

# Product Liability

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# Introduction

When a person is injured by a defective product that is unreasonably dangerous or unsafe, the injured person may have a claim or cause of action against the person/company that designed, manufactured, sold, distributed, leased, or furnished the product. In other words, such person may be liable to the person for his injuries and, as a result, may be required to pay for his damages. That, in short, is product liability; and, the law that governs this kind of liability is referred to as product liability law.

# What is Product Liability?

Product liability is the branch of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause. Although the word "product" has broad connotations, product liability as an area of law is traditionally limited to products in the form of tangible personal property.

## Historical Evolution of Product Liability as a Civil Liability.

- Era of the Doctrine of Privity - which states that an injured person can sue the negligent person only if he or she was a party to the transaction with the injured person.
- Erosion/Dilution of the doctrine of privity by way of a plethora of judicial pronouncements declaring many exceptions to the doctrine of privity.
- Position of law that “a concealed defect coupled with some sort of ‘invitation’ by the defendant to use the product was enough to establish liability.
- Rise of the doctrine of strict liability.

## **Predominantly there are three major types of product liability claims:**

- Manufacturing defect,
- Design defect,
- Marketing defects (Eg:- failure to warn).

## Three Theories based on which a product liability claim may be raised

- Negligence.
- Breach of warranty,
  - A. express warranty.
  - B. implied warranty.
    - a. of merchantability.
    - b. of fitness for a particular purpose.
- Strict tort liability

# Various Defenses to Product Liability

- Statute of Limitations.
- Unavoidable Danger.
- Contributory Negligence.
  - a. Assumption of Risk.
  - b. Misuse
  - c. Alteration
- Intervening or Superseding Negligence.
- Failure to Mitigate.



# Various Remedies for Product Liability

- Damages
  1. Compensatory Damages.
    - a. Special or Economic Damages
    - b. General or Non-economic Damages
  2. Punitive Damages.

# Laws Governing Product Liability in India

- General Statutes prescribing Civil Liability.
- Special Statutes pertaining to specific goods prescribing liability.
- Statutes prescribing Criminal Liability.
- Law of Torts.

## **General Statutes prescribing Civil Liability.**

1. The Consumer Protection Act, 1986.
2. The Sale of Goods Act, 1930.
3. The Monopolies and Restrictive Trade Practices Act, 1969.

## **Special Statutes Pertaining to Specific Goods prescribing liability**

- The Food Adulteration Act, 1954.
- The Food Safety and Standards Act, 2006.
- The Drugs and Cosmetics Act, 1940.
- The Indian Penal Code , 1860.
- The Standards of Weights and Measures Act, 1956.
- The Bureau of Indian Standards Act, 1986.
- The Agricultural Produce (Grading and Marking ) Act, 1937 - For marking and grading of commodities like vegetables, butter etc.
- Indian Standards Institution (Certification Marks ) Act, 1952 - To formulate a number of standards for different products by ISI.

# Statutes prescribing Criminal Liability.

- Indian Penal Code, 1860.
- Criminal Procedure Code, 1973.
- Standards of Weights and Measures Act, 1976.
- The Drugs and Cosmetic Act, 1940.

## The Law of Torts.

A claim under the Product Liability shall also lie where there is an element of negligence as enunciated in the Law of Torts.

For the Plaintiff to make a successful claim , it must be proved that:-

1. The defendant owed a duty to take care.
2. A breach of such duty.
3. Plaintiff suffered loss or injury as a result of such breach.
4. The plaintiff is entitled to damages.

## Case Laws Illustrating Product Liability.

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- Uma Deepak V Maruti Udyog Ltd & Others (2003)CPJ 90 (MRTP).
- Wheels World V Pradeep Kumar Khurana MANU/CF/0280/2002.

## Conclusion

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In India, the laws governing Product Liability has made the legal system more strong. The Judiciary has helped to bring the concept of Product Liability within our reach. It makes the producer more careful to save us from consumption of defective goods and services.





*THANK YOU!*