Instructor Manual

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# Purpose and Perspective of the Chapter

The purpose of this chapter is for students to learn product liability theories under which plaintiffs can sue. Although multimillion-dollar product liability lawsuits often involve big automakers, pharmaceutical companies, and the tobacco industry, many business face potential liability for the products they sell. Students will learn that for businesses that make (or sell) products in particular, manufacturers (and sellers) of products may incur in product lability when product defects cause injury (or property damage) to consumers, users, or bystanders (people in the vicinity of the product when it fails).

# Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Outline the reasoning behind strict liability.
2. Describe the defenses available for a strict liability action.
3. Identify whether a product is unreasonably dangerous to a consumer.
4. Explain a market share liability.
5. Define a defective condition.

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# Key Terms

**Market-share liability**: a theory under which liability is shared among all firms that manufactured and distributed a particular product during a certain period of time; this form of liability sharing is used only when the specific source of the harmful product is unidentifiable.

**Privity of contract**: the relationship that exists between the promisor and the promisee of a contract.

**Product liability**: the legal liability of manufacturers, sellers, and lessors of goods for injuries or damage caused by the goods to consumers, users, or bystanders.

**Statute of repose**: a statute that places outer time limits on product liability actions; such statutes cut off absolutely the right to bring an action after a specified period of time following some event (often the product’s manufacture or purchase) other than the occurrence of an injury.

**Tolling**: a legal doctrine that allows for the temporary suspension of the running of a prescribed time period, such as a statute of limitations.

**Unreasonably dangerous product**: a product that is so defective that it is dangerous beyond the expectation of an ordinary consumer, or a product for which a less dangerous alternative was feasible but the manufacturer failed to produce it.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* 3 New Numbered Case Examples:
  + on product misuse based on 2018 case
  + on the role of expert testimony in product liability (2020)
* 1 Numbered Example
  + on product recall of ATVs
* Update on Business Web Log with new information on J&J lawsuits for talcum powder causing cancer
* Update of Managerial Strategy on Medical Warnings, based on case from 2020.
* New Cybersecurity and the Law: *The Internet of Things*
* 1 New Case
  + *Primal Vantage Co. v. O’Bryan* (2019) – On whether there was an inadequacy of warnings that was the proximate cause of an accident involving a ladderstand.

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 6. (PPT Slide 3).*

**I. 06-1 Product Liability Claims (PPT Slide 5-8)**

* 1. **Negligence**
     1. Failure to exercise the degree of care that a reasonable, prudent person would have exercised under the circumstances.
        1. Due Care Must Be Exercised
           1. Designing the product
           2. Selecting the materials
           3. Using the appropriate production process
           4. Assembling and testing the product
           5. Placing adequate warnings on the label to inform the user of dangers of which an ordinary person might not be aware
           6. Inspecting and testing any purchased components used in the final product
        2. Privity of Contract Not Required
           1. Relationship that exists between the promisor and promisee
        3. “Cause in Fact” and Proximate Cause
           1. Requires showing that but for the defendant’s action, the injury would not have occurred.
  2. **Misrepresentation**
     1. When a user (or consumer) is injured as a result of a manufacturer’s (or seller’s) fraudulent misrepresentation, the basis of liability may be the tort of fraud.

1. **06-2 Strict Product Liability (PPT Slide 9-15)**
2. **Strict Product Liability and Public Policy**
   * 1. Consumers should be protected against unsafe products.
     2. Manufacturers and distributors should not escape liability for faulty products simply because they are not in privity of contract with the ultimate user of those products.
     3. Manufacturers, sellers, and lessors of products are generally in a better position than consumers to bear the costs associated with injuries caused by their products.
     4. **Classic Case Example 6.1** William Greenman
3. **Requirements for Strict Product Liability** 
   * 1. Providing a Defective Condition
        1. Plaintiff has to prove that the product was defective
     2. Unreasonably Dangerous Products
        1. Sellers or lessors held liable
4. **Product Defects**
   * 1. The Restatement (Third) of Torts – Products Liability recognizes three types of product defects.
        1. Manufacturing Defects
           1. Quality Control
           2. The Role of Expert Testimony

**Case Example 6.2** Preston Cavner

* + - 1. Design Defects
         1. Test for Design Defects

**Example 6.3** Gillespie

* + - * 1. Risk-Utility Analysis

**Case Example 6.4** Benjamin Riley

* + - * 1. Consumer-Expectation Test

**Case Example 6.5** Wilson Sporting Goods Company

* + - 1. Inadequate Warnings
         1. Content of Warnings

**Case Example 6.6** Jeffrey Johnson

* + - * 1. Obvious Risks

**Example 6.7** Lana

* + - * 1. State Laws and Constitutionality

**Case Example 6.8** California

1. **Market-Share Liability**
   * 1. **Case Example 6.9** Suffolk County Water Authority (SCWA)
2. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer****) Tests students’ knowledge of defenses to strict liability and when they apply. After answer is provided, review with students when certain strict liability defenses will apply.*
3. ***Knowledge Check Video Activity (2) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer****) Tests students’ knowledge about strict product liability. After answer is provided, review with students when strict product liability applies and if there are any applicable defenses.*
4. **Other Applications of Strict Liability** 
   * 1. **Example 6.10** Trent
     2. **Example 6.11** Toyota

**III.06-3 Defenses to Product Liability (PPT Slide 16-23)**

1. **Preemption**
   * 1. A defense that has been successfully raised by defendants in recent years.
        1. **Case Example 6.12** Reigel v. Medtronic, Inc.
2. **Assumption of Risk**
   * 1. Assumption of risk can sometimes be used as a defense in a product liability action. To establish such a defense, the defendant must show that (1) the plaintiff knew and appreciated the risk created by the product defect, and (2) the plaintiff voluntarily assumed the risk, even though it was unreasonable to do so.
        1. **Case Example 6.13** Savannah Boles
3. **Product Misuse**
   * 1. Occurs when a product is used for a purpose for which it was not intended.
        1. **Case Example 6.14** Steven Iliades
4. **Comparative Negligence (Fault)**
   * 1. Courts in many jurisdictions consider the negligent or intentional actions of both the plaintiff.
5. **Commonly Known Dangers**
   * 1. Manufacturers need not warn users of those dangers.
        1. **Classic Case Example 6.15** Marguerite Jamieson
6. **Knowledgeable User**
   * 1. If a particular danger (such as electrical shock) is or should be commonly known by particular users of the product (such as electricians), the manufacturer of electrical equipment need not warn these users of the danger.
        1. **Spotlight Case Example 6.16** McDonald’s
7. **Statutes of Limitations and Repose**
   * 1. 2-4 years

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Strict Product Liability** (PPT Slide 9-15). **Duration** 15 Minutes.
2. **On what public policy grounds is strict liability imposed?**
   1. Strict liability is imposed as a matter of public policy, based on the assumptions that (1) consumers should be protected against unsafe products, (2) manufacturers and distributors should not escape liability for faulty products merely because they are not in privity of contract with the ultimate users of those products, and (3) manufacturers and sellers of products are in a better position to bear the costs associated with injuries caused by their products (costs that can be passed on to consumers in the form of higher prices).
3. **What is meant by strict liability? In what circumstances is strict liability applied?** 
   1. Strict liability is liability without fault. Strict liability for damages proximately caused by an abnormally dangerous or exceptional activity, or the keeping of dangerous animals is an application of this doctrine. Another significant application of strict liability is in the area of product liability.
4. **To avoid liability on a negligence theory in a product liability suit, to what extent must a manufacturer exercise due care?** 
   1. A manufacturer must exercise due care to make a product safe for its intended use. Due care must be exercised in designing products, in selecting materials, in producing and testing products, and in placing warnings on labels informing users of dangers of which an ordinary person might not be aware. The duty also extends to inspecting and testing products that a manufacturer buys for use in the final product.
5. **What are the requirements for a cause of action in strict liability in a product liability suit?** 
   1. For a cause of action in strict liability in a product liability suit against a manufacturer, the requirements are: (1) the product must have been in a defective condition when the manufacturer sold it, (2) the manufacturer must be normally engaged in the business of selling the product, (3) the product must be unreasonably dangerous to a user or consumer because of its defective condition (not required in all states), (4) a plaintiff must suffer physical injury to self or property damage by use or consumption of the product, (5) the defective condition must proximately cause the injury or damage, and (6) the product must not have been substantially changed from the time it was sold to the time of the injury. It need not be shown why or how a product became defective, but it must be shown that at the time of the injury the product’s condition was essentially the same as it was when it left the manufacturer or seller.
6. **Discussion – Defenses to Product Liability (PPT Slide 16-23). Duration 20 Minutes.**
7. **Can an injured bystander recover from a manufacturer or seller on a strict liability theory?** 
   1. Yes—all courts extend the strict liability of manufacturers and other sellers to injured bystanders (when the explosion of an automobile motor in traffic released a cloud of steam that blocked the view of other drivers, for example, the automobile manufacturer was held liable for the resulting multiple collisions).
8. **Other than immediate sellers and manufacturers, who may be subject to strict liability?** 
   1. The strict liability doctrine has been expanded to include suppliers of component parts. Strict liability for personal injuries caused by defective goods extends to lessors. (Some courts have held that a lease gives rise to a contractual implied warranty that the leased goods will be fit for the duration of the lease—for instance, if U-Haul leases a trailer that has been improperly maintained, which causes an accident in which the lessee is injured, the lessee can sue U-Haul).
9. **What distinguishes strict liability as a theory for recovery in a product liability case from other bases for recovery?** 
   1. Under the doctrine of strict liability, persons may be held liable for the results of their acts regardless of their intentions or their exercise of reasonable care—that is, regardless of fault. Liability does not depend on privity of contract, the injured party does not have to be a buyer or a third-party beneficiary (as required under contract warranty theory), and a plaintiff does not have to prove that there was a failure to exercise due care (as in a negligence suit).
10. **How defective must a product be to support a cause of action in strict liability in a product liability suit?** 
    1. Normally, a product must be so defective as to be unreasonably dangerous—either (1) the product was dangerous beyond the expectation of an ordinary consumer, or (2) a less dangerous alternative was economically feasible for the manufacturer, but the manufacturer failed to use it. The factors that a court will look at when considering whether a less dangerous alternative was economically feasible include the following: a product’s utility and desirability; the availability of safer products; dangers that have been identified before an injured user’s suit; the dangers’ obviousness; the normal expectation of danger, particularly for established products; the probability of injury and its likely seriousness; the avoidability of injury by care in the product’s use, including the contribution of instructions and warnings; and the viability of eliminating the danger without appreciably impairing the product’s function or making the product too expensive (eliminating the obvious danger in knives would make them useless, for instance, so a knife would not normally be considered unreasonably dangerous, but a lawnmower without a safety guard might be considered unreasonably dangerous, even with a warning label, in light of the likelihood and probable seriousness of injury, and the cost and effect of adding a guard).

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# Additional Activities and Assignments

1. **MindTap** – Why Does Strict Liability Matter to Me?
   1. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **MindTap** – Learn It: Illegal Cybersquatting; Learn It: Laws Protecting Copyrights in the Digital Age; Learn It: Social Media Effects on American Legal Processes
   1. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students’ comprehension of the topics. Consists of 2 multiple choice questions in each.
3. **MindTap** – Check Your Understanding: Laws Governing Whether Internet Service Providers are Liable for Online Defamatory Statements Made by Users.
   1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: When Law Protects A Person’s Electronic Communications from Being Intercepted or Accessed.
   1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Internet Law, Social Media, and Privacy
   1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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# Additional Resources

## Cengage Video Resource

* MindTap Quick Lesson Video:
  + Strict Product Liability. Duration 1:32 minutes.

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