

STRICT LIABILITY

Abnormally Dangerous Activities

1. Flammable Products
2. Blasting
3. Crop Dusting

* One who engages in abnormally dangerous activities is subject to strict liability *regardless* of exercising the utmost care to prevent the injury.

* There is no balancing of utility and risk where ultra-hazardous activities are involved.

* The injury must be foreseeable.

Animals

* Housing wild animals attaches strict liability.

Exception: Trespassers may not recover in strict liability, but may recover in negligence, **where the land owner knows of their presence and fails to post warnings.**

Defenses

* Assumption of Risk bars the Plaintiff's recovery in strict liability.

* Contributory Negligence of the Plaintiff is **not** a defense in strict liability actions.

Products Liability

* The product had an unreasonably dangerous defect when it left the Defendant's control.

* One who puts out as his own product, as a chattel manufactured by another, is subject to the same liability (i.e. strict liability) as though he were its manufacturer. Thus, one puts out a chattel (as his own product) when he promotes or advertises it under his name or affixes to it his trade name or trademark. When such identification is referred to as an indication of the quality or wholesomeness of the chattel, there is an *added emphasis* that the user can rely upon the reputation of the person so identified.

* One who sells any product in a defective condition, that is *unreasonably* dangerous to the user or consumer or to his property, is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, **if**

1. The seller is engaged in the business of selling such a product; *and*

2. It is expected to (or does) reach the user or consumer without substantial change in the condition in which it is sold.

* This rule continues to apply when-

1. The seller has exercised all possible care in the preparation and sale of his product; **and**

2. The user or consumer has *not* bought the product from, or entered into any contractual relation, with the seller.

There is no Statute of Limitations on manufacturer defects. It must be proven that the item was defective when it entered the stream of commerce (when it was sold).

Application of Rule

* *Occasional* sellers, and those supplying services, **cannot** be strictly liable, but can be sued in negligence.

Potential Plaintiffs

* Privity between the Plaintiff and the seller is **not** required in strict liability or negligence actions.

* Users, consumers, and purchasers all protected.

* Bystanders are allowed to sue if they are injured as well.

* Protects rescuers where defective products threaten injury.

Specific Areas

* Misuse of a product is no defense to strict liability where the misuse is foreseeable. The misuse must be 'unforeseeable'.

* The failure to warn, or give adequate directions, involving an unreasonably dangerous product may provide grounds for strict liability even where the product is not defective. Use of warnings does not prevent a product from being characterized as unreasonably dangerous.

* Unavoidably unsafe products (avoidably safe products), such as knives and certain drugs, are **not** unreasonably dangerous.

* Use of disclaimers will not avert liability in strict liability or negligence actions.

* A seller is **not** required to warn with respect to products which are only dangerous when consumed in excessive quantity when the danger is known to the members of the general public. **Example:** Alcohol

* Damages for personal injury and property damage are recoverable, yet not 'consequential' losses- such as economic loss for injury to an employee.

* **Consumer Contemplation Tests:** Any foreseeable or ordinary user of a defectively and dangerous product may recover for strict liability.