



CLASS 11

TORTS AND PERSONAL INJURY

PRODUCT LIABILITY - NEGLIGENCE

- The same negligence rules apply when it comes to making a defective product as with ordinary negligence (duty, breach, causation, damages). Selling any unsafe product makes the seller or manufacturer liable.
- The duty applies to sellers as well as manufacturers of products.

PRODUCT LIABILITY - NEGLIGENCE (CONT.)

- Exceptions:
 - Does not apply to a **non-professional seller** (e.g., someone who resells her car) unless there is some reason why he or she is at fault.
 - **“Closed can” rule**: If the retailer had no access to the product at all, then only the manufacturer is liable
- The duty applies not just to direct buyers, but also to:
 - Buyers who receive it later in the chain of commerce
 - Foreseeable bystanders or “guest” users of the product
- Contributory negligence and assumption of risk rules apply!

THEORIES OF RECOVERY

- 1) Manufacture Defect:** This occurs when the product itself is defective because of the negligence of the manufacturer when building the specific item
 - Example: A mistake on the assembly line...

THEORIES OF RECOVERY (CONT.)

- 2) **Design Defect:** This occurs when the entire line of products is unsafe
- Example: A car is designed with a gas tank in a position that makes the car more likely to explode if the car is rear-ended
 - Exception: “unavoidably unsafe products”:
 - If a product is unsafe as designed, but serves a very important purpose (e.g., prescription drugs), a court might refuse to impose liability simply because the product is unsafe (unless it’s more unsafe than it has to be...)
 - Note, though, that there is a duty to warn for the maker or dispenser of a prescription drug
 - Exception: Inherently unsafe products (e.g., guns, tobacco...)

THEORIES OF RECOVERY (CONT.)

3) Failure to Warn: This occurs when the manufacturer or seller knows of a latent danger inherent in the product and fails to adequately warn the customer of the danger

– Should this apply to:

- Swimming pools?
- Hot coffee?

PRODUCT LIABILITY - BREACH OF WARRANTY

- **Express Warranty:**
 - If a claim is made by a manufacturer or retailer as to how a product will perform and it turns out not to work out that way, the party who made the claim is strictly liable for any resulting damage to any foreseeable injured party.
- **Implied Warranty of Merchantability:**
 - Even absent any warranty, it is automatically assumed that a product put into the stream of commerce will measure up to the standards of safety that are expected of products in commerce.

PRODUCT LIABILITY - BREACH OF WARRANTY (CONT.)

- **Implied Warranty for a Particular Purpose:**
 - If the seller knows that the buyer wants the product for a particular purpose and sells the product with that understanding, the product will be assumed to be fit for that purpose.
- **Endorsers:**
 - No liability for endorsing a product that turns out to be defective.



QUIZ TIME

STRICT PRODUCT LIABILITY

- This allows liability for manufacturing defects if the product is produced in a defective manner, even if it's done through no fault of the manufacturer.
- This does not apply to design defects. For design defects to apply, there must be no “reasonable alternative design”.
- Does not apply to failure to warn, because failing to warn is inherently negligent.

STRICT PRODUCT LIABILITY (CONT.)

- **Rationale:** Somebody has to take the loss from a defective product, and:
 - 1) The manufacturer is in the best position to prevent defects. Thus, by putting the burden on the manufacturer, it encourages the manufacturer to actively seek to prevent defects from occurring in the manufacturing process.
 - 2) The manufacturer can spread the cost of defects across society by raising prices to account for whatever liability there is, while the customer can't spread out the costs.
 - 3) (The manufacturer won't necessarily be hurt by this in business because the whole industry will have to raise prices to account for unavoidable liability that comes from non-negligent defects.)