

# Avoiding the Development of a Defective Product

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# Product Liability

- Area of case law involving the liability of the sellers of goods to third persons with whom they are not in privity of contract
- Lies at the intersection between the law of torts and contracts

# Product Liability Law: Basics

- When is a product seller or manufacturer liable?
  - Manufacturing defect
  - Design defect
  - Inadequate warnings or instructions (at time of sale)
  - Post-sale failure to warn

# “Defective”

- A product is defective if it is not reasonably safe and carries excessive risk?
- What is “reasonably safe” and “excessive risk?”

# Manufacturing Defect

- Exists when a product is not reasonably safe in construction because the product deviated in some material way from the design specifications or performance standards of the manufacturer, or deviated in some material way from otherwise identical units of the same product line.

# Design Defect

- Causes undue risks or unnecessary hazards which a safety device or other design alternative reasonably would have avoided

# Design Defect

- Consumer Expectations Test: requires showing that product is more dangerous than ordinary consumer would reasonably expect. Focus is on the reasonable expectations of the consumer.

# Design Defect

- Risk-Utility Test: A product is not reasonably safe as designed if at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms outweighed the burden on the manufacturer to design a product that would have prevented those harms and the adverse effect that an alternative design that was practical and feasible would have on the usefulness of the product.

# Design Defect

Risk-utility assessment involves consideration of:

- Gravity of posed danger
- Likelihood of damage
- Mechanical feasibility of alternative
- Financial cost of improvement
- Consideration of adverse consequences

# Warnings/Instructions

- A product is not reasonably safe because adequate warnings or instructions were not provided with the product, if, at the time of manufacture, the likelihood that the product would cause the claimant's harm or similar harms, and the seriousness of those harms, rendered the warnings or instructions of the manufacturer inadequate and the manufacturer could have provided the warnings or instructions which the claimant alleges would have been adequate.

# Post-Sale Duty to Warn

- After the time of manufacture, if a manufacturer learns of a danger with the product, or reasonably should have learned, it has a duty to use reasonable efforts to issue warnings or instructions about the danger.
- Post-sale duty to warn could include issuing alternative instructions, product alerts, bulletins, or even product recalls.

# Product Liability Generally Determined by:

- Negligence
- Strict Liability

# Negligence

Omission to do something that a reasonable person would do, or doing something that a reasonable person would not do

# Negligence

Focuses on “behavior” of manufacturer, not product. Plaintiff must prove:

- 1) Design caused concealed danger
- 2) Design didn't incorporate needed safety devices
- 3) Design failed to comply with standards to make product fit for intended use
- 4) Inadequate instructions or warning

# Strict Liability

(1963) Product, not seller, is on trial.  
Liability without fault, negligence aside.

Plaintiff must only prove:

- 1) Product had a defect
- 2) Defect was under control of defendant
- 3) Defect caused injuries

# Strict Liability

- Negligence not needed for liability
- Courts must balance risk versus utility
- Manufacturers must balance cost and benefit of finding defective products

# Strict Liability v. Negligence

- “...the doctrine of strict liability is really but another form of negligence, per se, in that it is a judicial determination that placing a defective product on the market which is unreasonably dangerous...is itself a negligent act...”

Phillips v. General Motors Corp. 1976

# Foreseeability

- Must design for foreseeable misuse of product
- Seller has the duty to warn of reasonably foreseeable dangers (but not necessarily obvious ones)

# Safety Engineering Design Methodology

- 1) “Design away” the hazard
- 2) Guard against the hazard
- 3) Warn of the hazard

# Defect Proofing Your Product

- Keep product liability issues in mind
- Perform hazard analysis
- Anticipate misuse as well as reasonably foreseeable uses
- Know which standards apply to your product
- Develop appropriate instructions and warnings
- Establish appropriate QA procedures to ensure manufacturing process complies with design