Introduction
Living in this 21st century, we rely heavily on mobile phone for our work and connection with the world. The recent incidents of explosion of mobile phone batteries causing burn injuries and fire to nearby objects raise the concern of battery safety as well as the right to be compensated. This article aims to discuss briefly product liability relating to defective mobile phone batteries causing personal injuries and property damage.

What is Product Liability?
Product liability refers to the liability of any or all the parties along the chain from manufacturing to retail of a defective product who are responsible for damage caused by that product. Therefore, the potential defendants are the manufacturer of the product, the one who designs, markets, distributes and retails the product. It is important to identify every potential defendant for the doctrine of joint and several liability (i.e. every defendant is liable both together and separately for the entire award of damages).

“Product” covers tools, appliances, clothes, vehicles, lifts, tombstones, hair dye, chemicals, computer software, surgical implants, cooking hood and insecticide spray. There is no exhaustive list of products. Mobile phone definitely is a product that attracts product liability if it is found defective.

There are 3 types of defects that might give rise to product liability, namely, manufacturing defect (those that occur in the course of a product’s manufacture or assembly), design defect (the design of the product is inherently unsafe) and marketing defect (the flaw in which the product is marketed, such as improper labelling, insufficient instructions or safety warnings).

Who Can Claim?
To make out a claim, the claimant need not be the buyer or user of the defective product that caused the damage. Thus, if the battery explodes causing personal injuries and property loss and damage to those who do not actually own or use the mobile phone but sit near to the exploded mobile phone at the material time, they may have a product liability claim.
Potential Defendants and Causes of Action

In the case of mobile phone with defective battery, apparently the manufacturer of the battery and the manufacturer of mobile phone (if different), and those who designed the battery and mobile phone (if different) and those who marketed the mobile phone would be liable.

In Hong Kong, liability for defective product is based on the legal principle of negligence and under contract if the claimant is the buyer of that product. Contracts for the sale of goods are governed by the Sale of Goods Ordinance, Cap.26 (“SOGO”). Under SOGO, when the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality. The meanings of merchantable quality include that the goods are safe and free from defect.

Under the law of negligence, the plaintiff must prove that the defendant has breached the common duty of care to exercise reasonable care to supply a safe and non-defective product and as a result, the plaintiff suffers damage. In spite of the significance of negligence, the claim may be difficult and expensive, in particular when expert evidence is required to establish liability. The plaintiff may reply on the principle of “res ipsa loquitur”. Res ipsa loquitur means that upon the other probable causes being eliminated, no explanation other than negligence can be the case. If this principle applies, the manufacturer bears the burden of proving that it has taken reasonable care to establish a safe system of production and quality control to avoid defects, and that the employees who implemented that system took reasonable care when doing so. It is difficult for the manufacturer to avoid liability unless it can show how the defect occurred.

Negligence claim against retailer is difficult because retailer has no duty to inspect for latent defects. Its only duty is to perform a cursory inspection before selling them. If such duty to inspect is fulfilled, it is unlikely that the retailer will be held liable for injuries caused by the defective battery unless the retailer had knowledge or should have had actual or implied knowledge of the defect, such as, there is already a recall. Nonetheless, if the claimant is a buyer of the defective mobile phone, he can rely on SOGO to recover damages from the retailer.

Conclusion

Victims who suffer personal injury or property damage caused by defective battery of mobile phones may claim against the manufactures and those who designed and marketed. The claim is based on negligence. If the victim is the buyer of the mobile phone, he would have an additional contractual claim against the seller under SOGO. It may be necessary to adduce expert evidence to prove negligence on the part of the Defendants (i.e. the battery is defective).
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**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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