

## 13.10: Product Liability

### Learning Objectives

- Explain the three major bases for product liability claims

When a tort or harm is caused by a product, the legal question is whether there is a product defect and, therefore, product liability. Manufacturers have a responsibility to produce products that are reasonably safe in both their intended and anticipated uses.

In pursuing a product liability case based on negligence, plaintiffs generally claim one of the following:

1. **Design defects.** In this case, the buyer/plaintiff claims the manufacturer's design is inherently dangerous or defective.
2. **Manufacturing defects.** In this situation, the defect is not the design, but rather a failure in the manufacturing and/or quality control process.
3. **Failure-to-warn defects.** In this case, the plaintiff is claiming "failure to warn"; that is, the manufacturer failed to provide adequate instructions regarding the product's use or warn the buyer of potential danger of misuse.

As an alternative (or in addition to) filing a claim based on negligence, an injured party can file a tort claim against the product manufacturer or retailer based on strict liability. The key difference between the two bases is that in a strict product liability case, the buyer doesn't need to prove that the manufacturer or seller's conduct was unreasonable. The plaintiff only needs to demonstrate that the defendant manufactured or sold a product that was defective and that the defect caused him or her harm. Three key points to note:

- The seller of a defective product is only subject to liability for harm if normally engaged in the business of selling this type of product.
- The defendant (manufacturer or seller) is liable only if the product is defective; that is, the product was defective when purchased by the consumer and the defect wasn't caused by a buyer's misuse of or substantial change to the product.
- In a strict liability case, "privity"—a contractual relationship—is not required. That is, a consumer can sue the manufacturer, distributor and retail store, even though privity only exists between the buyer and the entity that he or she actually purchased the product from.

To reinforce, whether a manufacturer or seller exercised due care is irrelevant. If the product is defective and injures the consumer, the seller is liable regardless of whether reasonable care was taken in the design, manufacture and throughout the distribution process.

### Practice Question

<https://assessments.lumenlearning.co...essments/14337>

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