



Product Liability

in 31 jurisdictions worldwide

Contributing editors: Harvey L Kaplan,
Gregory L Fowler and Simon Castley

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Contributing editor

Harvey L Kaplan, Gregory L Fowler and Simon Castley
Shook, Hardy & Bacon LLP

Publisher

Gideon Robertson

Business development managers

Alan Lee
George Ingledew
Dan White

Account manager

Megan Friedman and Zosia Demkowicz

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Robin Synnot

Marketing manager (subscriptions)

Rachel Nurse
subscriptions@gettingthedealthrough.com

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Adam Myers

Production coordinator

Lydia Geroges

Senior production editor

Jonathan Cowie

Subeditors

Timothy Beaver
Charlotte Stretch

Director

Callum Campbell

Managing director

Richard Davey

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Fax: +44 20 7229 6910
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Taiwan

Jackson Shuai-Sheng Huang

Formosa Transnational Attorneys at Law

Civil litigation system

1 The court system

What is the structure of the civil court system?

Taiwan has a three-tiered court system made up of the Supreme Court, the High Courts, and the district courts. The Supreme Court is the top tier of the court system. The second tier is made up of the High Courts, which are established in the counties or special regions. Each of the High Courts has several tribunals for civil and criminal trials made up of a presiding judge and two other judges. The third tier is made up of district courts, which are the lowest courts located in counties or cities. These courts are usually presided over by one judge. However, there can be up to three judges on a panel for larger cases. Civil claims are generally first brought in a district court. However, claims for less than NT\$500,000 may be first brought in a simplified procedure court. Appeals from the district court are made to the High Court, and appeals from the High Courts are made to the Supreme Court, provided that the claims are for amounts exceeding NT\$900,000.

2 Judges and juries

What is the role of the judge in civil proceedings and what is the role of the jury?

Taiwan operates a civil law system modelled after the Continental legal system. Consequently there are only bench trials and no jury trials. Judges generally play a much more active role in civil proceedings than their counterparts in common law jurisdictions. They may take a relatively passive role, simply hearing the evidence and ruling on matters of fact and law, and submissions from the parties. Alternatively, judges may also take on a more active, inquisitorial role, questioning the parties and the witnesses, investigating the facts, or gathering relevant evidence. Decisions are made on the basis of both statutes and precedents; however, the extent of reliance on precedents is likely less when compared to common law jurisdictions.

3 Pleadings and timing

What are the basic pleadings filed with the court to institute, prosecute and defend the product liability action and what is the sequence and timing for filing them?

A civil product liability action commences when a plaintiff files a formal complaint (usually with copies also served on the defendant) with the court. A complaint must indicate the following items: the parties and their statutory agents; the claim and the transaction or occurrence giving rise to such claim; and the demand for a judgment for the relief sought.

After receiving the complaint, the court issues and serves a writ of summons on the defendant. Before the hearing, the defendant will generally file a written answer. The defendant's answer must indicate the following: the facts and grounds of his or her defence;

the evidence proving the disputed facts – if there are multiple items of evidence, all of them must be provided; and a statement either admitting or denying the facts and evidence alleged by the opposing party – in the case of a denial, the reasons for the denial must be given.

4 Pre-filing requirements

Are there any pre-filing requirements that must be satisfied before a formal lawsuit may be commenced by the product liability claimant?

Generally, there are no pre-filing requirements for civil litigation related to product liability cases. However, if the dispute arises from proprietary rights where the price or value of the object in dispute is less than NT\$100,000, the matter will be subject to mediation by the court before the relevant litigation action is initiated.

5 Summary dispositions

Are mechanisms available to the parties to seek resolution of a case before a full hearing on the merits?

There is no summary disposition, such as a motion to dismiss or motion for summary judgment. However, if the claim in the complaint has certain apparent defects, it shall be deemed unlawful and the court may, by a ruling or judgment, dismiss such a claim without holding a full hearing on the merits. If, on the other hand, the defect is rectifiable, the court will order the claimant to rectify the defect within a designated period of time.

Some examples of apparent defects in a claim are as follows:

- the civil court does not have subject-matter jurisdiction over the action;
- the court in which the action is pending does not have territorial jurisdiction over the action;
- the plaintiff or defendant lacks the capacity to be a party;
- the plaintiff or defendant lacks the capacity to litigate and is not legally represented by his or her statutory agent;
- an advocate initiates the action and the advocate lacks the authority to do so;
- the action is not initiated in accordance with the prescribed formalities, or lacks other requirements;
- the plaintiff reinitiates an action that has been initiated and is pending; and
- given the alleged facts, the plaintiff's claim manifestly lacks legal grounds.

6 Trials

What is the basic trial structure?

Court hearings are held periodically to determine the substantial issues and prepare for the trial. In this phase, preparatory hearings are held in chamber.

For purposes of preparing for oral arguments, the parties must submit to the court a pleading which indicates their claims and

defences and their responses to the opposing party's statements, claims, and defences. The parties must also send a written copy or photocopy of the same directly to the opposing party.

After the preparatory proceeding by exchange of pleadings has been completed, the presiding judge or the commissioned judge will designate a date for oral argument or the preparatory session. The court may require the parties to formulate and agree on simplifying the issues in the case. The presiding judge may, if necessary, order the parties to submit pleadings that summarise the result of the formulation of the issues within a period of time as designated by the judge. The pleading provided in the preceding paragraph must be made in concise writing, in orderly itemised paragraphs, and must not make general reference to the previous statements presented in pleadings or oral statements.

The judges may ask the attorneys questions to clarify the facts and the parties' positions, and to try to simplify the arguments at issue. Parties are able to actively present favourable evidence and to request the court to summon witnesses for examination. If all substantive issues are reviewed, the court will determine the date for oral argument and make the final judgment.

7 Group actions

Are there class, group or other collective action mechanisms available to product liability claimants? Can such actions be brought by representative bodies?

The class action system in Taiwan has been developing since 1994. It was first introduced in the Consumer Protection Act in 1994 and expanded by the Code of Civil Procedure in 2003.

Article 50 of the Consumer Protection Act provides that:
[W]here numerous consumers are injured as the result of the same incident, a consumer protection group may take assignment of the rights of claims from 20 or more consumers and bring litigation in its own name. Consumers may revoke such assignment of the rights of claims before the close of oral arguments, in which case they must notify the court.

Similarly, article 44-1 of the Code of Civil Procedure also articulates that:

multiple parties with common interests who are members of the same incorporated charitable association may, to the extent permitted by said association's purpose as prescribed in its by-laws, appoint such association as an appointed party to sue on behalf of them.

Therefore, product liability claimants can invoke these statutory provisions to initiate class actions if they meet the requirements of 'numerous consumers' or 'multiple parties with common interests who are members of the same incorporated charitable association'. In addition, such actions can be brought by a representative party such as a consumer protection group or a charitable association.

8 Timing

How long does it typically take a product liability action to get to the trial stage and what is the duration of a trial?

This will vary widely depending on the complexity of the issues and the attitude of the parties. A complex product liability action could take years to proceed to trial.

With respect to the approximate length of product liability cases, the trial of the first instance may take between one and two years, or even longer. Pending cases may be suspended by agreement between parties for up to eight months, during which time they may pursue other options such as out-of-court settlement. The court may render decisions more quickly if one litigant's claim is particularly meritorious.

Evidentiary issues and damages

9 Pretrial discovery and disclosure

What is the nature and extent of pretrial preservation and disclosure of documents and other evidence? Are there any avenues for pretrial discovery?

Although there is no pretrial procedure that is the equivalent of 'discovery', and 'interrogatories' do not exist in Taiwan, under the Code of Civil Procedure (passed by the Legislature on 15 January 2000) both parties should exchange relevant documents before trial for the purpose of, among others, clarifying the issues to be focused on during trial (article 268-1 of the Code of Civil Procedure).

10 Evidence

How is evidence presented in the courtroom and how is the evidence cross-examined by the opposing party?

Evidence can be categorised as 'personal evidence' (when presented by a witness or an expert) and 'real evidence' (when presented in the form of documents and objects to be inspected).

With respect to personal evidence, the identity of a witness and the matters to be examined must be specified by the party when such witness is introduced. Then the court will summon the witness through a notice. When examining a witness, the court will first ask the witness for his or her full name, age, occupation and domicile or residence; if necessary, the presiding judge will also question the relationship between the witness and the parties and other matters in order to evaluate the credibility of the witness. The court should also order a witness to answer the questions fully and consecutively.

Parties may request the presiding judge to conduct a necessary examination of a witness or, conduct such examination himself or herself after informing the presiding judge. Therefore, the examination of witnesses may be conducted by the court or by the requesting party and cross-examined by the opposing party.

11 Expert evidence

May the court appoint experts? May the parties influence the appointment and may they present the evidence of experts they selected?

An expert witness is appointed by the court and the number of expert witnesses is also determined by the court. Therefore, the parties are only required to specify the matters for which expert testimony is sought in the motion for taking expert testimony.

However, before appointing an expert witness, the court may give the parties an opportunity to be heard. If the parties have agreed to designate a specific expert witness, the court will generally appoint such expert witness, except when the court considers that such expert witness is manifestly inappropriate.

12 Compensatory damages

What types of compensatory damages are available to product liability claimants and what limitations apply?

There is no specific limitation regarding the types of compensatory damages that are available under the Civil Code or the Consumer Protection Act. Therefore, any compensatory damage suffered by the victim, whether direct or indirect, psychological or economic, can be included, if there is legally sufficient causation.

13 Non-compensatory damages

Are punitive, exemplary, moral or other non-compensatory damages available to product liability claimants?

Punitive damages are available to product liability claimants if their interests are injured by a defective product. In a litigation brought

under the Consumer Protection Act, the claimants may demand punitive damages of up to three times the amount of actual damages as a result of injuries caused by the wilful misconduct of business operators, however, if such injuries are caused by negligence, punitive damages may be claimed only up to the amount of the actual damages suffered.

Litigation funding, fees and costs

14 Legal aid

Is public funding such as legal aid available? If so, may potential defendants make submissions or otherwise contest the grant of such aid?

Except in cases where there is manifestly no prospect for a party to prevail in the action, if a party lacks the financial means to pay for the litigation expenses, the court will grant litigation aid by ruling on a motion. In determining whether a party lacks the financial means, the court takes into consideration the basic living expenses of the party and his or her family members living together. A grant of legal aid has the following effects before the action is concluded:

- temporary exemption from paying the court costs and other litigation expenses which are to be advanced;
- exemption from providing a security for the litigation expenses; and
- temporary exemption from paying the attorney's fees when the presiding judge appoints an attorney to advocate the case for the party pursuant to the applicable laws.

According to the various precedents, the opposing party may not object to the court's decision to grant legal aid as such decision does not cause him or her detriment.

15 Third-party litigation funding

Is third-party litigation funding permissible?

There is no law or regulation specifically prohibiting third-party litigation funding in Taiwan.

16 Contingency fees

Are contingency or conditional fee arrangements permissible?

According to article 35 of the Regulation on Attorney Ethics, lawyers are only restricted from having a contingency fee agreement for criminal cases, family matters, and juvenile delinquency cases. Therefore, for product liability cases, contingency fee arrangements are permissible.

17 'Loser pays' rule

Can the successful party recover its legal fees and expenses from the unsuccessful party?

According to article 78 of the Code of Civil Procedure, the losing party bears the litigation expenses. In certain circumstances, however, the court has the discretion to order the successful party to bear the litigation expenses incurred in full or in part if: the act performed by the prevailing party was unnecessary for asserting or defending its rights; or the act performed by the defeated party was necessary to assert or defend its rights in accordance with the phase of the proceedings reached at the time.

Attorney fees are not a part of the litigation expenses in the court of first and second instance, as the appointment of an attorney is not required. However, the attorney's fees in the court of third instance are included as a part of the litigation expenses because the appointment of an attorney is mandatory at the Supreme Court.

Sources of law

18 Product liability statutes

Is there a statute that governs product liability litigation?

There is no specific statute governing product liability cases. Nevertheless, relevant regulations concerning product liability are included in the Civil Code and the Consumer Protection Act.

Traditionally, if a consumer is injured due to defects in a product or service, there are two different claims that he can assert in an attempt to remedy his injuries in accordance with the Civil Code. The first is to demand compensation based on a contractual relationship between the consumer and the other party. The second is to demand compensation based on a cause in torts. Nevertheless, the traditional contract and torts liabilities are not sufficient to protect consumers. Consequently, the Consumer Protection Act was enacted to provide more sufficient protections and remedies.

19 Traditional theories of liability

What other theories of liability are available to product liability claimants?

Prior to the enactment of the Consumer Protection Act, a product liability action could be brought as a torts or non-performance of contract claim under the Civil Code. Liabilities under such claims are regarded as fault-based liabilities. However, under the Civil Code, a product liability action could also be brought based on warranties made by the seller. Liability in this regard is a no-fault liability

20 Consumer legislation

Is there a consumer protection statute that provides remedies, imposes duties or otherwise affects product liability litigants?

As indicated in question 18, the Consumer Protection Act enacted in 1994 imposes duties on business operators. They must pay attention to the health and safety of consumers, and are required to explain to consumers the proper methods of using goods and services, and of ensuring the fairness of transactions, and of providing consumers adequate and accurate information, and implementing other measures necessary to protect consumers with regard to goods or services provided by them. Moreover, the Consumer Protection Act also requires business operators to ensure that goods and services they provide meet and comply with the contemporary technical and professional standards of the reasonably expected safety prior to these goods or services being launched in the market. Where goods or services may endanger the lives, bodies, health or property of consumers, they must have a label in a conspicuous place that includes proper warnings and indications of the methods for emergency handling of such danger.

Business operators that violate the above obligations and cause injury to consumers or third parties shall be jointly and severally liable.

21 Criminal law

Can criminal sanctions be imposed for the sale or distribution of defective products?

The Consumer Protection Act does not impose criminal sanctions on the sale or distribution of defective products. However, if the government believes that the goods or services provided by business operators may endanger the lives, bodies, health or property of consumers, they will immediately undertake an investigation. If the belief is confirmed, the related agency shall order such business operators to immediately cease the design, production, manufacturing, processing, importation and distribution of such goods or the rendering of such services, or take other necessary measures.

A business operator violating such order may be punished by an administrative fine of not less than NT\$60,000 and not more than NT\$1.5 million and these fines may be imposed consecutively if the violations are not ceased.

In the case of a material violation, an order for the suspension of operations or discontinuance of business may be issued with the approval of the relevant authorities at the central government level or of the Consumer Protection Commission of the Executive Yuan.

In addition, laws concerning specific types of products, such as food, contain penalty provisions for non-compliance under the respective laws, which are related to the sale and distribution of defective products.

22 Novel theories

Are any novel theories available or emerging for product liability claimants?

There are currently no novel theories emerging for claimants. Nonetheless, the public is putting increasingly heavy emphasis on product safety; especially with respect to food and the product liability field, due to recent discoveries of poisonous additives in some food in Taiwan.

23 Product defect

What breaches of duties or other theories can be used to establish product defect?

See question 24.

24 Defect standard and burden of proof

By what standards may a product be deemed defective and who bears the burden of proof? May that burden be shifted to the opposing party? What is the standard of proof?

The applicable defect standard varies between contractual liability and torts liability. With respect to contractual liability, a product is deemed defective if the product lacks the reasonably expected usage, value, and quality, and has caused a mismatch of consideration between contractual parties. Therefore, the seller of a product must warrant that the product sold is free from any defect in quality that may destroy or impair its value, its fitness for ordinary efficacy, or its fitness for the efficacy of the contract of sale. In this regard, the burden of proof lies on the complainant who alleges that the product is defective.

With respect to torts liability, 'contemporary technical and professional standards' are applicable. That is, business operators engaging in the design, production or manufacture of the goods or in the provisions of services must ensure that the goods and services they provide meet and comply with the contemporary technical and professional standards of reasonably expected safety prior to the goods being launched for sale in the market, or at the time of rendering services in accordance to the Consumer Protection Act. Furthermore, business operators are required to present evidence to demonstrate that when their goods are sold in the market or at the time when the services are rendered, they were in compliance with the contemporary technical and professional standards of reasonably expected safety. The burden of proof on consumers is therefore lessened and partially shifted to the manufacturers.

25 Possible respondents

Who may be found liable for injuries and damages caused by defective products?

Generally, business operators such as designers, producers, and manufacturers may be found liable for injuries caused by product defects. The Consumer Protection Act further broadens the scope of possible respondents. Importers are deemed as the designers, producers or

manufacturers and thus also bear the liability of producers

Distributors of goods and services are jointly and severally liable for damages with the business operators with respect to injuries caused by the provided goods or services; however if the distributors have exercised due care with respect to the prevention of such injuries, or if despite the distributor's exercise of due care, the injury would still have occurred, the distributor will not be jointly and severally liable.

Importers of goods or services are deemed the designers, producers, or manufacturers of such goods or the providers of such services and therefore bear the liability of producers set forth in article 7 of the Consumer Protection Act.

26 Causation

What is the standard by which causation between defect and injury or damages must be established? Who bears the burden and may it be shifted to the opposing party?

In the Consumer Protection Act, the consumer, who is the injured party, bears the burden of proving the causation between the defect and the damage under the general theory. Furthermore, the evidence of the causation must be sufficient for the court to exclude any reasonable doubt.

Nonetheless, article 191-1 of the Civil Code provides that 'the manufacturer is liable for the injury to another arising from the common use or consumption of his merchandise, unless there is no defectiveness in the production, manufacture, process, or design of the merchandise, or where the injury is not caused by the defectiveness, or where the manufacturer has exercised reasonable care to prevent the injury.' Consequently, if the party invokes this article rather than the Consumer Protection Act as the legal ground for the compensation demanded, as long as he shows that the injury resulted from the common use or consumption, the causation will be assumed to exist and the burden of proof will shift to the manufacturer.

27 Post-sale duties

What post-sale duties may be imposed on potentially responsible parties and how might liability be imposed upon their breach?

Article 10 of the Consumer Protection Act provides that if there are facts sufficient to prove the existence of suspicion that goods or services provided will endanger the safety and health of consumers, business operators are required to immediately recall such goods or discontinue such services. If necessary treatments taken by the business operators are sufficient to remove such danger, the foregoing recall will not be required. Furthermore, where goods or services are a danger to the lives, bodies, health or property of consumers in the absence of conspicuous warning labels with explanations of the methods for emergency handling of such dangers, article 10 applies *mutatis mutandis*.

If the business operators fail to recall or take necessary measures, they may face an administrative fine of not less than NT\$60,000 and not more than NT\$1.5 million and these fines may be imposed consecutively if the operators continue to fail to recall or take necessary measures. In the case of a material violation, an order for suspension of operations or discontinuance of business may be issued.

Limitations and defences

28 Limitation periods

What are the applicable limitation periods?

The Consumer Protection Act remains silent as to the limitation period. Therefore, the relevant article of the Civil Code can be applied. Article 197 of the Civil Code provides that the limitation period is two years from the date when the injury and the person liable to make compensation became known to the injured person.

Regardless of the above, the limitation will have lapsed 10 years after the date when the wrongful act was committed.

29 State-of-the-art and development risk defence

Is it a defence to a product liability action that the product defect was not discoverable within the limitations of science and technology at the time of distribution? If so, who bears the burden and what is the standard of proof?

Article 7 of the Consumer Protection Act stipulates that business operators are only required to ensure that goods and services provided by them meet and comply with the contemporary technical and professional standards of the reasonably expected safety prior to the goods being sold in the market, or at the time when the services were provided. Therefore, as a defence, business operators can argue that the product defect was not discoverable within the limitations of science and technology at the time of distribution. However, business operators bear the burden of proving such claims.

30 Compliance with standards or requirements

Is it a defence that the product complied with mandatory (or voluntary) standards or requirements with respect to the alleged defect?

The relevant administrative rules simply set minimum standards for products. Manufacturers can still produce or design safer products without limitations. Therefore, compliance with standards or requirements normally cannot be used as a defence to exempt a manufacturer from product liability. Nonetheless, if relevant regulations have deprived a manufacturer of the discretion with respect to a product's design and manufacture, and compliance with the regulation will inevitably lead to a product defect, the manufacturer may raise its compliance as a defence.

31 Other defences

What other defences may be available to a product liability defendant?

A product liability defendant may argue that the Consumer Protection Act does not apply to goods that were already circulated in the market or services that were already provided prior to the implementation of the Act on 11 January 1994. Moreover, defendants will not be liable for defective products if they can prove that the products were distributed without the defendants' prior consent.

32 Appeals

What appeals are available to the unsuccessful party in the trial court?

Any party that is dissatisfied with a judgment made in the first instance may appeal to the higher court within 20 days from the

date the judgment is served. An appeal may also be taken from the final judgment of a court of the second instance to the court of third instance with jurisdiction. However, it should be noted that no appeal may be taken from the judgment of a court of the second instance on an action arising from proprietary rights when the value of the interests in such appeal is not more than NT\$1 million.

Jurisdiction analysis

33 Status of product liability law and development

Can you characterise the maturity of product liability law in terms of its legal development and utilisation to redress perceived wrongs?

There is no unified single statute governing product liability in Taiwan. There are several articles dealing with product liability in the Civil Code and the Consumer Protection Act. However, these regulations have similar but slightly different requirements that make the area of product liability law more sophisticated. The Consumer Protection Act brings in certain innovations that benefit complainants and the Civil Code also includes a newly enacted special torts cause of action that allows complainants to demand compensation. The interaction and application of these laws is important.

In recent years, laws on class actions have been enacted. While these laws seem to be suitable for product liability cases, they are rarely used.

34 Product liability litigation milestones and trends

Have there been any recent noteworthy events or cases that have particularly shaped product liability law? Has there been any change in the frequency or nature of product liability cases launched in the past 12 months?

Recently, this area of law has become an important issue that has attracted enormous attention due to several incidents closely connected to product safety. Several food additive manufacturers are under investigation for selling poisonous products over the past few decades. Both the press and the government are placing great emphasis on this issue. Several legislators have even proposed amending the relevant laws to impose harsher punishment on those 'black-hearted' manufacturers. We can reasonably predict that the frequency of product liability cases will increase dramatically during the coming years.

35 Climate for litigation

Please describe the level of 'consumerism' in your country and consumers' knowledge of, and propensity to use, product liability litigation to redress perceived wrongs?

Lately, legislators and social movements point out that Taiwan is experiencing an increasing level of consumer protection in many



萬國法律事務所

Formosa Transnational

Attorneys at Law

SINCE 1974

Jackson Shuai-Sheng Huang

shuai-sheng.huang@taiwanlaw.com

13th Floor, Lotus Building
136 Jen Ai Road, Section 3
Taipei 106
Taiwan

Tel: +886 227 557 366 ext. 260
Fax: +886 227 556 486
www.taiwanlaw.com

areas. Furthermore, the level of ‘consumerism’ is gradually being elevated and people tend to boycott or shun enterprises that have provided defective products in the past and frequently seek redress for harms caused by defective products.

36 Efforts to expand product liability

Please describe any developments regarding ‘access to justice’ that would make product liability more claimant-friendly.

The Consumers’ Foundation, a non-political and non-profit organisation, was established in 1980. The foundation’s ultimate goal is to protect consumers’ interests, elevate consumers’ standing in business transactions, and popularise consumer awareness. It provides multiple claimant-friendly functions and services as listed below:

- providing consultation – people can call in and ask any questions regarding defective products, misleading product promotion, etc. There are also several lawyers involved to provide preliminary legal opinions;
- receiving complaints – the foundation also gives suggestions with respect to product liability disputes. People can make reports regarding manufacturers whose products are harmful or deceptive. The foundation will request the manufacturer to clarify the issues; and
- publication – the foundation publishes books and magazines that reveal the results of its investigations as well as product testing data for the reference of consumers.

Moreover, the Consumer Protection Committee, a governmental authority in charge of consumer protection, is established in the Executive Yuan to aid consumers seeking redresses. It provide information services, including various brief introductions, publications, activities, relevant consumer protection laws, example copies of standard contracts, and various channels of consumers to make petitions. Its primary duties include:

- drafting and amending basic consumer protection policies and plans;
- coordinating and supervising the execution of the functions carried out by the agencies of the central and local government;
- drafting and amending consumer protection laws; and
- mediating and handling significant consumer disputes.

The above governmental and non-governmental mechanisms make product liability more claimant-friendly.

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