



# Products Liability

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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**

- ?
- ?
- ?
- ?
- ?

## **Negligence**

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

## Strict Products Liability

• **sold or supplied product**

iff

• **defect exists**

- Actual causation
- Proximate causation
- Injury (Damages)

## Strict Products Liability

• **sold or supplied product**

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• **defect exists**

- Act
- Proximate causat
- Injury (Damages)

**“Unchanged condition”?**

This issue is covered in upcoming slides ...

## Strict Products Liability



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- Actual causation
- Proximate causation
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**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

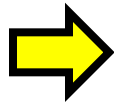
carpeting installed in your home

- yes

## Strict Products Liability

• **sold or supplied product**

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• **defect exists**

- Actual causation
- Proximate causation
- Injury (Damages)

## **defect exists**

### **What's a defect?**

It's something that makes the product **unreasonably dangerous** to the user/consumer (including their property).

## **defect exists**

Some key issues to consider:

- How to classify the defect?
- Is a relevant test satisfied for the existence of defect?
- Did the product reach the defendant in essentially unchanged condition?



## **defect exists**

Issues to consider:

- **How to classify the defect?**
  - E.g., manufacturing, design, warning
  - As a conceptual matter, classifying the defect shouldn't be necessary to deciding whether a good claim exists, but some courts may expect it, and it may help in understanding what test can be used.
- **Is a relevant test satisfied for the existence of defect?**
  - E.g., consumer-expectations, risk-utility
- **Did the product reach the defendant in essentially unchanged condition?**
  - Some courts use this as an element. It's not conceptually crucial to the products liability concept, but where considered an element, it may help the defendant.

## **defect exists**

- **Is a relevant test satisfied for the existence of a defect?**
  - Different courts may recognize or require different tests.
  - But the straightforward regular approach would be that the plaintiff can choose any relevant test, and so long as that test is satisfied, the plaintiff has proven the existence of a product defect.

## defect exists

- Did the product reach the defendant in essentially unchanged condition?
  - Some courts list this as a separate element.
  - In my view, f.w.i.w., listing this as an element is needless.
  - It is true that the defect must have existed in the product when the product was sold or supplied by the defendant for the defendant to be liable. That's properly considered part of the "defect exists" element.
  - It is also true that if someone modified the product such that it was the modification and not the defect that injured the plaintiff, then that's an issue for causation (actual or proximate, as appropriate).

## defect exists

- Did the product reach the defendant in essentially unchanged condition? (*continued*)
  - Where included as a separate element, "reached the plaintiff in essentially unchanged condition" might give the defendant a way to win that has nothing to do with whether the defect existed at the time of defendant's supply or with causation. (See, e.g., *Lakey v. Sta-Rite.*)
  - Either way - whether you think of this as a separate element or a possible issue under the elements of existence of a defect, actual causation, and proximate causation, it's a question you should think about when you analyze a potential product defect claim.

## **defect exists**

- How to classify the defect?
  - E.g., manufacturing, design, warning
  - In analyzing a product defect claim, it's a good idea to try to determine how to categorize the defect involved (or defects, if more than one).
  - As a conceptual matter, classifying the defect in this way shouldn't be necessary to deciding whether a good claim exists, but some courts may expect it, and it can be helpful in understanding what tests can be used.

## **defect exists**

### **kinds of**

## **defect**

- manufacturing defects
- design defects
- warning defects

**defect exists**

**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

**example**

**Takata airbags**

## **Strict Products Liability**

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# **example**

## **Takata airbags**

Is there a good claim for strict products liability?

- A. Yes
- B. No

## Strict Products Liability

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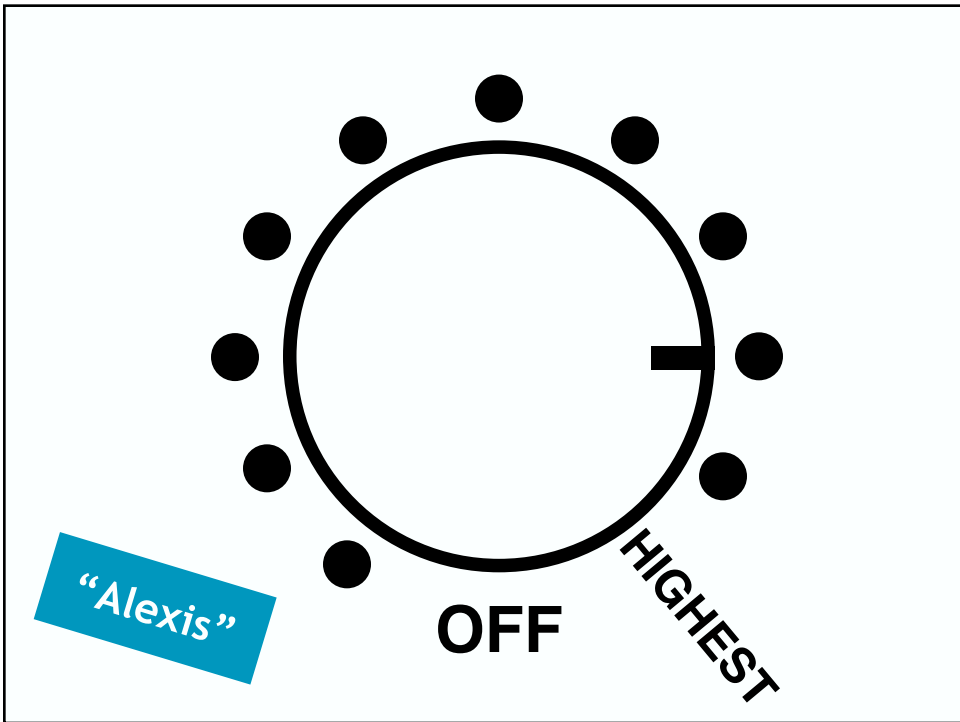
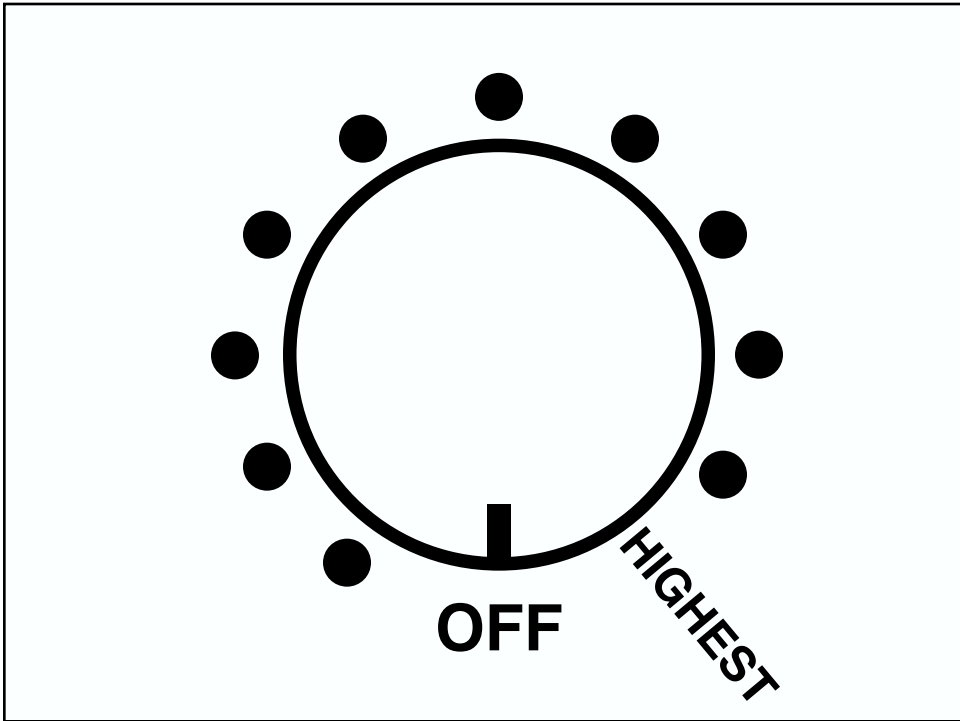
iff

• **defect exists**

- Actual causation
- Proximate causation
- Injury (Damages)

Tomorrow  
Temp 

**HOME  
HANGAR**



WARNING: EXTREMELY HOT WATER CAN BURN.

