

## 5.4: Strict Liability

Intentional torts require some level of intent to be committed, such as the intent to batter someone. Negligence torts require carelessness or neglect. Some torts require neither intent nor carelessness. In strict liability, it is irrelevant how carefully the defendant acted. If someone is harmed in a situation where strict liability applies, then the defendant is liable regardless of lack of intent.

Strict liability applies when restaurants and bars serve alcohol to minors or visibly intoxicated persons. This is dangerous because there is a high risk that drunk patrons will injure others if they drive. Sale of tobacco and firearms to minors are also strict liability crimes, as well as possession of child pornography.

### Ultraazardous Activity

An **ultrahazardous activity** is an undertaking that cannot be performed safely even if reasonable care is used while performing it, and it does not ordinarily happen in the community. Ultrahazardous activities include using dynamite, transporting dangerous chemicals, keeping wild animals, and using nuclear and radioactive materials. Some states have passed laws defining offshore drilling for oil and gas as an ultrahazardous activity as well.

Defendants engaged in ultrahazardous activities are almost always liable for resulting harm. Plaintiffs do not have to prove duty of care or breach of duty of care. The “reasonable person” test is also irrelevant, as well as the issue of whether the harm was foreseeable.

### Product Liability

**Product liability** cases address situations in which products, not people, cause injury. Plaintiffs can raise either negligence or strict liability claims for injuries caused by products. There are three main product liability theories: design defect, manufacturing defects, and failure to warn.

**Design defects** occur when the foreseeable risk of harm can be reduced or avoided by the adoption of a reasonable alternative design. In other words, the manufacturer poorly designed a product that caused injuries which could have been avoided. The law does not require products to be perfect. Litigation in these cases centers on what is a foreseeable risk and whether there was a reasonable alternative. As a result, plaintiffs must show that an alternative design was reasonable.

For example, Takata manufactured airbags that were installed by most major car manufacturers. After many airbags failed to deploy in car accidents, leading to severe injury and death, Takata recalled its airbags. Takata is strictly liable for injuries caused by its defective design.

**Manufacturing defects** occur when a product fails to conform to the manufacturer’s design for the product. In other words, the product may have been designed adequately but the manufacturer allowed a dangerous product to leave the plant. These claims often involve allegations of failure to adequately inspect products before distribution.

For example, a light bulb factory is strictly liable for manufacturing a batch of faulty bulbs that explode when turned on due to some glitch in the production process.

**Failure to warn** occurs when the defect is not in the product itself but in the instructions (or lack of them). The plaintiff argues that the manufacturer failed to warn users about the dangers of normal use or a foreseeable misuse. However, there is no duty to warn about obvious dangers.

### Defenses to Product Liability

There are several defenses to product liability claims.

First, strict liability applies only to commercial sellers. If an individual sells her car to another person, she would not be strictly liable for selling an unreasonably dangerous product if it had Takata airbags.

Second, plaintiff’s assumption of risk can be a defense. The user must know of the risk of harm and voluntarily assume that risk. Someone cutting carrots with a sharp knife voluntarily assumes the risk of being cut by the knife. However, if the knife blade unexpectedly detaches from the knife handle because of a design or production defect, no assumption of risk occurs.

Third, product misuse is another defense to strict product liability. If the consumer misuses the product in a way that is unforeseeable by the manufacturer, then strict liability does not apply. Modifying a lawn mower to operate as a go-kart, for instance, is product misuse.

A final related defense is known as the commonly known danger doctrine. If a manufacturer can convince a jury that the plaintiff's injury resulted from a commonly known danger, then the defendant may escape liability.

---

This page titled [5.4: Strict Liability](#) is shared under a [CC BY 4.0](#) license and was authored, remixed, and/or curated by [Matthew L. Mac Kelly](#) via [source content](#) that was edited to the style and standards of the LibreTexts platform.

- **9: Torts** by [Melissa Randall and Community College of Denver Students](#) is licensed [CC BY 4.0](#). Original source: <https://introductiontobusinesslaw.pressbooks.com>.