

# STRICT LIABILITY

- **Strict Liability:** Liability regardless of fault. Strict liability is imposed on defendants whose activities are abnormally dangerous or involve dangerous animals and on defendants whose products are defective.
  
- **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.

# PRODUCT LIABILITY: NEGLIGENCE

- **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.

## PRODUCT LIABILITY: MISREPRESENTATION

- **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.
  - To be actionable, a misrepresentation must be made **knowingly** or with **reckless disregard** for the facts.
    - In addition to affirmative misrepresentations, a manufacturer may also be liable for knowingly or recklessly **omitting** to tell the consumer or user some relevant fact or **concealing** that fact from the consumer or user.
  - To be actionable, a misrepresentation or omission must also be made with the intent that the consumer or user **rely** on it and the consumer or user must have, in fact, **actually relied** on the misrepresentation or omission.

# STRICT PRODUCT LIABILITY

- **Strict Liability:** A manufacturer, seller, or lessor of goods will be liable, **regardless of intent or the exercise of reasonable care**, for any personal injury or property damage to consumers, users, and bystanders **caused by the goods** it manufactures, sells, or leases if:
  - (1) the product is **defective when the defendant sells it** (either to an end-user or to another seller for ultimate resale);
  - (2) the defendant is **normally engaged in the business of selling** or otherwise distributing the product in question;
  - (3) the product is **unreasonably dangerous** to the user or consumer because of its defective condition;
  - (4) the plaintiff suffers **physical harm to self or property** as a result of using or consuming the product;
  - (5) the defective condition of the product **proximately causes** the plaintiff's harm; and
  - (6) the product **had not been substantially changed** between the time the defendant sold or otherwise distributed it and the time the plaintiff was injured.

# UNREASONABLY DANGEROUS PRODUCTS

- **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 Flaw:** The manufacturer fails 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 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 AND THE *RESTATEMENT (THIRD) OF TORTS*

- **Manufacturing Defects:** The manufacturer, wholesaler, and retailer are strictly liable “when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product.”
  
- **Design Defects:** A product is defectively designed if
  - (1) the defendant or a predecessor in the chain of commercial distribution could have reduced or avoided a **foreseeable risk of harm** by adopting a **reasonable alternative design**, and
  - (2) the **failure to adopt** the alternative design renders the product “**not reasonably safe.**”
  
- **Warning Defects:** A warning is defective if
  - (1) the foreseeable risks of harm posed by a product could have been reduced or avoided by providing **reasonable warnings or instructions**, and
  - (2) the **omission** of the warnings or instructions renders the product “**not reasonably safe.**”

## MARKET SHARE LIABILITY

- Generally, a plaintiff must prove that the defendant manufactured the defective product.
- However, in some cases, plaintiffs have been permitted to sue any or all manufacturers of an allegedly defective product, because the plaintiff does not know which of those manufacturers made the product that caused the plaintiff's injuries.
- In these cases, all of the product's manufacturers (and, in some cases, distributors) may be held liable **in proportion to each firm's respective share of the market**. For example, if a plaintiff suffered damages of \$1 million, a named defendant whose market share during the relevant period was 10% would be liable to the plaintiff for \$100,000 – even if the plaintiff sued manufacturers responsible for less than 100% of the market.
- In some cases, courts have imposed market share liability on a defendant even though that defendant could affirmatively prove that it did not manufacture the product that caused the plaintiff's injuries.

# PRODUCT LIABILITY DEFENSES

- **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

- **Statute of Limitations:** A typical statute of limitations requires that an action be brought within a specified period after the plaintiff's cause of action *accrued* or within a specified period after the plaintiff *discovered or should have discovered* her injuries.
- **Statute of Repose:** Regardless of whether a plaintiff has discovered her injuries, many states also have statutes of repose, which set *absolute outer limits on the time within which an action must be brought*.