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What is Product Liability?

Defective or dangerous products are the cause of thousands of injuries every year in the U.S. "Product liability law," the legal rules concerning who is responsible for defective or dangerous products, is different from ordinary injury law, and this set of rules sometimes makes it easier for an injured person to recover damages.

Product liability refers to a manufacturer or seller being held liable for placing a defective product into the hands of a consumer. Responsibility for a product defect that causes injury lies with all sellers of the product who are in the distribution chain. Potentially liable parties include: the product manufacturer; a manufacturer of component parts; the wholesaler, and the retail store that sold the product to the consumer.

In general terms, the law requires that a product meet the ordinary expectations of the consumer. When a product has an unexpected defect or danger, the product cannot be said to meet the ordinary expectations of the consumer.

There is no federal product liability law. Typically, product liability claims are based on state laws, and brought under the theories of negligence, strict liability, or breach of warranty. In addition, a set of commercial statutes in each state, modeled on the Uniform Commercial Code, will contain warranty rules affecting product liability.

Responsible Parties

For product liability to arise, at some point the product must have been sold in the marketplace. Historically, a contractual relationship, known as "privity of contract," had to exist between the person injured by a product and the supplier of the product in order for the injured person to recover. In most states today, however, that requirement no longer exists, and the injured person does not have to be the purchaser of the product in order to recover. Any person who foreseeably could have been injured by a defective product can recover for his or her injuries, as long as the product was sold to someone.

Liability for a product defect could rest with any party in the product's chain of distribution, such as the manufacturer, wholesalers, a retail seller of the product, and a party who assembles or installs the product. For strict liability to apply, the sale of a product must be made in the regular course of the supplier's business. Thus, someone who sells a product at a garage sale would probably not be liable in a product liability action.

Types of Product Defects

Under any theory of liability, a plaintiff in a product liability case must prove that the product that caused injury was defective, and that the defect made the product unreasonably dangerous. There are three types of defects that might cause injury and give rise to manufacturer or supplier liability: design defects, manufacturing defects, and marketing defects. Design defects are present in a product from the beginning, even before it is manufactured, in that something in the design of the product is inherently unsafe. Manufacturing defects are those that occur in the course of a product's manufacture or assembly. Finally, marketing defects are flaws in the way a product is marketed, such as improper labeling, insufficient instructions, or inadequate safety warnings.

Design Defects

A design defect is some flaw in the intentional design of a product that makes it unreasonably dangerous. Thus, a design defect exists in a product from its inception. For example, a chair that is designed with only three legs might be considered defectively designed because it tips over too easily. Design defect claims often require a showing of negligence; however, strict liability may be imposed for an unreasonably dangerous design if the plaintiff can present evidence that there was a cost-effective alternative design that would have prevented the risk of injury. In some cases, if a product was so unreasonably dangerous that it never should have been manufactured, the availability of a safer design might not be required to hold the designer liable.

Manufacturing Defects

A product has a manufacturing defect when the product does not conform to the designer's or manufacturer's own specifications. Manufacturing defect cases are often the easiest to prove, because the manufacturer's own design or marketing

standards can be used to show that the product was defective. But proving how or why the flaw or defect occurred can be difficult, so the law applies two special doctrines in product liability cases to help plaintiffs recover even if they cannot prove a manufacturer was negligent.

The first doctrine, known as "res ipsa loquitur," shifts the burden of proof in some product liability cases to the defendant(s). Translated, this Latin term means "the thing speaks for itself," and indicates that the defect at issue would not exist unless someone was negligent. If the doctrine is successfully invoked, the plaintiff is no longer required to prove how the defendant was negligent; rather, the defendant is required to prove that it was *not* negligent.

The second rule that helps plaintiffs in product liability cases is that of strict liability. If strict liability applies, the plaintiff does not need to prove that a manufacturer was negligent, but only that the product was defective. By eliminating the issue of manufacturer fault, the concept of no-fault, or "strict" liability allows plaintiffs to recover where they otherwise might not.

Marketing Defects

Marketing defects include improper labeling of products, insufficient instructions, or the failure to warn consumers of a product's hidden dangers. A negligent or intentional misrepresentation regarding a product may also give rise to a product liability claim.

Unavoidably Unsafe Products

By their nature, some products simply cannot be made safer without losing their usefulness. For example, an electric knife that is too dull to injure anyone would also be useless for its intended purpose. It is generally believed that, as to such products, users and consumers are the best equipped to minimize risk. Thus, while a product might not be deemed unreasonably dangerous, manufacturers and suppliers of unavoidably unsafe products must give proper warnings of the dangers and risks of their products so that consumers can make informed decisions regarding whether to use them.

[More](#) on unavoidably unsafe products.

Common Defenses to Product Liability Claims

A defense often raised in product liability cases is that the plaintiff has not sufficiently identified the supplier of the product that allegedly caused the injury. A plaintiff must be able to connect the product with the party(ies) responsible for manufacturing or supplying it. There is an exception to this rule, known as the "market share liability" exception, which applies in cases involving defective medications. Where a plaintiff cannot identify which of the pharmaceutical companies that supply a particular drug supplied the drug he/she took, each manufacturer will be held liable according to its percentage of sales in the area where the injury occurred.

Another defense a manufacturer might raise is that the plaintiff substantially altered the product after it left the manufacturer's control, and this alteration caused the plaintiff's injury. A related defense is that the plaintiff misused the product in an unforeseeable way, and that his/her misuse of the product cause the injuries alleged.

Getting Legal Help for a Defective Product Injury

Product liability actions are often quite complex, and establishing legal fault often requires the assistance and testimony of experts. There are several theories under which a plaintiff might bring a claim, and several defenses that might defeat such a claim. Additionally, every state has its own laws and specific statutes that will affect a product liability action. Accordingly, it is important to consult an experienced attorney if you or a loved one suffers injury caused by a potentially defective product.

Go [here](#) to learn more about an attorney's role in a product liability case.

Click [here](#) to find an experienced product liability attorney near you.

See also:

- [Defective and Dangerous Products: Case Preparation Issues](#)

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