

# HOW TO ORGANIZE A PRODUCTS LIABILITY ANSWER

## I THE THEORIES OF PRODUCTS LIABILITY ARE:

1. Strict Liability
2. Negligence
3. If appropriate, consider
  - a. **Battery**- Defendant knew about the danger when the product was sold.
  - b. **Intentional Misrepresentation**- Defendant lied about safety.
  - c. **Breach of warranty:**  
Modernly, seldom used because nowadays the suit is essentially the same as the strict liability suit. However, it uses the contracts statute of limitations which is usually longer, and one can recover for economic loss (such as loss of use) if it was foreseeable under Hadley v. Baxendale (Economic loss must be foreseeable by the defendant at formation of K). These are not recoverable in strict liab.

## II STRICT LIABILITY

### The Prima Facia Case for Strict Liability for a Defective Product has Six Parts:

- M 1. **Merchant**- Defendant was a merchant (in these kind of goods)
- A 2. **Altered - Product was not altered** after product left the defendant's control
- D 3. **Defective**- The product was defective- Use the **3<sup>rd</sup> Restatement Sec 1 &2.:**
  - a. The 3<sup>rd</sup> Rest. defines three three kinds of defects:
    - (1) **Manufacturing defect** -Product was not manufactured as designed.
    - (2) **Design Defect** – A Reasonable Alternative Design (**RAD**) does exist, and failure to use it made the product **NOT REASONABLY SAFE.**
    - (3) **Inadequate Instructions or Warnings**- Failure to provide adequate instructions or warnings made the product **NOT REASONABLY SAFE.**
- F 4. **Foreseeable** use by plaintiff
- A 5. **Actual and Proximate cause**- Defect must cause plaintiff's injuries
- D 6. **Damages**- Some damages are not recoverable; what about these?

### Defenses

- Defense of contributory negligence
- Defense of comparative negligence
- Defense of assumption of the risk
- Defense that release of one defendant releases all defendants
- Statue of Limitations

## III NEGLIGENCE

1. Duty
2. Breach
3. Actual Cause
4. Proximate Cause
5. Damages
6. Defenses