



Defective Products

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- [Background](#)
- [Theories of Product Liability](#)
- [Types of Product Defects](#)
- [Used Merchandise](#)
- [Foreign Corporations](#)
- [Comparative Fault](#)
- [Statute of Limitations](#)
- [Damages](#)
- [Consumer Product Safety Commission](#)
- [Additional Resources](#)
- [Organizations](#)

Background

Defective product law, commonly known as products liability, refers to the liability of parties along the chain of manufacture of any product for damage caused by that product. A defective product is one that causes some injury or damage to person as a result of a person because of some defect in the product or its labeling or the way the product was used. Those responsible for the defect can include the manufacturers of component parts, assembling manufacturers, wholesalers, and retail stores. Many states have enacted comprehensive products liability statutes. There is no federal products liability law.

Theories of Product Liability

Some consumer advocates believe that a products liability lawsuit is a consumer's most effective weapon against dangerous products. While the government regulates products, regulations may not require the offending company to suffer much of a penalty. A products liability lawsuit allows the individual citizen to [PROSECUTE](#) a case against reckless, incompetent, or negligent manufacturers. Typically, product defect cases are based on strict liability, rather than [NEGLIGENCE](#). It is irrelevant whether the manufacturer or supplier exercised great care. If there is a defect in the product that causes harm, that entity will be liable for it. This means that it is not necessary to prove "fault" on the part of the [DEFENDANT](#). To win the case, the plaintiff must prove that the product was unreasonably dangerous or defective; that injury resulted from use of the defective product; and that the injury was caused by the defect in the product. A repairer, seller, or manufacturer of a defective product is liable for injuries sustained by persons using the defective product. Liability may also extend to persons who did not purchase the product but were using the product in a foreseeable manner. Also, people injured as a result of someone else using a defective product may be able to recover if their injuries were caused by the product's defect. All jurisdictions require a connection between the product defect and the injury. Many [PRODUCT LIABILITY](#) cases turn on experts' [TESTIMONY](#), where both plaintiff and defendant use expert testimony to establish or deny a link between an alleged defect and an injury. Although strict liability is most common, products liability lawsuits include negligence theories, strict liability theories, and breach of [WARRANTY](#) theories.

Negligence

A negligence theory requires the plaintiff to prove that the defendant owed a duty to the consumer. Manufacturers do, in fact, owe a duty to the users of its products and to bystanders likely to be injured. The manufacturer also has a duty in making its product to guard against injuries likely to result from reasonably foreseeable misuse of the product. The plaintiff must also show that the manufacturer breached its duty. The plaintiff should be able to prove that a reasonable manufacturer, with knowledge or constructive knowledge of the product's defect, would not have produced the product. The plaintiff also must prove injury and that the defendant's breach caused the injury.

Strict Liability

Strict liability does not require that the injured plaintiff show knowledge or fault on the manufacturer's part. The plaintiff must show only that the product was sold or distributed by a defendant and that the product was unreasonably dangerous at the time it left the defendant's possession. The behavior or knowledge (or lack thereof) of a products liability defendant regarding the dangerous nature of a product is not an issue for consideration under a strict liability theory. Strict liability concerns only the condition of the product itself while a negligence theory concerns not only the product, but also the manufacturer's knowledge and conduct.

Breach of Warranty

Every product comes with an [IMPLIED WARRANTY](#) that it is safe for its intended use. A defective product that causes injury was not safe for its intended use and thus can constitute a breach of warranty.

Types of Product Defects

There are three types of product defects: design defects, manufacturing defects, and defects in marketing, sometimes known a failure to warn. Design defects exist before the product is manufactured. Manufacturing defects result from the actual construction or production of the item. Defects in marketing deal with improper instructions and failures to warn consumers of potential dangers with the product.

Design Defects

In these cases injury results from a poor design, even though there may be no defect in the manufacture of the individual product. A product can be unreasonably dangerous for various reasons. The design of the product could be unreasonably dangerous resulting in the entire line of products being defective. Generally, in order to prove a design defect case, the plaintiff is obligated to offer a reasonable alternative design that the manufacturer could have employed, which would have prevented the injury and which would not have substantially diminished the product's effectiveness. If the jury finds that the plaintiff's proposed alternative is reasonable and would have eliminated the product's risk, the product is determined defective.

The manufacturer in a design defect case cannot escape liability by relying on industry standard as a defense or alleging that because the other manufacturers used the same design, the product was not defective. Theoretically, the entire industry could be producing products with design defects. However, the industry standard defense is not the same as the state of the art defense, which may be a valid defense if the defendant can show that at the time the product was built, no safer, alternative design existed. The state of the art defense protects a manufacturer from liability for a product, which was reasonably safe years earlier but by current's standards might be deemed defective.

Manufacturing Defects

A manufacturing defect occurs when a particular product is somehow manufactured incorrectly and in its condition is unreasonably dangerous. The plaintiff must show that the product was in its defective condition when it left the manufacturer's possession and that it was unaltered at the time it caused the injury. In short, the consumer must prove that the manufacturer caused the defect. If the defective part was a component in a larger product (for example, a defective tire on an automobile), the component producer may be liable, as well as the manufacturer of the larger product.

Marketing Defects

A product can also be unreasonably dangerous absent appropriate warnings. If a product could reasonably have been designed with a higher degree of safety, a proper warning will not necessarily convert the unreasonably dangerous product into a safe, nondefective one. An appropriate warning however, can transform certain dangerous products, which would be defective without the warning, into reasonably safe ones. The warning must be thorough and conspicuous, and it must evaluate the magnitude of the risk involved in failing to abide by the manufacturer's instructions. Failure to warn, or "inadequate warning " cases refer to injuries caused as a result of a product already known to be potentially dangerous which was sold without a proper warning to the consumer. Every product has a potential to be unsafe if it is used incorrectly. Whether a warning is adequate requires weighing all the possible circumstances. Juries are typically left with the task of determining whether a given warning is adequate, appropriate, suitable, or sufficient under the specific facts of a particular case.

Used Merchandise

Sellers of used merchandise may be liable depending on the factual situation. If the product was warranted or guaranteed, there may be a basis of liability. CORPORATE takeovers, purchases, break-ups of companies may create additional potentially responsible parties who are liable for injuries caused by defective products created initially by others.

Foreign Corporations

Many products manufactured outside the United States are sold in the United States. Additionally, U.S. companies frequently outsource the production of certain components to companies in foreign countries. While it is possible to sue a foreign corporation for a defective product, the requirements of proper legal procedure are sometimes extensive.

Comparative Fault

While under a products liability theory a manufacturer may be strictly liable for defects, the law recognizes that certain products are inherently dangerous and that consumers should know that the product is dangerous when they purchase it. If a consumer uses a defective product in a manner that an ordinary consumer would and is injured as a result, then a valid case may exist. Conversely, if a consumer uses a product in a manner other than that intended by the manufacturer, the consumer may be partially at fault, despite the fact that the product may have been defective.

Statute of Limitations

All states have some form of [STATUTE OF LIMITATIONS](#), which limits the time allowed for filing a lawsuit. The time frame in which the [STATUTE](#) of limitations runs usually begins from the time of the injury as a result of the defect. However, most states have some form of a delayed [DISCOVERY](#) rule, which states that the statute does not begin to run until the injury is discovered. This may be important when the injury is not obvious, perhaps until years later. There is a related statute in some jurisdictions called a statute of repose. It essentially provides that no claim can be made based upon a defective product beyond a specified number of years after the date of manufacture.

Damages

COMPENSATORY DAMAGES awardable in products liability cases include medical bills, reimbursement for lost wages, and property damaged as a result of the defective product. Pain and suffering experienced as a result of injury and general damages are also recoupable. And if the conduct of the defendant was egregious, the plaintiff may be entitled to [PUNITIVE DAMAGES](#).

Consumer Product Safety Commission

The U.S. Consumer Product Safety Commission (CPSC) is an independent federal regulatory agency created to protect the public from unreasonable risks of injuries and deaths associated with some 15,000 types of consumer products. CPSC uses various means to inform the public. These include local and national media coverage, publication of numerous booklets and product alerts, a website, a telephone Hotline, the National Injury Information Clearinghouse, CPSC's Public Information Center and responses to FREEDOM OF INFORMATION ACT (FOIA) requests. For nearly 30 years the U.S. Consumer Product Safety Commission (CPSC) has operated a statistically valid injury surveillance and follow-back system known as the National Electronic Injury Surveillance System (NEISS). The primary purpose of NEISS has been to provide timely data on consumer product-related injuries occurring in the U.S. NEISS injury data are gathered from the emergency departments of 100 hospitals selected as a probability sample of all U.S. hospitals with emergency departments. The system's foundation rests on emergency department surveillance data, but the system also has the flexibility to gather additional data at either the surveillance or the investigation level. Surveillance data enable CPSC analysts to make timely national estimates of the number of injuries associated with (not necessarily caused by) specific consumer products. These data also provide [EVIDENCE](#) of the need for further study of particular products. Subsequent follow-back studies yield important clues to the cause and likely prevention of injuries.

Additional Resources

Product Liability Entering the 21st Century: The U.S. Perspective. Moore, Michael J., Brookings Institution Press, 2001.

Why Lawsuits Are Good for America: Disciplined Democracy, Big Business, and the Common Law. Bogus, Carl, NYU Press, 2001.

Organizations

Consumer Action

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U. S. Consumer Product Safety Commission

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