

Products Liability



Torts

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Important note:

Products Liability

There are three paths to products liability
(a plaintiff can use any or all).

- **Strict products liability**
 - *Our current topic*
- **Negligence**
 - *We already covered this*
- **Breach of warranty (UCC Article 2)**
 - *Not covered in this course*

Negligence

- Duty of care owed to plaintiff
- Breach of duty
- Actual causation
- Proximate causation
- Injury (Damages)

STRICT LIABILITY

- Duty of care owed to plaintiff
- Absolute duty of safety**
- Actual causation
- Proximate causation
- Injury (Damages)

Strict Products Liability

- **sold or supplied product** iff

- **defect exists**

- Actual causation
- Proximate causation
- Injury (Damages)

sold or supplied product

- manufacturer
- wholesaler
- retailer
- *anywhere in the vertical distribution chain suffices*
- *but casual sellers are not included*

sold or supplied

??????

a local car dealer, for a car it sold

- yes

an American subsidiary of an overseas automaker, where the subsidiary buys cars from the maker and sells them to local dealers, for a car ultimately sold to a consumer

- yes

your neighbor running a garage sale, for a used blender sold to a random person

- no

a consumer website that recommended a model of washing machine, for that washing machine

- no

product

- a tangible item created by humans to be commercially sold distributed
 - includes food
 - even served in a restaurant!

product

???????

an automobile

- yes

a portable space heater

- yes

a cup of coffee at the donut shop

- yes

life insurance

- no

carpeting installed in your home

- yes

kinds of

defect

- manufacturing defects
- design defects
- warning defects

courts use various tests to determine
whether a product is truly defective ...

A graphic consisting of a red rounded rectangle. Inside, the word 'tests' is written in white, italicized, sans-serif font on a red pill-shaped background. To the right, the word 'defect' is written in a large, bold, red, sans-serif font.

tests

defect

- **consumer expectations test**
 - esp. for manufacturing and design defects
- **risk-utility test**
 - esp. for design defects
- **reasonable under circumstances to avoid danger**
 - esp. for warning defects