

## Strict Liability and Product Liability

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## Strict Liability

- Defendant's liability is without regard to
  - Fault
  - Foreseeability
  - Standard of Care
  - Causation

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## Abnormally Dangerous Activities

- Defendant strictly liable for “abnormally dangerous activity” if that activity
  - involves serious potential harm
  - involves high degree of risk that cannot be made safe
  - is not commonly performed in the community or area

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## Animals

- Persons who keep wild animals are strictly liable for injuries caused by them
- Persons who keep domestic animals are liable if the owner knew or should have known that animal was dangerous

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## Product Liability

- Tort Liability can be based on:
  - Negligence
  - Misrepresentation
  - Strict Liability
  - Warranty Theory

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## Product Liability: Negligence

- Based on manufacturer's breach of reasonable standard of care, failure to make product safe
- Manufacturer must exercise "due care" in
  - Designing products
  - Manufacturing and Assembling products
  - Inspecting and Testing products
  - Placing adequate warning labels
- Negligence Per Se (Violation of Statute)
- No privity of contract required between Plaintiff and Manufacturer

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## Product Liability: Misrepresentation

- Fraud committed against consumer or user of product
  - Must have been made Knowingly or with Reckless Disregard for safety
  - Plaintiff does not have to show product was defective

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## Theory behind Strict Liability

- Manufacturers liable without regard to fault based on public policy
  - Consumers must be protected from unsafe products
  - Manufacturers should be liable to any user of the product
  - Manufacturers, sellers and distributors can bear the costs of injuries

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## Strict Product Liability

- Requirements
  - Product defective when sold
  - Defendant normally in business of selling product
  - Product unreasonably dangerous because of defect
    - dangerous beyond expectations of the ordinary consumer, or
    - less dangerous alternative economically feasible but manufacturer failed to produce it
  - Plaintiff or property physically harmed or damaged
  - Defective condition is proximate cause of injury
  - Product must not have been altered since between sale and injury

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## Strict Liability: Product Defects

- Manufacturing Defects
  - product differs from design specification
    - flawed, damaged, incorrectly assembled
- Design Defects
  - foreseeable risks could have been reduced or avoided with a reasonable alternative design, the omission of which renders the product unreasonably unsafe
- Warning Defects
  - foreseeable risks could have been reduced or avoided with reasonable instructions or warnings, the omission of which renders product unreasonably unsafe

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## Market Share Liability

- Used when when multiple Defendants contributed to manufacture of defective product
- Liability of each Defendant proportional to its share of the market

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## Product Liability: Defenses

- Assumption of Risk
- Product Misuse
  - Plaintiff does not know product is dangerous for particular use
- Contributory/Comparative Negligence
- Commonly known dangers
- Statutes of Limitation

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