

Products Liability

Strict Liability Recap

Limits on Strict Liability

Fletcher v. Rylands

--- PWFOPBOHL&C&KTALDMIIE

Rylands v. Fletcher

--- PWFOPBOHL&C&KTA “non-natural” and LDMIIE

First Restatement

--- “ultrahazardous activity”

Second Restatement

--- “abnormally dangerous activity”

Indiana Harbor Belt v. *American Cyanamid*

Strict liability applies for behavior that is:

- Very risky and that risk cannot be eliminated at reasonable cost

AND

- Not susceptible to due care analysis

Tort law is the law of
negligence.

Strict liability is the law of tort law when negligence fails.

MacPherson v. Buick Motor Co.



MacPherson v. Buick Motor Co.

Escola v. Coca Cola

**Activism
in Pursuit
of the
Public Interest:**

**The
Jurisprudence of
Chief Justice**

ROGER J. TRAYNOR



BEN FIELD

Escola v. Coca Cola

Tort Law Values

Era	Philosophy	Primary Goal	Concern
Classical	Corrective justice	Individual accountability	Autonomy
New Deal	Political Economy	Distributive justice	Power
Neoliberal	Economics	Maximize utility	Efficiency

Rationale

Power dynamics

Cost spreading / insurance

Deterrence

Extensions of Liability

Plaintiffs: Not just consumers but bystanders.

Defendants: Not just manufacturers but retailers.

Defect Requirement

Products Liability

- Manufacturing defects
- Design defects
- Instructions and warnings

Manufacturing Defects

Design Defects

Barker v. Lull Engineering

Two tests:

- 1) Consumer expectations
- 2) Excessive preventable danger

Soule v. General Motors

**When does the consumer
expectations test apply?**

Not at all clear!

It depends upon the “everyday experience of the product’s users”

~~1) Consumer expectations~~

2) Excessive preventable danger

“Reasonable *Alternative* Design”

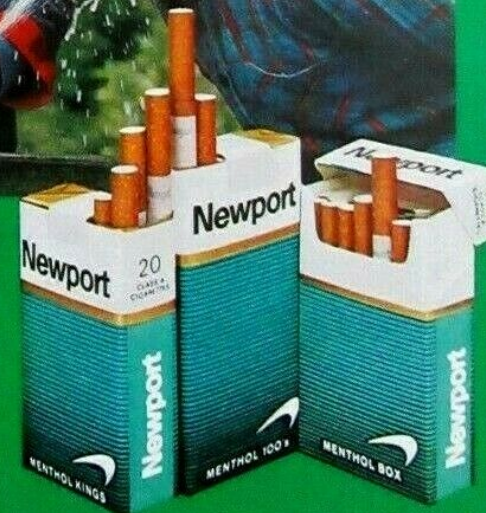


© Lorillard, U.S.A., 1979

Alive with pleasure! **Newport**



*After all, if smoking
isn't a pleasure,
why bother?*



Warning: The Surgeon General Has Determined
That Cigarette Smoking Is Dangerous to Your Health.

Box: 17 mg. "tar", 1.2 mg. nicotine av. per cigarette. Kings: 18 mg. "tar", 1.3 mg. nicotine av. per cigarette. 100's: 19 mg. "tar", 1.4 mg. nicotine av. per cigarette. FTC Report May 1978.



Warnings

Products Liability Claims

1. ??????????????????

2. ??????????????????

3. ??????????????????

Products Liability Claims

1. Manufacturing Defects

2. Design Defects

3. Failure to Warn

Elements of a Claim

Negligence

- Duty
- Breach
- Causation
- Harm

Strict Liability

- Defendant was engaged in the kind of activity where strict liability applies
- Causation
- Harm

Products Liability

- Defect
- Causation
- Harm

Speller v. Sears, Roebuck & Co.

“Refrigerator Fire”

Warnings

What are our concerns with the effectiveness of warnings and warning labels?

- Clarity of labels
- Too much text
- Level of detail related to the possible harm
- Language and legalese / What languages?
- Location of label
- Overwarning
- Color and font, visibility

Hood v. Ryobi American Corp.

Couple nuances

“Heeding Presumption”

Warnings can’t overcome design defects

**How can you defend against a
strict liability or products liability
claim?**

Plaintiff's failure to discover a defect

Restatement (Second) of Torts

Contributory negligence of the plaintiff is not a defense when such negligence consists merely in a failure to discover the defect in the product, or to guard against the possibility of its existence.

Restatement Third

[W]hen the defendant claims that the plaintiff failed to discover a defect, there must be evidence that the plaintiff's conduct in failing to discover a defect did, in fact, fail to meet a standard of reasonable care. In general, a plaintiff has no reason to expect that a new product contains a defect and would have little reason to be on guard to discover it.

**Comparative Responsibility is
Hard**

