

Other

1. Strict Liability

a. Abnormally Dangerous Activities

i. Generally

A defendant is held strictly liable for injuries to others caused by the activity.

ii. Restatement (Second) Approach

1) Multi-Factor Test -- The RST 2nd uses a multi-factor test:

- ★ a) Existence of a high degree of risk of some harm to the person, land or chattels of others;
- ★ b) Likelihood that the harm that results from it will be great;
- ★ c) Inability to eliminate the risk by the exercise of reasonable care; (<--- many courts treat this as a requirement)
- ★ d) Extent to which the activity is not a matter of common usage;
- e) Inappropriateness of the activity to the place where it is carried on; and
- f) Extent to which its value to the community is outweighed by its dangerous attributes.

iii. Restatement (Third) Approach

1) Two Prong Test:

- a) The activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; **AND**
- b) The activity is not one of common usage.

Note: DON'T FORGET ---> Still need to prove cause in fact and proximate cause.

iv. Defenses

1) Negligent Plaintiff

- a) Traditional View -- Plaintiff's liability is no defense
 - i) *Exception* -- If plaintiff voluntarily assumed the risk
- b) Modern View -- Plaintiff's share is reduced by her share of the negligence.

b. Basics

i. Abnormally Dangerous Activities

Three criteria--

- 1) **Cannot be made safe**
- 2) **Poses a severe risk of harm**
- 3) **Uncommon where it is being conducted**

Note: Limited to the kind of harm that makes the activity ultra-hazardous.

2. Products Liability

Note: Often there can also be a cause of action for negligence.

a. Restatement 2nd Approach (§402A)

i. One who sells (or anyone engaged in the business of sale -- occasional sellers excluded) any product in a defective condition unreasonably dangerous is held strictly liable for the harm or injury that that product causes if --

- 1) The seller is engaged in the business of selling such a product, **AND**
- 2) It is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

ii. The rule stated in subsection (i) applies although:

- 1) The seller has exercised all possible care in the preparation and sale of his product, **AND**
- 2) The user or consumer has not bought the product from or entered into any contractual relation with the seller.

b. Restatement 3rd Approach

i. Three Conditions

- 1) Manufacturing Defect -- Product departs from its intended design -- even though all possible care was taken in its production.
- 2) Defective in Design -- foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller (or anyone else in the commercial chain)
- 3) Inadequate Instructions or Warnings -- when foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller (or anyone else in the commercial chain)

c. THE BASICS -- KISS

i. Product is Defective

- 1) Manufacturing Defect -- Has a production flaw
- 2) Design Defect -- There must be an alternative design that is:
 - a) *Safer*
 - b) *Cost Effective*
 - c) *Practical* -- doesn't undermine core utility.
- 3) Instructions and Warnings -- If you can't make a product any safer --> put a warning on it.

ii. Foreseeable Use -- *Any use* of a product, proper or improper (ie misuse is no defense).

iii. Damages -- only personal injury or property damage.