

Products Liability

by Sophia



WHAT'S COVERED

In this lesson, you will learn more about the remedies available when a defective product causes personal injury or other damages. Specifically, this lesson will cover:

1. Origin of Products-Liability Law

It's first important to note that products liability describes a type of claim, not a separate theory of liability. Products liability has strong emotional overtones— ranging from the pro-litigation position of consumer advocates to the conservative perspective of the manufacturers.

The theory of *caveat emptor* - let the buyer beware - that pretty much governed consumer law from the early eighteenth century until the early twentieth century made some sense at the time.

IN CONTEXT

A horse-drawn buggy is a fairly simple device: Its workings are apparent; a person of average experience in the 1870s would know whether it was constructed well and made of the proper woods. Most foodstuffs 150 years ago were grown at home and “put up” in the home kitchen or bought in bulk from a local grocer, subject to inspection and sampling; people made home remedies for coughs and colds and made many of their own clothes. Houses and furnishings were built of wood, stone, glass, and plaster— familiar substances. Entertainment was a book or a piano.

The state of technology was such that the things consumed were, for the most part, comprehensible and locally made, which meant that the consumer who suffered damages from a defective product could confront the product's maker directly. Local reputation is a powerful influence on behavior.



TERM TO KNOW

Caveat Emptor

Meaning "buyer beware" in Latin, a term that describes a relaxed attitude characteristic of earlier times before product liability lawsuits and consumer protection measures became a major means of ensuring consumer product safety.

2. Cost of Free Enterprise

The free enterprise system confers great benefits, and no one can deny that. Modern life comes with a cost, and the fundamental political issue always is "Who has to pay?"

When the true cost of some money-making enterprise (e.g., cigarettes) becomes inescapably apparent, there are two possibilities. First, the legislature can in some way mandate that the manufacturer itself pay the cost; with the meatpacking plants, that would be the imposition of sanitary food-processing standards. Typically, Congress creates an administrative agency and gives the agency some marching orders, and then the agency crafts regulations dictating as many industry-wide reform measures as are politically possible.

Second, the people who incur damages from the product either suffer and die, or access the machinery of the legal system and sue the manufacturer. If plaintiffs win enough lawsuits, the manufacturer's insurance company raises rates, forcing reform (as with high-powered muscle cars in the 1970s); the business goes bankrupt; or the legislature is pressured to act, either for the consumer or for the manufacturer.

Thus, for all the talk about the need for tort reform, the courts play a vital role in policing the free enterprise system by adjudicating how the true costs of modern consumer culture are allocated.

IN CONTEXT

Obviously, conditions have improved enormously in a century, but one does not have to look very far to find terrible problems today. Consider the following, which occurred in 2009–10:

1. In the United States, Toyota recalled 412,000 passenger cars, mostly the Avalon model, for steering problems that reportedly led to three accidents.
2. Portable baby recliners that are supposed to help fussy babies sleep better were recalled after the death of an infant. The Consumer Product Safety Commission announced the recall of 30,000 Nap Nanny recliners made by Baby Matters of Berwyn, Pennsylvania.
3. More than 70,000 children and teens go to the emergency room each year for injuries and complications from medical devices. Contact lenses are the leading culprit, the first detailed national estimate suggests.
4. Smith and Noble recalled 1.3 million Roman shades and roller shades after a child was nearly strangled. The Consumer Product Safety Commission reported a five-year-old boy in Tacoma, Washington was entangled in the cord of a roller shade in May 2009.
5. The Consumer Product Safety Commission reported that 4,521 people were killed in the United States in consumer-product-related incidences in 2009, and millions of people visited hospital emergency rooms from consumer-product-related injuries.
6. Reports about the possibility that cell phone use causes brain cancer continue to be hotly debated. Critics suggest that the studies minimizing the risk were paid for by cell-phone manufacturers.

Products liability can thus be a life-or-death matter from the manufacturer's perspective.

3. Current State of the Law

Here, we examine the legal theories that underlie products-liability cases that developed rapidly in the twentieth century to address the problems of product-caused damages and injuries in an industrial society.

In the typical products-liability case, three legal theories are asserted—a contract theory and two tort theories. The contract theory is **warranty**, governed by the UCC, and the two tort theories are negligence and strict products liability, governed by the common law.

Contract	Tort
<i>Warranty</i> 1. Express 2. Implied a. Merchantability b. Fitness for a Particular Purpose	<i>Strict Liability</i> <i>Negligence</i>



TERMS TO KNOW

Warranty

A contract initiated by a seller of goods guaranteeing a product's quality.

Express Warranty

A warranty that is expressed orally or in writing.

Implied Warranty

A warranty that is implied in law such as the implied warranty of merchantability or the implied warranty of fitness for a particular purpose.

Implied Warranty of Merchantability

A warranty implied by law that, absent a lawful exclusion or waiver, promises that goods meet their description in the trade; are fit for ordinary purposes; are adequately contained, packaged, and labeled; and conform to the promises made on such packages and labels. Defective goods are in breach of this implied warranty.

Implied Warranty of Fitness for a Particular Purpose

A warranty implied by law when the retailer, distributor, or manufacturer has reason to know any particular purpose for which consumer goods are required, and that the buyer is relying on the skill and judgment of the seller; there is an implied promise that the goods are fit for such use.



SUMMARY

In this lesson, you learned that **products-liability law originated** in shifting economic conditions that moved consumer law away from a tradition of *caveat emptor*. As products became increasingly sophisticated and potentially dangerous in the twentieth century, and as the separation between production and consumption widened, products liability became a very important issue for both consumers and manufacturers.

Millions of people every year are adversely affected by defective products, and manufacturers and sellers pay huge amounts for products-liability insurance and damages. This **cost of free enterprise** is adjudicated in the court system. The **current state of the law** provides a means for recovery for products-liability damages based on three legal theories: warranty, strict liability, and negligence.

Best of luck in your learning!

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