

STRICT LIABILITY

- **Strict Liability:** Liability regardless of fault. Among others, defendants whose activities are abnormally dangerous or involve dangerous animals are strictly liable for any harm caused.

- **Abnormally Dangerous Activities:** Some activities are so inherently dangerous that they give rise to liability without regard to fault because the activity
 - (1) involves **serious potential harm** to persons or property,
 - (2) involves a **high degree of risk** that cannot be completely guarded against by the exercise of reasonable care, or
 - (3) is **not commonly performed** in the community or under the circumstances.

- **Animals:** A person who keeps a **wild animal** is strictly liable for any harm the animal inflicts; whereas, the owner of a **domestic animal** is only strictly liable if she knew or should have known that the animal was dangerous or had the propensity to harm others.

PRODUCT LIABILITY

- **Product Liability:** A manufacturer's, seller's, or lessor's liability to consumers, users, and bystanders for **physical harm** or **property damage** that is **caused by the goods**.
- **Negligence:** A **manufacturer** is liable for its failure to exercise **due care** to any person who sustained an injury **proximately caused** by the manufacturer's negligence in
 - (1) **designing** the product,
 - (2) selecting **materials** (including any component products purchased from another seller that are incorporated into a finished product),
 - (3) using appropriate **production processes**,
 - (4) **assembling and testing** of the product, and
 - (5) placing **adequate warnings** on the product, which inform the user of dangers of which an ordinary person might not be aware.
- **Misrepresentation:** A manufacturer may also be liable for any misrepresentations made to a consumer or user of its product if the misrepresentation causes the consumer or user to suffer some injury.

STRICT PRODUCT LIABILITY

- The policy surrounding strict product liability rests on the assumption that
 - (1) Consumers should be protected against unsafe products
 - (2) Manufacturers and distributors should not escape liability for faulty products simply because that are not in privity of contract with the user of those products
 - (3) Manufacturers and distributors can better bear the costs associated with injuries caused by their products- because they can pass the costs on to all consumers in the form of higher prices
- **Requirements for Strict Product Liability:**
 - (1) The product was in defective condition *when the defendant sold it*
 - (2) The defendant must normally be engaged in the business of selling or distributing that product
 - (3) The product must be *unreasonably dangerous* to the user or consumer *because of its defective status*
 - (4) The plaintiff must incur *physical harm* to self or property by use or consumption of the product

- (5) The defective condition must be the *proximate cause* of the injury or damage
- (6) The goods have not been *substantially changed* from the time the product was sold to the time the injury was sustained

PRODUCT DEFECTS

- **Unreasonably Dangerous Product:** A product so defective as to threaten a consumer's health and safety either because
 - (1) the product is dangerous **beyond the expectation** of the ordinary consumer, or
 - (2) the manufacturer failed to produce an economically feasible, **less dangerous alternative**.
- Claims that a product is unreasonably dangerous generally fall into one of three categories:
 - (a) **Manufacturing Defect:** The manufacturer failed to exercise due care in the manufacture, assembly, or testing of the product;
 - (b) **Design Defect:** The product, even if manufactured perfectly, is unreasonably dangerous as designed – often because an economically feasible, less dangerous alternative was not available to the manufacturer; and
 - (c) **Inadequate Warning:** The product, even if designed and manufactured perfectly, lacks adequate warnings or instructions for the consumer or other end user.

PRODUCT LIABILITY DEFENSES

- **Preemption:** Government regulations preempt claims for product liability; an injured party may not be able to sue the manufacturer of defective products that are subject to comprehensive federal regulatory schemes.
- **Assumption of Risk:** The defendant must show that (1) the plaintiff **knew and appreciated** the risk created by the alleged product defect, and (2) the plaintiff **voluntarily assumed** the risk, even though it was unreasonable to do so.
- **Product Misuse:** The defendant must show that (1) the plaintiff was using the product in some way for which it was not designed, and (2) the plaintiff's misuse was **not reasonably foreseeable** to the defendant, such that the defendant would be required to safeguard against it.
- **Comparative Negligence:** The defendant must show that the plaintiff's own negligence or wrongful acts contributed to her injury. Such a showing may permit the plaintiff to recover only for the percentage of her injury or loss that was not caused by her own negligence or wrongful acts.
- **Commonly-Known Danger:** The defendant must show that the plaintiff's injury resulted from a danger so commonly known **by the general public** that the defendant had no duty to warn plaintiff.

- **Knowledgeable User:** If a particular danger is or should be commonly known **by particular users** of the product, the manufacturer need not warn those particular users.
- **Statutes of Limitations and Repose:** The statute of limitations for product liability vary according to state law-typically two to four years.
- **Statutes of Repose:** Place *outer* time limits on product liability actions, in order to ensure sellers and manufacturers are not left vulnerable to lawsuits indefinitely.