigation]' (2004) 71 Hosei Kenkyu 235-314; and Luke Nottage, *Product Safety and Liability Law in Japan*, RoutledgeCurzon, 2004),

- Jun Masuda, *Saishin PLkankei Hanrei to Jitsumu [The Latest Case Law and Practice related to Product Liability]* (Minjihokenkyukai, Tokyo, 2004), and
- subsequent newspaper articles and other sources.
- For further general commentary and comparative analysis, see also Luke Nottage's 'Japan - National Report' for the BIICL database <www.biicl.org/plf/>; Luke Nottage, '**Product Liability and Safety Regulation**' in Gerald McAlinn (ed) *Japanese Business Law* (Kluwer, 2007) 221-62; Luke Nottage and Hiroo Kano, '**Japan**' in Jocelyn Kellam (ed) *Product Liability in the Asia-Pacific* (2009).

Overview of Case Notes:

1. [PL Law Case No 1] Paper Tea Pack Case
2. [PL Law Case No 4] School Lunch O-157 Food Poisoning Case (1025 Hanta 85)
3. [PL Law Case No 5] Raw Sea Urchins Case
4. [PL Law Case No 10] McDonalds Orange Juice Case (1682 Hanji 106)
5. [PL Law Case No 11] Taxation Software Case
6. [PL Law Case No 12] Foundation (Make-up) Case (1718 Hanji 3)
7. [PL Law Case No 14] Chinese Medicine Case (No 1)
8. [PL Law Case No 20] Windshield Cover Case (1754 Hanji 138)
9. [PL Law Case No 22] School Glass Plate Case (1840 Hanji 48)
10. [PL Law Case No 28] Imported Jarred Olives Case (1068 Hanta 181)
11. [PL Law Case No 29] Snapper Fish Case (1033 Hanji 54)
12. [PL Law Case No 30] Food Container Cutter Case (First Appeal: 1773 Hanta 45)
13. [PL Law Case No 31] Construction Bamboo Case
14. [PL Law Case No 32] Fuel Additive Case
15. [PL Law Case No 33] Magnetic Water Current Machine Case
16. [PL Law Case No 34] Mitsubishi *Delica* Case (1824 Hanji 90)
17. [PL Law Case No 35] Tracheotomy Equipment Case (1846 Hanji 62)
18. [PL Law Case No 36] Italian Oven Case
19. [PL Law Case No 37] Mercedes Benz Engine Case (1835 Hanji 94)
20. [PL Law Case No 38] Kenwood Car Stereo Case (1842 Hanji 84)
21. [PL Law Case No 39] Brain Catheter Case (1843 Hanji 118)
22. [PL Law Case No 40] Chinese Medicine Case (No 2)
23. [PL Law Case No 41] Facial Atopic Dermatitis Case (1765 Hanji 67)
24. [PL Law Case No 42] Vertical Car Park Case (1808 Hanji 90)
25. [PL Law Case No 44] Toyota Mark II Case

- 26. [PL Law Case No 45] Propane Gas Fire Case
- 27. [PL Law Case No 46] Vending Machine Fire Case
- 28. [PL Law Case No 47] Used Car Accident Case (1129 Hanta 174)
- 29. [PL Law Case No 52] Mitsubishi Trailer Tyre Case

1. [PL Law Case No 1] Paper Tea Pack Case

Country:	Japan
Court:	Niigata District Court, Nagaoka Branch, <u>8 September 1999</u>
Topics:	Definition of "delivery"
Articles:	Product Liability Law Supplementary Provisions Clause 1
Facts:	The proprietor of a restaurant cut his finger on the sharp plastic pourer of a paper tea pack on 10 separate occasions over 2 years. The proprietor sued the tea pack manufacturer under the PL Law.
Legal Questions	The relevant time for "delivery" for the purposes of the PL Law.

Decision: Held that "delivery" occurs when ownership passes from the manufacturer, and not when the item is purchased from a vendor. Accordingly, the relevant transactions occurred several months before the PL Law came into effect (on 1 July 1995), and as such the Law could not apply to the current case. In any event, held that a causal relationship could not be made out between the alleged design defect and the injuries claimed.

Comments: This judgment shows that the PL Law applies in a similar fashion to the EC PL Directive, namely when the product is first "put into circulation".

2. [PL Law Case No 4] School Lunch O-157 Food Poisoning Case (1025 Hanta 85)

Country:	Japan
Court:	Osaka District Court, Sakai Branch, <u>10 September 1999</u>
Topics:	Defect, Negligence
Articles:	State Compensation Act Article 1 Product Liability Act Articles 2 and 3
Facts:	A strain of Enterohemorrhagic E.Coli swept the country in 1996, starting in Okayama Prefecture. A Sakai school student contracted

	<p>this O-157 virus and died of septicemia after eating a school lunch. The child's parents sued the State under the PL Law, and for negligence under the State Compensation Act Article 1.</p> <p>It was discovered that the company that distributed school lunches did not refrigerate the meals before or during distribution.</p>
Legal Questions	Whether school staff were liable for negligence.

Decision: The direct cause of the O-157 was found to be the school lunch, and specifically white radish sprouts. The school was found to be negligent for failing to provide the highest possible level of safety, so the PL Law claims were not considered.

Parties jointly awarded 45,370,000 yen

Comments: Given decisions handed down in other food poisoning cases, it seems almost certain that PL Law liability would have been found in the present case if it had been necessary for the Court to consider it.

The Court did reason that the City and the Education Ministry had issued strong guidance to get all children to eat the lunches, thereby requiring an extremely high level of safety and giving rise to an inference of negligence in the event of food poisoning, might be carried over into the PL Law context. The tenor of the judgment suggests that the expectations of consumers are particularly important in these situations, rather than the perspective of suppliers operating in fulfilment of public duties – irrelevant also in determining whether they satisfy the PL Law's definition of a 'manufacturer'. Support for such a view can be found in *A. & Others v. National Blood Authority and Another* [2001] 3 All ER 289 (QB), where Justice Burton held that 'there is no necessary reason why a public authority or a non-profit organisation should be any different position if the product is unsafe', noting this accorded with the Advocate-General's argument in the 'Danish kidney' case (para. 42), subsequently adopted in the judgment of the ECJ (Case C-203/99, 2001 ECR I-3569).

3. [PL Law Case No 5] Raw Sea Urchins Case

Country:	Japan
----------	-------

Court:	Sendai District Court, 25 February 1999
Topics:	Definition of "Manufacturer"
Articles:	Product Liability Law Articles 2 and 3
Facts:	23 restaurant patrons apparently contracted vibrio parahaemolyticus food poisoning from raw sea urchins, imported from China. The sea urchins had been placed between non-freeze sheets in ice, and sliced as sashimi, but had not otherwise been cooked or prepared. The proprietor sued the importer under the PL Law, among other actions, seeking 34,950,000 yen.
Legal Questions	Whether the sea urchin could be considered "manufactured" for the purposes of the PL Law. Whether a corporation is entitled to sue under the PL Law.

Decision: The Court held that a causal relationship could not be made out, since it could not be shown that the amount of vibrio bacteria in the urchin before import was sufficient to cause the food poisoning, or that the means of refrigeration was insufficient to guard against the bacteria increasing. Accordingly there was no need to consider the case further.

Comments: This case is commonly considered as the very first PL Law judgment. The case did not touch on whether a corporation could claim damages under the PL Law, however this was later approved in the *Kenwood* case. An expansive interpretation of "processing", to establish "manufacturing" under the PL Law, was also later adopted in the *Snapper* case.

4. [PL Law Case No 10] McDonalds Orange Juice Case (1682 Hanji 106)

Country:	Japan
Court:	Nagoya District Court, 30 June 1999 ; settled on appeal to the Nagoya High Court
Topics:	Inference of defect
Articles:	Product Liability Law Articles 2 and 3
Facts:	A woman who bought a meal from a McDonald's outlet took it back to her workplace, felt something like a shard of glass get caught in her throat as she drank the orange juice, and was taken to hospital for treatment to a cut in her throat – where the cup containing the rest of the juice was inadvertently thrown away. An examination of

	her stomach also failed to uncover the object responsible. The woman sued under the PL Law, Civil Code negligence, and breach of an implied obligation to ensure safety (<i>anzen hairyo gimu</i>) ancillary to the sales contract.
Legal Questions	Whether circumstantial evidence (eye-witness evidence and the injury to the throat) could corroborate that some extraneous matter (never found) was contained in the juice, making it defective.

Decision: The Court decided that there had been relevant injury, caused by the orange juice (rather than, for example, any dental treatment), and therefore concluded briefly that:

“Mixing into the orange juice extraneous matter, able to create such injury to the throat of people drinking it, can be said to constitute a lack of the safety that juice generally has. Accordingly we hold that the orange juice was ‘defective’ under the Product Liability Law.

The extraneous matter was not discovered, and in the end it is still unclear what it was. According the facts found [...] above, considering that probably the Plaintiff threw up the extraneous matter when she vomited the contents of her stomach, and that the orange juice was thrown away without having been examined, it is too severe to require the Plaintiff to determine the extraneous matter with any further specificity. Whatever it was, if extraneous matter is mixed into juice able to cause injury to people drinking the juice, it is clear that the latter lacks the safety that juice usually has. Because of the clarity of the fact itself that there was extraneous matter in the orange juice sufficient to cause injury to the throat of the drinker (i.e., that it had a ‘defect’), the point that the form of the extraneous matter is unclear, does not affect our abovementioned holding.”

Awarded 50,000 yen for pain and suffering, and 50,000 yen towards lawyers’ fees.

Comments: This was one of the first judgments under the PL Law, and the first in a plaintiff’s favour. It was also widely reported, since it involved a large franchise chain, and the Court seemed very willing to infer a defect without requiring much specificity as to its nature. This result is not unlike that adopted in the *Restatement Third – Product Liability*, when the allegedly defective goods are not longer available for inspection, but it still has not been extended so often in Japan in other

product areas. The judgment also confirms that it remains relatively easy to succeed in claims for defective foodstuffs under the PL Law, as it was under the Civil Code negligence regime.

The plaintiff's lawyer has written that he felt that the result was 'not unrelated' to the senior judge, out of the three usual for more complex District Court cases, being one of the very few who has taken the still comparatively restricted opportunity to join the judiciary after having practised as a lawyer, instead of upon completing the government-funded legal training programme for all those who pass the very difficult national bar examination. On more doctrinal grounds, most commentators believe the judgment was generally justified, and the plaintiff's lawyer has reported that the case was settled on appeal for three times the amount awarded by the District Court. Its judgment therefore stands as an illustration of the considerable flexibility open to Japanese courts nowadays, in setting the standard for the burden of proof in civil proceedings more generally.

Translation: Luke Nottage, *Product Safety and Liability Law in Japan* (RoutledgeCurzon, 2004) pp 215-222; reproduced (without annotations) in Kenneth Port & Gerald McAlinn, *Comparative Law: Law and the Legal Process in Japan* (2nd edn, Durham, N.C., Carolina Academic Press, 2003).

5. [PL Law Case No 11] Taxation Software Case

Country:	Japan
Court:	Aomori District Court, 13 February 2001 ; appealed to Sendai High Court, 8 March 2002
Topics:	Definition of "product"
Articles:	Product Liability Law Article 2
Facts:	Office software purchased by plaintiff contained several programming errors, leading to an over-payment of 12,800,000 yen over the 1995/96 financial year. Plaintiff claimed the losses against the software company based partly on the PL Law. The plaintiff claimed a defect in the "computer system", incorporating the software and hardware, since software is a non-physical object and could potentially not be claimed as a product under the PL Law. The base software had been purchased before the PL Law came into effect, but software upgrades had been made afterwards.

Legal Questions	Whether software integrated in a "computer system" could qualify as a product for the PL Law. Whether the delivery was after implementation of the PL Law.
-----------------	---

Decision: Held that the cause of the error was not a defect of the software but an error in operation by the user. Neither the original nor the appeal decision considered the applicability of the PL Law.

Comments: In Japan, authoritative commentary has maintained flatly that all software, as incorporeal property, is not subject to the PL Law, but its defectiveness could taint the final product into which the software is incorporated and therefore give rise to the liability on the final product manufacturer. Even in the latter situation, however, it may be difficult to establish that a software defect is 'defective' in the required sense of 'unsafe'. This seems so in the present case.

This case also left unanswered the interesting question of whether software upgrades, if subject to the PL Law, will qualify as defective under the PL Law if the base software was purchased prior to 1994. However, in practice as time goes on, that issue should now be becoming less important.

6. [PL Law Case No 12] Foundation (Make-up) Case (1718 Hanji 3)

Country:	Japan
Court:	Tokyo District Court, 22 May 2000
Topics:	Causal link, defect
Articles:	Product Liability Law Articles 2 and 3 Civil Code Articles 709, 710, 715, 722(2)
Facts:	The Plaintiff purchased and used make-up (a foundation) from a department store, which caused itchiness and pain to her skin. She continued using the make-up after visiting a doctor, who diagnosed the condition as chronic hepatitis and allergic inflammation, but denied that the make-up was the cause. A hospital visit 5 months later confirmed the make-up as the cause. The make-up in question carried a warning on its label that users should "cease using the make-up where it does not suit your skin", but elsewhere stated that it was "safe for use with sensitive skin". The plaintiff complained to Tokyo government officials, who encouraged the

	manufacturer to change the product documentation. Around two years later, unrepresented by counsel (<i>honnin soso</i>), the plaintiff sued the manufacturer under the PL Law, and the department store under a separate action, demanding 6,600,000 yen.
Legal Questions	Whether the warning was adequate or there were any other defects. Causal link to the injuries suffered.

Decision: The Court upheld a causal relationship (albeit only as one cause) between the use of the make-up and the allergic reaction. However, it held that the make-up could not be said to not have failed to meet the requisite level of safety simply because of the fact that it had caused an allergic reaction in this case. It was also held that the manufacturer's warning label was sufficient to cover the current case, and that "sensitive skin" did not include skin that was prone to allergic reactions.

The Court criticized the defendant for belatedly amplifying the wording it used for its cosmetics, listing for example situations when they did not 'go well with' the a customer's skin, so 'usage should be ceased' (*'ohada ni awanai toki wa goshiyo o oyame kudasai'*: 1718 Hanrei Jiho 17). However, it held that such improvements did not substantively affect the original wording's content, which was in accordance with the requirements of the Pharmaceutical Affairs Law, as well as 1987 recommendations of the Japan Cosmetics Industry Federation's voluntary standards, particularly in light of the extent of harm inherent in these cosmetics.

Comments: This case was significant for having found a causal relationship while at the same time denying a defect in the product. This case denied the existence of a design, manufacturing or (most importantly) labelling defect. Compliance with legislative and voluntary industry association safety standards was relevant evidence even as to civil liability.

This case was also the first to consider the adequacy of labelling as a basis of product liability, although liability was not established in this case.

7. [PL Law Case No 14] Chinese Medicine Case (No 1)

Country:	Japan
----------	-------

Court:	Nagoya District Court, 22 April 2002 ; settled on appeal to Nagoya High Court
Topics:	Defect, negligence
Articles:	Product Liability Law Article 3 Civil Code Article 709
Facts:	Two plaintiffs took a course of a Chinese traditional medicine, "KM", over several years and both suffered chronic kidney damage, requiring dialysis. The defendant argued that the length of the course and the amount prescribed was inappropriate, and that there was doubt over the causal relationship since the illness did not occur until 6 months after the prescription had finished. The plaintiffs sued the importer under the PL Law and Civil Code negligence.
Legal Questions	Whether the effects of the medicine exceeded what would normally be expected; whether there was adequate notice/warning of side effects; whether the effectiveness of the medicine was significant; whether an alternate medicine was available; and whether it was necessary to warn of the potential side effects on kidneys.

Decision: The Court accepted the existence of a causal relationship, but not for the purposes of the PL Law since only 21% of the first plaintiff's and 8.5% of the second plaintiff's course of medication occurred after the PL Law came into effect (on 1 July 1995). Instead the Court found the defendant liable for negligence under the Civil Code. The Court held that there was an obligation on medicine manufacturers to test their products to the highest standards, and that the obligation to the consumer continued after the period of transaction.

Parties jointly awarded 33,530,000 yen

Comments: This judgment confirms a tendency for plaintiffs to succeed relatively frequently in cases involving drugs and medicines, based on Civil Code negligence, because of courts setting a high standard of care, even outside the realm of mass tort cases.

8. [PL Law Case No 20] Windshield Cover Case (1754 Hanji 138)

Country:	Japan
Court:	Sendai District Court, 26 April 2001 ; settled on appeal

Topics:	Definition of (design) defect
Articles:	Product Liability Law Articles 2 (defect) and 3
Facts:	The victim was attaching a car windshield cover which was fastened to the front of the car by rubber cords stretched across the side of the vehicle and hooked underneath the front doors by metal hooks. One of the hooks flew off the rubber cord while the victim was crouching to inspect it, piercing his left eye, and seriously injuring the eyeball.
Legal Questions	Whether the metal hook had a design defect.

Decision: Held that the cover did not have the requisite level of safety, given that: the National Consumer Affairs Centre (NCAC) had tested the product and declared it a to be "difficult to use"; that there was no warning against the danger of using the product in dark places; that the manufacturer voluntarily switched to plastic hooks after the incident; that the manufacturer had not tested to see how far a hook would fly if released; that it was foreseeable that a consumer would bend over to attach the hook, and that if they were unable to attach it, the hook would fly up. The plaintiff's usage did not exceed the bounds of what could be ordinarily predicted. The defendant's claim of contributory negligence was rejected.

Awarded 28,556,560 yen.

Comments: This was an early case upholding liability for a design defect. The mere fact that a safety improvement is later introduced is not decisive evidence against the manufacturer, but it can still be relevant to assessment of safety at the time the original goods were supplied. The plaintiff was also assisted by the involvement of the (governmental) NCAC; in other situations plaintiffs' lawyers often complain of impediments to suing successfully due to a paucity of independent testing organisations.

Defectiveness was found in this case notwithstanding that it was the only reported complaint out of 94,000 units sold. By comparison, the English Court of Appeal (*Piper v JRI Manufacturing Ltd* (2006 EWCA Civ 1344) upheld the trial court's judgment which had considered that there had been only 9 problem reports for 80,000 prostheses, along with other evidence of the manufacturing process, before

concluding that a defect in the one that split in the plaintiff's hip did not exist in the product when supplied to the hospital.

9. [PL Law Case No 22] School Glass Plate Case (1840 Hanji 48)

Country:	Japan
Court:	Nara District Court, 8 October 2003
Topics:	Design or warning defect
Articles:	Product Liability Law Articles 2 and 3 State Compensation Law Articles 1(1), 2(1)
Facts:	A reinforced glass plate used for lunches provided at a primary school was dropped on the floor by a student, shattering and sending shards of glass into the student's left eye. The plate was of a design commonly used in public institutions such as schools and hospitals, and although reinforced so as not to crack, it could shatter forcefully if damaged. The plaintiff sued the plate's manufacturer under the PL Law, and the state under the State Compensation Law (alleging negligence in selecting the plate as well as in caring for the child after the accident). The defendant manufacturer contended that it could not be expected to produce a product of similar quality to that used in motor vehicle windows, and could only warn against damage or breakage.
Legal Questions	To what extent the utility and the nature of risk of the product must be taken into account in determining the existence of a defect.

Decision: The Court found a causal relationship between the breakage of the plate and the damage sustained to the student's eye. It also held that "in determining the existence of a design defect, regard must be had not simply to the existence of inherent danger, but also the utility of the product, the nature of the product's danger, the possibility or difficulty of avoiding that danger, the effect of providing against that danger on the utility of the product, and whether the user could have foreseen and avoided that danger". On this basis the Court acknowledged the utility of the dish for educational facilities, and found against any design defect (or manufacturing defect). However, it did find that there was defective labelling regarding the significance of the danger regarding this product.

Awarded 10,370,000 yen.

Comments: Although phrased in terms of factors discussed in the debates leading to enactment of the PL Law, and familiar under the EC Directive regime, the factors examined by the Court in determining both design and warning defects illustrate the potential overlap with negligence-based liability regimes (cf more acutely now the *Restatement Third – Product Liability*, in the US). A case involving a breakage of the same design of dish had previously been settled out of court.

10. [PL Law Case No 28] Imported Jarred Olives Case (1068 Hanta 181)

Country:	Japan
Court:	Tokyo District Court, <u>28 February 2001</u>
Topics:	Causal link between food poisoning and jarred olives imported from Italy. Scope of damages.
Articles:	Product Liability Law Article 3
Facts:	Patrons of a restaurant contracted food poisoning after eating an imported jar of olives, which were found to contain traces of B-type botulinus.
Legal Questions	Whether the jarred olives contained the botulinus bacteria that resulted in harm to restaurant-goers served the olives. Liability of an importer of goods under the PL Law. Liability of the restaurant proprietor for failing to warn of the possibility of botulinus.

Parties: In the first instance, the plaintiff against the restaurant proprietor and importer; in the second instance, other plaintiffs and the restaurant proprietor against the importer; in the third instance the restaurant company against the importer seeking loss of business and loss of reputation, seeking 17 190 000 yen. Each under the PL Law.

Decision: On the basis that B-type botulinus has rarely been found in Japan, that there was no botulinus discovered on the spoon or anywhere else in the restaurant, and that botulinus bacteria dies upon contact with oxygen, as well as a report by the Tokyo Hygiene Board stating that there was almost 100% certainty that the bacteria could not have entered the jar after opening, it was found that the

botulinus existed in the jar before opening. It was unclear whether the anti-bacterial method used by the manufacturer was sufficient to completely kill off the bacteria. The importer was found to be liable under the PL law, but the restaurant proprietor had not failed in his duty to warn.

Proprietor awarded 350,000 yen against the importer. Other plaintiffs were awarded between 250,000 yen and 2,422,436 yen for medical costs and *isharyo* (general pain and suffering).

Comments: Unlike the later *Snapper* fish poisoning case, there was no question as to whether the restaurateur could be said to have “processed” the bacterial olives, and so was not liable under the PL Law. This judgment also illustrates that a firm (like the restaurant owner) can sue another (the importer) under the PL Law, unlike the EC Directive allowing only suits by consumers; but that the real claimants may be consumers (the restaurant’s customers, compensated already by the restaurant owner). Further, unlike in Germany under the Directive, Article 3 of Japan’s PL Law allows claims by firms for loss of business reputation and by consumers for pain and suffering (*isharyo*).

11. [PL Law Case No 29] Snapper Fish Case (1033 Hanji 54)

Country:	Japan
Court:	Tokyo District Court, 13 December 2002 ; appealed to the Tokyo High Court
Topics:	Definitions of “processing”, “manufacturer” and defect; Development risks defence
Articles:	Product Liability Law Articles 2(2), 3, 4(1)
Facts:	Patrons at a Japanese restaurant contracted a form of food poisoning after having eaten snapper sashimi.
Legal Questions	Definition of “processing” and “manufacturer” under the PL Law. Relevance of negligence to cases brought under PL Law, and relationship to development risks defence.

Decision: Held that by heating, adding flavour or the like to the food in question, the defendant was “adding an attribute or value” in such a way as to qualify as a “process”. It was also held that food was a product that was expected to be unconditionally safe, and as such containing a poisoning-causing element

meant that it did not meet the requisite level of safety. The Court rejected the defendant's submission that "processing" required the supplier to be able to discover and avoid the risk, since this amounted to an invitation to determine negligence or otherwise, contrary to the clear intention behind the PL Law of establishing a strict liability regime. It was held that it was not unreasonable to expect an individual restaurant proprietor to carry out the necessary process of poison removal, despite the defendant's submission that as an individual he was in the same economic position as a consumer, and did not fall within the scope of the public policy intention of the PL law.

The Tokyo District Court also emphasized the purposes behind the PL Law in arguing that 'the scope of the defence's application should be interpreted restrictively'. It noted that industrial capacity could be undermined if manufacturers scaled back R&D because they could not foresee harms arising from defects and scope of liability, impeding 'the sound development of the national economy'; but stressed that 'it is clear that the significance of introducing a PL system aimed at redress for injured parties would be lost if the development risks defence was readily permitted'. The Court also reasoned that it was inappropriate to seek the standards for 'scientific and technological knowledge' in the tortfeasor's own standards, because the legislation aimed to reduce the uncertainties involved in assessing its 'negligence'. It therefore defined the knowledge as 'all knowledge established enough to decide whether the relevant product was defective, building on the results of all disciplines related to science and technology', objectively existing in society as a whole; and that the applicable standard was 'the world's highest standard obtainable (*nyushu kano*) when the product was delivered'. Applying this to the facts, the Court first pointed to information available from several books – which the plaintiff had earlier argued were available from health authorities (*hokensho*) and for sale – and indeed noted that the defendant restaurateur had sought out relevant literature from medical institutions after the health authorities had reported that the fish it had served was infected by STEC (*shigatera dokuso*). The Court also noted that these books had remarked that infection had been reported in snapper mostly in more southerly waters (like Okinawa prefecture), in other fish in the defendant's Chiba prefecture, and more generally in all sorts of fish. It found in effect that the defendant should have made the connections between these facts, ruling that the development risks defence was unavailable because the defendant could not therefore prove that the risk of

infected snapper eventuating in Chiba was 'completely unforeseeable' (1805 Hanrei Jiho 24).

Comments: This case confirmed an expansive interpretation of "processing" particularly for foodstuffs, and that even small firms are to be subjected to the PL Law. It also affirmed that the PL Law was intended to operate by strict liability, and that the development risks defence was to be restrictively interpreted (cf ECJ Case No. C-300/95, para. 26, suggesting that the scientific knowledge had to be "accessible").

The Court did not go on to address some rather different points raised by the defendant (cf eg *Graham Barclay Oysters Pty. Ltd. v. Ryan* 117 A.L.R. 18 (2000) Full Federal Court of Australia, per Lindgren J). The defendant had submitted not only that it was impossible or extremely difficult in practice to distinguish infection in fish other than those species which are typically susceptible; but that it was impossible to detect inspection from a surface examination of the fish. The defendant then contended that foreseeing STEC infection was difficult, and that there was currently no means of effectively guarding against it (1805 Hanrei Jiho 18). Such arguments could have been developed into the notion that there were no actual or feasible means of removing the risk of infection – sending each fish to be tested by authorities before preparing it for restaurant consumption being too expensive, for example, or indeed likely to destroy the inherent features of the product (freshness being essential to good *sashimi* dishes). This might have been related back to the test proposed by commentators such as Professor Masanobu Kato, in that such circumstances could indicate that admittedly 'obtainable' knowledge was not 'usable' (*riyo kano*). On the other hand, the Court's stress on the strict liability and consumer protection underpinnings of the PL Law suggest that such arguments would also have been given short shrift.

12. [PL Law Case No 30] Food Container Cutter Case (First Appeal: 1773 Hanta 45)

Country:	Japan
Court:	Urawa District Court (Kumagaya Branch), 29 June 2000 ; appealed to Tokyo High Court on 12 April 2001; appealed to Supreme Court on 28 June 2002.

Topics:	Foreseeable (mis)use
Articles:	Product Liability Law Articles 2 (defect) and 3 Civil Code Article 415
Facts:	The hydraulic lift on a machine used for cutting and conveying plastic food containers occasionally jammed, requiring subsequently damaged products to be removed from the machine. In this instance, the victim did not wait for the machinery to stop or use the emergency button to stop the machine himself before removing the products, and instead attempted to clear the products while still in motion, was caught by the hydraulic lift and had his head squashed between the lift and the ceiling, killing him. The victim's family brought an action under the PL Law against the manufacturer of the machinery and an action under the Civil Code against the employer for breach of the contractual obligation to secure safety of employees.
Legal Questions	Whether it was foreseeable that a person might attempt to clear products while the machine is still in motion.

Decision: The first-instance judgment recognised the criminal liability of the employer, but not the PL of the manufacturer. Held that clearing the machine by entering it while still in motion was so dangerous a method as to be unforeseeable, and as such the machine was not lacking any necessary degree of safety. On the other hand, the employer had failed in its responsibility to provide adequate safety education, but due to contributory negligence by the employee this liability was reduced by 70%.

The first appeal also recognised the manufacturer's PL. It could not be overlooked that it was inefficient to stop the machine, and that entering the machine was the easiest way to clear it, and so the employee's method of clearing the machine was foreseeable. Furthermore, it was held that it was possible to create a system that allowed the machine to be cleared without shutting it down, and additionally that there should have been a sensor placed above the lift. As such the machine was held to be lacking the necessary degree of safety and was defective. Victim's contributory negligence was reduced to 50%. Upheld on second appeal to the Supreme Court.

Awarded 24,080,000 yen.

Comments: This was the first PL Law case involving a manufactured product and not a foodstuff. Foreseeable use of the product is one of the relevant factors in Article 2's definition of "defect" (as also under the Directive), triggering liability under Article 3. Japanese suppliers often claim that a use was not foreseeable and/or unreasonable, so this may become an important precedent, particularly as it is one of few judgments to be appealed all the way to the Supreme Court. However, even Supreme Court judgments are not formally binding on lower courts in Japan.

A somewhat similar fact scenario arose recently in *Fitzpatrick v Robert Norman Job & Ors* [2007] WASCA 63. The Court of Appeal in Western Australia held that the manufacturers owed a duty of care to users to potential users, including employees like the plaintiff, to advise their employers purchasing the dangerous wood processing machinery of safety features that should be installed for use in the workplace. However, on appeal the plaintiff did not pursue a claim of strict-liability PL under Part VA of the Trade Practices Act. The trial judge had rejected that claim against the product manufacturer because (a) it had supplied the machinery without a cabin (which the employer had added, becoming the only 'manufacturer' regarding the alleged defect of a lack of safe cabin), (b) it had not 'caused' the plaintiff's injury, and (c) the machine did not lack sufficient safety given that it was supplied 'custom-made' and was quite inherently dangerous (like a saw or other tools). Anyway, unlike Japan's PL Law, Part VA cannot be raised against employers for any amount that "has been, or could be, recovered" under Australian legislation that "relates to workers' compensation" (TPA s75AI: applied eg in *Elms v Ansell Ltd* [2007] NSWSC 618).

13. [PL Law Case No 31] Construction Bamboo Case

Country:	Japan
Court:	Nagasaki District Court, 29 May 2002 ; appealed to the Fukuoka High Court
Topics:	Definition of a "manufactured good"
Articles:	Product Liability Law Article 2
Facts:	Plaintiff purchased materials to build his own house, including bamboo logs to form the framework of a rendered wall. After

	several months the bamboo was eaten through by invasive pests.
Legal Questions	Whether bamboo that has been sprayed with insect repellent qualifies as a "manufactured good".

Decision: Held that the bamboo-eating insect was well-known, that its presence is related to the level of starch within the bamboo, and that the best time to cut bamboo is from summer to early winter, when starch levels are low. Since the bamboo seller was only a vendor and not a harvester, it was not clear when the bamboo had been harvested; however, it was clear that the bamboo was in round form instead of being split, increasing the likelihood of pest invasion. On the question of whether simply spraying the bamboo logs with insect repellent by the vendor amounts to "processing", the Court held that treating the bamboo "created a new property or else increased its value", and so qualified as a "process". It then held that the vendor had not adequately protected against pests to industry standards, and so had failed to reach the necessary level of product safety. It was also held to be unlikely that the bamboo had been infested after purchase, and was more reasonable to expect that it had been so while in the vendor's possession.

Awarded 19,120,000 yen.

Comments: This was the first case to determine that the question of "processing" in agricultural or forest products was to be determined based on some artificial treatment or manipulation of the product. Like the *Snapper* case, the Court preferred an expansive interpretation of processing, thus bringing the claim within the scope of the PL Law. This case also extends into a new area a willingness to find defectiveness adequately proved on more circumstantial evidence, as in some PL Law judgments involving foodstuffs (eg the *McDonalds orange juice* case, and the *Jarred Imported Olives* case) and even some manufactured products (eg the *Fuel Additives* case).

This case is also significant in involving construction of a building, a significant category of case law under the Civil Code liability regime and hence one that some commentators ought to be more generally included within the PL Law regime. The judgment shows that defective construction materials already can be the subject of a PL Law claim provided they were "movable" goods when defectively supplied. (If a homeowner sues the builder for overall poor construction of the dwelling,

however, the claim concerns an immovable and therefore can only be brought under the Civil Code.)

14. [PL Law Case No 32] Fuel Additive Case

Country:	Japan
Court:	Kofu District Court, 17 September 2002 ; appealed
Topics:	Causal link, defectiveness
Articles:	Product Liability Law Articles 2 and 3 Civil Code Article 570
Facts:	The owner of a courier service purchased a fuel additive and used it in the tanks of two of his light vehicles. The engines stopped working and were replaced three times over two and a half months. Sued the vendor under the PL Law and under Civil Code liability for 'latent defects'. (<i>kashitanpo sekinin</i>).
Legal Questions	Indirect evidence and factual inferences of causation. Defectiveness given likely conditions of use.

Decision: Held that ceramic materials in the fuel additives had worn away at the bore wall of the engine, and that the product was defective for not being able to be used over long distances. Although subsequent examinations could not directly establish the causal connection, one vehicle’s engine worked properly again after it (for the third time) and the fuel tank were replaced.

Awarded 205,000 yen (cost of replacing the engines).

Comments: This is an important case illustrating that Japanese courts can be flexible in drawing factual inferences even regarding causation and defectiveness on a case-by-case basis, even though pro-plaintiff groups failed in having inferences enshrined in the PL Law for all types of claims. The judgment also rejected the defendant’s suggestions of other causes for the engine failures – a strategy often pursued quite effectively by defendants, along with allegations of misuse, particularly in claims of defective automobiles.

This development extends case law (somewhat like *res ipsa loquitur* in Anglo-Australian negligence law) which has presumed negligence under the Civil Code, first on the part of servicers or repairers of automobile that soon afterwards have

accidents due to brake failures or other inexplicable causes, and secondly on the part of certain product manufacturers. That approach was also extended in the Matsushita TV case, decided against the manufacturer under the Civil Code. The Osaka District Court (29 March 1994, 1439 Hanji 29) inferred that cause of the fire was a problem in the TV set, as well as inferring negligence in its manufacturing, shifting the burden onto Matsushita to show that it taken due care.

15. [PL Law Case No 33] Magnetic Water Current Machine Case

Country:	Japan
Court:	Tokushima District Court, 29 October 2002 ; appealed
Topics:	Causal link, defects.
Articles:	Product Liability Law Article 3
Facts:	A magnetic water current machine for the purpose of passing water through sewer pipes in magnetised areas was tested in a flatfish aquaculture tank, causing the flatfish to completely die out within one month.
Legal Questions	Whether a causal link could be established between the use of the magnetic water current machine and the death of flatfish. Type of defects.

Decision: Held that there was a causal relationship between the use of the magnetic current machine and the death of the flatfish, since no other flatfish tanks suffered the same losses, it was not a particularly hot summer, and the way in which these flatfish died. Held that there was a design defect in having a machine that could be used for seawater fish breeding with the potential for causing harm to such fish, and a warning defect after not conducting proper safety tests and overlooking the risk of adverse effects.

Awarded 6,700,000 yen.

Comments: This case mainly seems to involve a warning defect, but it may have been possible also to “design out” the risks of using such a machine with saltwater fish. Again, as in other cases involving foodstuffs and bamboo construction materials, the Court was prepared to infer that the harm was caused by the machine, and also was unsafe or defective. This case also involved a claim by one firm against another for “business” losses, rather than by a consumer.

16. [PL Law Case No 34] Mitsubishi *Delica* Case (1824 Hanji 90)

Country:	Japan
Court:	Sapporo District Court, 23 November 2002 (settled on appeal)
Topics:	Manufacturer, damages
Articles:	Product Liability Law Articles 2(3) and 3
Facts:	Driver of a Mitsubishi <i>Delica</i> attempted to overtake another vehicle, but upon switching to the opposite lane the vehicle's accelerator failed, and the vehicle collided with an oncoming large-bodied car. The cause was found to be a fault in the engine's jet pump wax lever. This fault was tested and recognised by Mitsubishi prior to the trial. The plaintiff sued both Mitsubishi (the manufacturer) and the vendor.
Legal Questions	Whether a retailer may fall within the PL Law definition of "manufacturer" Scope of damages

Decision: Mitsubishi conceded the defect prior to trial. It was held that the vendor could not be equated with a manufacturer "in fact" even under the circumstances alleged by the plaintiff. The Court also declined to find any comparative negligence on the part of the driver. Since the driver fortunately did not sustain any bodily injuries, he was awarded only compensation for the damaged vehicle. An appeal was lodged (but then settled) primarily on the basis that no damages for pain and suffering (*isharyo*) were added.

Awarded 2,280,000 yen.

Comments: Unlike other cases involving defective motor vehicles (such as the defective brake case) there was no question as to whether the cause of the accident was due to a defective car part, as opposed to fault on the part of the driver, and there was not even any finding of comparative negligence. Mitsubishi's concession as to defectiveness of the part may have been due to the spate of vehicle recalls it was forced to undertake from around 2000. It is odd that the plaintiff persisted in suing the vendor, even though the PL Law's definition of manufacturer is slightly broader than under the EC Directive.

17. [PL Law Case No 35] Tracheotomy Equipment Case (1846 Hanji 62; 1133 Hanta 97)

Country:	Japan
Court:	Tokyo District Court, 20 March 2003 (settled on appeal, along with a second suit involving the same hospital and same incompatible devices)
Topics:	Incompatibility of two medical devices
Articles:	Product Liability Law Articles 2, 3, 4 (against the manufacturers) Civil Code Art 709 (against the hospital), 715
Facts:	Two pieces of equipment - a tracheal tube and a fresh gas supply pipe - used during an infant tracheotomy, each produced by different medical companies, were incompatible, causing one of the pieces - the tube- to close up, resulting in the death of the infant. The infant's family sued both medical supplies companies. It was discovered during trial that at least two other infants had died under similar circumstances but with a different piece of equipment. Akoma, the maker of the fresh gas supply pipe, carried warnings of its incompatibility with the other product on its box, but not of its incompatibility with the tracheal tube. Taiko, the maker of the tube, had no such warnings. It was also found that a journal article published several years earlier had warned of the incompatibility of the equipment in question.
Legal Questions	Whether each medical company was liable for failing to warn of the incompatibility of its medical device with the other.

Decision: Neither product was held to be defective of itself, but the products were held to be faulty for failing to warn of the incompatibility with the other, when it could be foreseen that the two products in question would be used together. Akoma's incompatibility warning about the third piece of equipment was held not to encompass Taiko's tracheal tube.

The medical staff were also found to be negligent under the Civil Code for not having previously tested the compatibility of the equipment. They could have foreseen the problem despite each device complying with industrial standards and

having been approved by the Ministry of Health, and could have avoided the problem despite the instructions not specifying testing methods.

The Tokyo District Court again rejected the development risks defence raised. Reports of similar accidents, including one outlined in a medical journal and a broader FDA warning in the US, ought to have been enough to establish the mechanism causing the accident, and most of the incidents had involved equipment produced by the manufacturer or its predecessor company. In addition, the Court rejected what was in effect a "learned intermediary defence" (namely, the argument that the manufacturer of medical supplies should be excused due to potential advice or actions by expert medical staff dealing directly with patients).

Awarded 50,620,000 yen.

Comments: This case drew attention as the first upholding PL Law liability for medical devices, in the context of burgeoning medical malpractice lawsuits in Japan.

18. [PL Law Case No 36] Italian Oven Case

Country:	Japan
Court:	Osaka District Court, <u>16 April 2003</u>
Topics:	Defect
Articles:	Product Liability Law Article 3
Facts:	The knob of the stove of an Italian-made oven reached temperatures which exceeded Japanese national safety standards (53 degrees within 30 minutes of turning the stove on, 80 degrees even 15 minutes after turning it off), thus causing a burn hazard.
Legal Questions	Foreseeable use and defect

Decision: Held that the importer of the stove was liable under the PL Law because of the possibility that users could touch the scalding hot knob while cooking, and thus burn themselves.

Awarded 1,100,000 yen for the costs of replacing the stove (out of 8,800,000 yen claimed, with no award for pain and suffering or *isharyo*).

Comments: This is the only information available for this unreported judgment.

19. [PL Law Case No 37] Mercedes Benz Engine Case (1835 Hanji 94)

Country:	Japan
Court:	Tokyo District Court, 28 May 2003 ; appealed to the Tokyo High Court
Topics:	Defect, scope of damages Contractual non-performance
Articles:	Product Liability Law Articles 2 (defect) and 3 Civil Code Article 415
Facts:	Driver of a company-owned Mercedes Benz S600L pulled over on the side of the freeway after noticing white smoke pouring from the car. After stopping a fireball exploded some 3 metres high, and destroyed the car. This model had a tendency to leak oil, and the vehicle in question had been recalled on two previous occasions, and repaired by the vendor. The Fire Department's report found the cause of the fire to be an oil leak in the engine room. The driver sought damages against the importer, Daimler Chrysler Japan, and the vendor, Yanase Saitama, which had performed the recall inspections.
Legal Questions	Whether the car was defective. Whether the vendor was liable towards the plaintiff, who was not the purchaser. Damages for the plaintiff's Post-Traumatic Stress Disorder (PTSD) and "punitive solatium".

Decision: Daimler Chrysler contested the question of the defect, but admitted it would be liable for damages proved to be caused by a defect within the scope of "adequate causation" (*soto inga kankei*), ie remoteness of damages. The Court adopted the Fire Department's report as to the cause of the fire. However, it also held that the plaintiff did not suffer from PTSD and that a "punitive solatium" (*chobatsuteki isharyo*) was not claimable under Japanese private law, thus rejecting the combined claim of 100,000,000 yen for such damages. Including instead a

500,000 yen solatium for pain and suffering, and the value of the vehicle when destroyed, the Court awarded 13,270,000 yen in damages. It also held that Yanase Saitama was liable under the Civil Code towards the plaintiff, as both the vendor and recall inspector of the vehicle.

The Tokyo High Court rejected the plaintiff’s appeal for the extra 100,000,000 yen in damages, holding that Japanese private law aims at compensation rather than “punishment of tortfeasors or preventing similar behaviour in the future, namely general deterrence”.

Comments: This was another unusual case involving an automobile, in that the vehicle had been recalled regarding the allegedly defective part and the Fire Department had identified from the wreck that part as the likely cause of the vehicle catching fire. The main issue therefore became the scope of damages, with the Court accepting PTSD as a possible basis for damages but refusing to find it proven in this case, and following the prevailing view in case law and commentaries in refusing to allow punitive damages.

20. [PL Law Case No 38] Kenwood Car Stereo Case (1842 Hanji 84)

Country:	Japan
Court:	Tokyo District Court, 31 July 2003
Topics:	Defect
Articles:	Product Liability Law Article 3
Facts:	The MiniDisc component of a Kenwood car stereo shorted and caused an irregular current, causing the car battery to overheat. The cause was found to be a silver-coated switch manufactured by Matsushita Electrical. Kenwood sued Matsushita under the PL Law. Matsushita argued that the min/max temperature and humidity levels specified in the switch’s warranty documentation should be read separately, so that making it fit within both ranges exceeded the part’s warranty. It also claimed that it had not intended for the part to be used within cars. After the incidents, new model switches were gold-coated and no longer caused problems.
Legal Questions	Liability of a parts manufacturer. Design versus warning defects.

Decision: The Court held that the Matsushita switch was used in a reasonably foreseeable way, and had a design defect.

Awarded 57 050 000 yen (comprising not only repair costs, but also Kenwood's costs involved in investigating the cause of the fault and conducting recalls of the car stereos).

Comments: This case was decided on the basis of a design defect, seemingly influenced by the later design improvement, rather than a warning defect. However, there seemed to be no evidence of problems with the switch in other applications. The Court also did not investigate all aspects of the relationship of the parties and customs in the relevant trade, as might have been done if the claim had been brought in contract.

The case is also a rare example of major Japanese companies suing each other, especially for product liability. It illustrates the large potential liability of parts manufacturers even for low-price unit sales, once the recall costs and other "business" losses claimable under the PL Law (unlike the EC Directive) are factored in. The case ought to have sounded a warning to Japanese manufacturers to ensure recall costs are covered by insurance.

The "component manufacturing" defence under Article 4(2) would have been inapplicable because Kenwood hadn't solely (or substantially: *moppara*) directed production of the defective Matsushita parts.

21. [PL Law Case No 39] Brain Catheter Case (1843 Hanji 118)

Country:	Japan
Court:	Tokyo District Court, 19 September 2003
Topics:	Defect
Articles:	Product Liability Law Article 3 Civil Code Article 709
Facts:	A super-fine catheter being used in surgery to reduce a deformity in a patient's brain broke off, causing a chemical matter to flow throughout the brain and leading to cerebral infarction. The plaintiff sued both the catheter's importer under the PL Law, and the

	hospital and surgeon for negligence.
Legal Questions	Whether the catheter was defective. Whether the surgeon was negligent in using the catheter.

Decision: The Court held that the hospital and surgeon were not negligent, as it was unable to find proof that the surgeon had applied an unusual amount of pressure to the catheter or bent it too far, as submitted by the importer. However, it found the importer liable under the PL Law, given that the catheter had been recalled in the US, where it was manufactured, and that the US FDA had provided statistics about past accidents involving the catheter. It held that provided the surgeon had not applied an unusual amount of pressure or used the catheter in an appropriate form, it had to be inferred that the catheter had been made in such a way as to incapable of resisting breakage.

Awarded 117,000,000 yen.

Comments: This was the second PL Law judgment involving a medical device. A clear defect could not be established, but was inferred from the fact that negligence on the part of the surgeon could not be upheld. It was also uncertain whether the Court found a design or manufacturing defect.

22. [PL Law Case No 40] Chinese Medicine Case (No 2)

Country:	Japan
Court:	Nagoya District Court, 9 April 2004
Topics:	Defect
Articles:	Product Liability Law Articles 2 and 3
Facts:	The plaintiff took a course of imported Chinese medicines (KM) prescribed by a doctor over a period of two years to improve circulation, but gradually began to experience lethargy and nausea, and from 1998 suffered damage to the kidneys, receiving haemodialysis in 2000.
Legal Questions	Factors establishing defects in medicines.

Decision: Held that in determining the existence of a defect in medicines, "regard must be had to the effect of the medication; the possible degree and nature

of side effects emerging from a predictable course of medication; the existence of a proper warning or disclosure relating to the side effects; the existence of an alternative, safe medicine; and the standards of medicine in place at the time of the transaction". With respect to the KM medication, it was held that the medicine was potent; that it could be ordinarily predicted to be used continuously over a long period of time; that by using even a small amount over a long time it would have a poisonous effect; that there were no warnings or disclosures about the side effects of kidney damage; that there were alternate drugs available; and that it was possible to know that the medication would cause kidney damage. Accordingly the KM medication was found to be defective.

There was no issue about the causal relationship between the course of medication and the kidney damage.

Awarded 33,360,000 yen.

Comments: Although not clearly specified by the Court, the defect found seems to be a design and/or manufacturing defect.

23. [PL Law Case No 41] Facial Atopic Dermatitis Case (1765 Hanji 67)

Country:	Japan
Court:	Tokyo District Court, <u>22 May 2001</u>
Topics:	Negligence, vicarious liability Defect
Articles:	Civil Code Articles 709, 710, 715, 722-2 Product Liability Law Articles 2 and 3
Facts:	Plaintiff with a history of atopic dermatitis underwent a facial including a "CIC sonic" ultrasound at a beauty salon. The next day her face showed a red rash and was very itchy. The beauty salon staff assured her that the rash was a result of the ultrasound "rebounding" off steroids in her skin from a previous atopy treatment, and that it would eventually disappear. On this advice she continued the facial course, but over time the rash spread to her neck and back. A medical examination determined that the rash was originally caused by an atopic reaction.
Legal Questions	Whether the beauty salon staff were negligent in applying the ultrasound treatment.

Decision: The Court found a causal relationship between the ultrasound facial and the appearance of the rash. It found the beauty salon staff negligent and the salon vicariously liable, and so had no need to consider PL Law liability. Comparative negligence of 30 percent was found on the part of the patient in acceding to ongoing treatments despite harbouring doubts about the explanations given for her worsening condition.

Awarded 4,400,000 yen

Comments: PL Law liability was not considered in this case, but it is doubtful if this would have been successful since there was no delivery (ie transfer of property) of movable goods (ie the plaintiff purchased the facial services, not the ultrasound machine itself, even if the defendant had actually manufactured and installed it in its salon). The Court showed a willingness to extend high standards of care in PL litigation involving medicines to the field of cosmetics, even when the plaintiff had sensitive skin. However, as in many claims involving cosmetics, the defendant succeeded in arguing comparative negligence in not promptly desisting from using cosmetics causing problems.

24. [PL Law Case No 42] Vertical Car Park Case (1808 Hanji 90)

Country:	Japan
Court:	Fukuoka District Court, Kokura Branch, 29 October 2002
Topics:	Duty of disclosure and hence breach of contract
Articles:	Civil Code Article 415 Product Liability Law Article 3
Facts:	The plaintiff landowner purchased a vertical multi-layered car-park and elevator system, which was operated by an attendant from outside. The design was such that the attendant was unable to visibly confirm whether the driver of the car had left his vehicle once the elevator doors had shut; nor was there a motion sensor inside. In this case the attendant pressed the button to insert the car from the elevator into the car park, despite the fact that the driver had not yet alighted. The driver was caught between the elevator palette and the wall, and was squashed to death. The plaintiff landowner compensated the deceased's estate, and then sought damages from

	the defendant supplier of the machine, claiming design and warning defects. The defendant contended that there was an option to include a motion sensor, but that the plaintiff themselves had elected not to include it.
Legal Questions	Whether the defendant had breached its the contract by failing adequately to warn about the risks of using the machine without the motion sensor.

Decision: The Court held that the defendant had an obligation under the Civil Code requirement of good faith (*shingizoku*) to clearly explain to the plaintiff the need for a motion sensor given the life-or-death dangers of the machine. The defendant was found to have breached this duty ancillary to the contract of sale, and as such there was no need to consider PL Law liability. Comparative negligence of one third was found on the part of the plaintiff.

Awarded 13,920,000 yen.

Comments: If the defendant was the manufacturer of the machine, as well as its vendor, it should also have been possible for a suit to be sustained under the PL Law either by the plaintiff, or the deceased's representative, on the basis of a warning defect (and possibly even a design defect, in not fitting the motion sensor in all models for a small extra cost: see the *Food Container Cutter* case).

25. [PL Law Case No 44] Toyota Mark II Case

Country:	Japan
Court:	Hiroshima District Court, 19 December 2001
Topics:	Causal link
Articles:	Product Liability Law Article 3
Facts:	After turning a sharp left curve while driving along a mountain road, the plaintiff suddenly became unable to control the steering on his Toyota vehicle, and careened left off the side of a cliff. The plaintiff contended that the vehicle had studless tyres fitted and that the road surface was covered with only light snow that would not cause slippage. The defendant argued that there was a possibility that the road was iced and slippery. Plaintiff claimed for 5,530,000 yen.
Legal	Extent to which the PL Law relaxes the burden on the plaintiff to

Questions	show a causal relationship between defect and damage.
-----------	---

Decision: The Court held that the road was heavy with snow on the day in question, and that the cause of slippage was the plaintiff's own acceleration and sudden braking of the vehicle. It held that the plaintiff's testimony was inconsistent and could not be relied upon. The Court also held that as a strict liability law, the PL Law relaxed the responsibility of a plaintiff to demonstrate the existence of intention or negligence, but not of a causal relationship: "To simply indicate the possibility that the cause of the accident was an abnormality in the steering mechanism of the vehicle and not some extraneous cause, without clearly demonstrating such facts, does not qualify as a claim of defect".

Comments: This case can be distinguished from the other motor vehicle cases decided so far under the PL Law, or cases like *Fuel Additives*, in that in that it remained unclear that a defect in the vehicle even existed. It shows some limits, particularly in cases involving complex goods such as automobiles, to establishing liability under the PL Law without offering more specific evidence. This follows because Japan, rather like Australia, decided not to add a blanket inference of causation (between loss and problems alleged with the goods) when modelling their strict liability legislation on the EC Directive.

26. [PL Law Case No 45] Propane Gas Fire Case

Country:	Japan
Court:	Wakayama District Court, 17 October 2000 ; appealed to Osaka High Court, 20 December 2001.
Topics:	Causal link
Articles:	Product Liability Law Article 3
Facts:	According to the plaintiff's testimony, the plaintiff was cooking in the kitchen of their house when the gas main flared, and instantly spread across the kitchen floor. The plaintiff extinguished the flame with a fire extinguisher, but a propane gas cylinder from outside the kitchen exploded, sending flames into the kitchen area. The defendant claimed that a fire caused by a gas leak could not possibly have spread across the floor in the manner described by the plaintiff, and inferred that the cause of the fire was either gasoline or kerosene from outside. A Fire Department investigation

	held that the cause of the fire was “unclear”. The plaintiff claimed for 7,000,000 yen against the manufacturer.
Legal Questions	Evidence needed to establish a causal link.

Decision: The Court held that the testimony of the plaintiff’s family was inconsistent (although it acknowledged that in the case of an emergency some degree of inconsistency was acceptable because of the effect of panic on memory), and of doubtful reliability. It held that the possibility of a cause other than a gas leak could not be dismissed, and that the gas leak alone could not be determined as the cause.

Comments: This judgment suggests that some Japanese courts are not always willing to extend the approach of the *McDonald’s Orange Juice* case, inferring a defect particularly when the allegedly defective goods have been destroyed, beyond the foodstuffs context. Plaintiffs in automobile PL suits also report reasoning similar to that in this case, whereby the defendant raises the possibility of another possible cause, impeding success. The importance of a Fire Department report is also highlighted by this judgment.

This is also one of relatively few cases brought in relation to gas appliances. However, quite a few matters have long been brought before the Gas Appliances PL ADR Centre run by the relevant industry association; and from 2006 a rare mandatory recall was ordered for Paloma gas water heaters, followed by voluntary recalls of many models by other manufacturers.

27. [PL Law Case No 46] Vending Machine Fire Case

Country:	Japan
Court:	Hiroshima District Court, 29 May 2002
Topics:	Defect Applicability of the PL Law Negligence
Articles:	Product Liability Law Article 3 Civil Code Articles 415, 709, 717
Facts:	A fire broke out in a toy museum, allegedly started by a fault in a beverage vending machine adjacent to the museum. The plaintiff

	(museum owner) claimed 14,720,000 yen against the owner and supplier of the vending machine (but not the manufacturer) under the PL Law as well as the Civil Code (negligence, breach of contract, and liability for 'structures' on land).
Legal Questions	Inference of defect when goods damaged. Negligence in not maintaining or testing the machines.

Decision: The Court held that on balance, it could be inferred that the fire had been started by a fault in the vending machine, and that the vending machine did not have the requisite level of safety. However, since the vending machine had been produced in 1993 (although not installed in the toy museum until 1995), it fell outside of the ambit of the PL Law. The Court then acknowledged that it was difficult to foresee the damage caused by the fault, and so there was no element of negligence on the vending machine's owner in failing to perform adequate tests or maintenance.

Comments: In any case the PL Law generally only allows claims against the manufacturer, not intermediate suppliers. It is also unclear why the plaintiff chose not to sue the manufacturer for negligence. This Court seemed quite willing to infer that the machine itself was defective, unlike others especially involving more complex goods even when they and surrounding premises are destroyed or damaged.

28. [PL Law Case No 47] Used Car Accident Case (1129 Hanta 174)

Country:	Japan
Court:	Osaka District Court, 24 September 2002
Topics:	Causal link, design defect
Articles:	Product Liability Law Articles 2 and 3 Civil Code 415, 709
Facts:	A used motor vehicle belonging to the plaintiff suddenly burst into flames and burnt, apparently due to a foreign object entering the engine. The plaintiff sued for 85 790 000 yen partly under the PL Law alleging a manufacturing defect. The defendant argued against the existence of a defect, since it was difficult to believe that there had been no other unusual incidents over the car's 20-year and 50,000 km history, since it was possible that a foreign object had

	entered the engine during a previous engine inspection or repair, and since it was not difficult to discover and remove any foreign objects.
Legal Questions	Whether the cause of the fire was a foreign object entering the engine or some other cause. Whether the engine should have been designed to prevent entry of any objects.

Decision: The Court acknowledged the plaintiff's explanation about the fire, however disagreed that an inherent defect was the cause, since the likelihood of an incident over the previous 20 years was too high. Similarly, it could not be discounted that a foreign object could have entered the engine during a previous inspection, repair or even oil-change. It could also not be said that a design defect existed in the engine simply because it did not guard against the entry of foreign objects, since it was easy to remove foreign objects.

Comments: This judgment illustrates that although (even considerably) used goods are within the scope of the PL Law, it is often difficult to establish a defect involving them, compounding the difficulties for plaintiffs particularly in PL suits involving automobiles.

29. [PL Law Case No 52] Mitsubishi Trailer Tyre Case

Country:	Japan
Court:	Yokohama District Court, 18 April 2006 ; appealed (to the Tokyo High Court)
Topics:	Defect, foreseeability
Articles:	Product Liability Law Article 3 Civil Code Article 709 State Compensation Law Article 1
Facts:	A tyre came off a large trailer-rig while in motion along a Yokohama motorway, hitting and killing a 29-year-old mother and injuring her two children.
Legal Questions	Whether the problem with tyre connection was foreseeable. Whether the trailer was defective.

Parties: The deceased's mother sued the State, the trailer's manufacturer - Mitsubishi Automotive Industries, the trailer's driver, and the company that owned the trailer. The deceased's mother claimed that a manufacturing defect had caused the trailer's brake drum to come away, and that the national inspection regime was faulty.

Decision: The Court found that Mitsubishi, which acknowledged the defect, had known about the defect for some time but chosen not to recall the vehicle for fear of economic loss and damage to reputation, and that it had also concealed information about the defects from the government. It called Mitsubishi's actions "extremely heinous". However, the Court found that the government had not been negligent, and could not have discovered any defects in the vehicle prior to the accident.

Awarded: 5.5 million yen.

Comments: This case was brought after the first controversy (around 2000) concerning a spate of clandestine and then mandated recalls by Mitsubishi, during which Mitsubishi acknowledged that it had been hiding defects for decades. Those events also led to prosecutions against senior Mitsubishi executives, for criminal negligence causing death or injury, and a second controversy (from around 2004) when ongoing cover-ups were revealed.

The plaintiff had originally sought damages of only 5.5 million yen when filing her suit in March 2003, but increased her demands to 165.5 million yen after hearing of Mitsubishi's systematic misbehaviour. That is, she added a claim for punitive damages, as an incentive to report and avoid defects in the future. The trial Court followed the longstanding prevailing view and refused an award of punitive damages, remarking that they were, "not compatible" with Japan's legal system, and that the goal of compensation in Japanese civil suits was simply reparation of losses.