

Strict liability in business law

[Law](#), [Contract Law](#)



The American common law adopted the concept of strict liability in early 1960's. They began to adopt the view that the sellers should bear the cost of injuries or defects in their products as they are in the best position to distinguish the risks associated with their products. The courts of modern times also provide the sellers the indisputable liability for their defective products without the negligence or fault on the part of the seller. The American law institutes call for the various state law departments to recapitulate the developments in strict liability in Section 402A of the Restatement (Second) of Torts in 1977.

In 1997 ALI approved the Restatement (Third) of Torts products liability, which expands the general language of Section 402A into over 20 different sections addressing specific applications of the strict liability ground for recovery. In 1999, the ALI approved Restatement the apportionment of Liability, completely succeeding and expanding upon comparable provisions of Restatement (Second) of Torts. This Restatement gives paramount importance to the principles of law governing apportionment as liability in cases where there are multiple actors who may have differing degrees of liability.

(1)The application of strict liability is important in various segments of business law. Here we shall discuss the scope of strict liability, its essentials and exceptions etc. Moreover we shall try to explore the relationship and contrast of the strict liability with other dimensions in the business law like Rule in Rylands Vs Fletcher, mens rea, negligence, product liability and contract.

Introduction

“ He can excuse himself by showing that the escape was owing to plaintiff's default; but as nothing of this sort exists here, it is unnecessary to inquire to what excuse would be sufficient. - Blackburn J Sec. 402A of Restatement (Second) of Torts, 1977 enunciates that seller of any defective product which is unreasonably dangerous to the user or consumer is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

It does not matter that the seller has exercised all possible care in the preparation and sale of his product; and the user or consumer has not bought the product from or entered into any contractual relation with the seller. Moreover the claim under rule of strict liability can be made against Property damage, Compensation for wrongful death, Physical and mental pain and suffering Loss of consortium for loss of love and affection, Past, present and future medical bills and Lost past and future wages.

Definition

Strict liability is a legal doctrine that makes some persons responsible for damages their actions or products cause, regardless of any " fault" on their part. There are situations when a person may be liable for some harm even though he is not negligent in causing the same or there is no intention to cause the harm or sometimes he may even have made some positive efforts to avert the same. In other words the law recognizes such type Strict Liability 3 of “ no fault “ liability. (Salmond, 1996)(2)The liability arises when a person

or company sells a defective product which is unreasonable and dangerous to the user.

The defect may in the products design or manufacturing, in the instructions or warning necessary for the product's safety or in the container or packaging. The main feature of this aspect is, here the injured is excluded from proving the negligence of seller. Scope Generally our legal system typically imposes liability for money damages only upon a showing that a person was negligent (i. e., failed to use due care) or somehow intended to bring about an injury or damage to another. There are cases, however, where a defaulter can be held responsible for an injury even where no negligence or evil intent can be shown.

The doctrine of strict liability imposes legal responsibility for injuries sustained by or as a result of an actor's conduct, whether or not the actor used reasonable care and regardless of the actor's state of mind. Strict liability cases are limited to certain narrowly-defined areas of the law, including products liability, ultrahazardous activities, care of animals and certain statutory offenses. (Faegre & Benson, 2003) (3) The rule of strict liability is mainly attributed to rule in Rylands Vs Fletcher (4) in which the House of Lords well-founded the principle of as strict liability.

In this case, the defendant got a reservoir constructed through independent contractors, over his land for providing water to his mill.

There were old disused shafts under the site of the reservoir, which the contractors failed to observe and so did not block them. When the water was filled in the reservoir, it burst through the shafts and the plaintiff's cold

mines on the adjoining land. The defendants did not know the shafts and had not been negligent although the independent contractors had been. In this case the court found that even if the defendant was not negligent or rather, even if the defendant did not intentionally cause the harm or he was careful, he could still be made liable under the rule.

The defendant may excuse himself by showing that the occurrence was owing to the plaintiff's default or that was the consequence of vis major or the act of God. But in this case the court firmly asserts that it is unnecessary to inquire what excuse would be sufficient. Normally in these cases, the liability arises not because there was any fault or negligence on the part of persons, but because he kept such defective products and the same was caused some sort of personal damage to another. In *Smedley's Vs Breed*, (5) a large manufacturing company of tinned peas was convicted as there found the carcass of a caterpillar.

On dismissing the appeal of company the court held it was offence of strict liability, therefore it was not sufficient show that the company had taken all reasonable care to avoid the event. The same view was taken in the famous case *Donoghue Vs Stevenson* (6) in this case A purchased a bottle of ginger beer from a retailer for the appellant.

While pouring to the tumbler the appellant found a decomposed body of a snail floated out with her ginger beer. The appellant alleged that she seriously suffered in her health in consequence of having drunk the beer which contains the contaminated contents. On her claim for damages, the court declared that a person who is for gain engages in the business of manufacturing articles of food and drink intended for consumption by

members of the public in the form he issues them, is under a duty to take care in the manufacture of these articles.

That duty must be to whom he intends to consume his products. The fact is that he manufactures his commodities for human consumption. Due to this informal nexus he places himself in a relationship with all the potential consumers of his commodities, and that relationship which he assumes and desires for his own ends impose upon him a duty to take care to avoid injuring them. " Hence the manufacturer owed her a duty to take care that the bottle did not contain any noxious matter and that he would be liable for the breach of the duty.

Moreover the law looks into the scope of strict liability while it is arising out of indeed consumer's case. In *Berrier v. Simplicity Manufacturing, Inc* (7), the leg of four years old was amputated as the result of injuries sustained when her grand father unintentionally backed over her foot while shearing the lawn with a riding mower.

Her parents moved a case against the manufacturer of the riding mower on the basis of strict liability and negligence based on design defect and inadequate warning theories. But the court followed the decision of *Phillips v. Cricket Lighters*, (8) and held that since the intended user or consumer is limiting the wide application of rule of strict liability the issue still remains that the child is neither user nor intended user or consumer of the mower.

Strict liability and mens rea

So the offences of strict liability, we can say, are those crimes which do not require mens rea with regard to at least one or more elements of the actus reus.

In *R Vs Storkwain* (9) the defendant supplied drugs for which a prescription was required, after being handed a forged prescription. There was no evidence of any negligence or wrong doing on the part of the pharmacist.. On appeal against conviction, it was held that the statute created an offence of strict liability; therefore no proof of mens rea was required. In *Gammon (Hong Kong) Ltd vs Attorney-General for Hong Kong* (10) following points has been laid down to determine the circumstances to which strict liability to be imposed.

1. There is a presumption of law that mens rea is required before a person can be held guilty of a criminal offence;
2. The presumption is particularly strong where the offence is “ truly criminal” in character;
3. The presumption applies to statutory offences, and can be displaced only if this is clearly or by necessary implication the effect of the statute;
4. The only situation in which the presumption can be displaced is where the statute is concerned with an issue of social concern;
5. Even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can be shown that the creation of strict liability will be effective to promote the objects of the statute by

encouraging greater vigilance to prevent the commission of the prohibited act.

Essentials of strict liability For the application of this rule the following three essentials should be there:

1. Injury by a defective product: In order to succeed the strict liability under the law the plaintiff must show that the injury must be caused by a defective product whose defect existed at the time of injury and the product should be plaintiff's control. In the recent case of Ceiba-Geigy (Pty) Ltd v Lushof Farms (Pty) Ltd en 'n Ander (11) it was held that the liability arising from the defective products not only related to the personal injury but financial loss also. It was further confirmed that when a manufacture undertakes or market the production without any prior tests and Ltd en 'n Ander, 2002 (2) SA 447 (SCA) Strict Liability 8 consequently it turns hazardous to the consumer such negligent activities expose a liability to the consumer. Here a contractual nexus between the manufacturer and the consumer is not required. (Weir, Tony 2006), (12)
2. The goods must be dangerous or defective in nature: Here the plaintiff must show that due to the dangerous nature, such goods can not be used for the ordinary purpose or for some other reasonably foreseeable purpose. Thus, a manufacturer owes a duty to supply a product fit for the ordinary purposes and it is to be used and safe notwithstanding a reasonably foreseeable misuse that could cause injury. The decisions in famous cases like Batcheller Vs Tunbrige Wells Gas co. ,(13) National Telephone Co. Vs Baker (14)and West Vs Bristol

Tramways Co. (15) manifests that the defective products are whatever in form, whether it is gas, electricity noxious fumes, the rule of strict liability can be applied.

3. The goods should leave the manufacturer: It is essential that the thing caused injury to the plaintiff must leave from the possession and control of the defendant. So those defective goods are still with the manufacturer is safe from the claim of compensation. In *Read Vs Lyons* (16) (text) the plaintiff was the employee in the defendant's munitions factory. While performing her duty a shell was exploded and she was injured. Even though the shell exploded was dangerous in nature it was held that defendants were not liable as the shell was not left from outside the defendant's premises and the rule of strict liability could not be applied in this case.
4. Breach of warranty: Generally, the law imposes certain warranties (or guaranties) on the sale of products. Such warranties include that the goods are in proper condition for use and free of defects and that they are fit for a particular purpose. Since the court doesn't disregard the liability of the waivers against the policy and the warranties are limited, the manufacturers and retailers are always held responsible for injuries from the defective and dangerous products. The aspect of breach of warranty enables the plaintiff to act against the defendant with his complete freedom.

Here he need not assert that the defendant is fault. Usually the product claims under the breach of warranty are in quasi contractual nature. Any factual statement or promise about the product, a description of the product

made, any sample or model provided constitutes the warranty upon which the buyer relies to purchase the goods. (Faegre & Benson, 2003)(17)

Exceptions/limitations

The following are the exceptions to the rule of strict liability.

1. Plaintiff's own default: Damage caused due to the plaintiff's own default was considered to be good defense in rule of strict liability. If the plaintiff suffers damages by his own intrusion into the defendant's property he can not complain for the damage so caused. When the damage to the plaintiff's products/property is caused not so much by the escape of things collected by the defendants as by the unusual sensitiveness of plaintiff's property itself, the plaintiff cannot recover anything. In *Eastern and South African Telegraph Co. Ltd. Vs Capetown Tramways Co.* (18) the plaintiff submarine cable transmissions were disturbed by escape of electric current from the defendant's tramways. It was found that the damage was due to the unusual sensitiveness of the plaintiff's apparatus and such damage will not occur to person carrying on the ordinary business and the defendant held not liable for the such occurrence.
2. Act of god: Act of god or Vis Major was also considered to be a good defense to an action under the rule of strict liability. If the defect is unforeseen and it is without any human intervention the defense of act of god can be pleaded. In *Tennent Vs Earl of Glasgow* (19) the court has framed a well-maintained definition for the act of god as the circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility.

3. Consent of plaintiff: In cases of *volenti non fit injuria* i. e where the plaintiff has consented to the accumulation of the dangerous /defective product in defendant's possession, then such liability does not arise. But such consent must arise for the common benefit of both plaintiff and defendant. For eg: when two persons are living on the different floors of the same building each of them is deemed to have consented to the installation of things of common benefit such as the water system, gas pipes or electric wiring . When water has been collected for the common benefit of the plaintiff and the defendant will not be liable for any defects happened to such system unless there is negligence on his part. In *North Western Utilities Vs London Guarantee, etc Co. Ltd* (20) , the concept of consent for the common benefit had been formulated as there is no such common benefit between a gas or other public utility undertaking and its consumer's.
4. Act of third party: If the harm has been caused due to the act of a stranger who is neither defendant's servant nor the defendant has any control over him, the defendant will not be liable under this rule. But if the act of the stranger is or can be foreseen by the defendant and the damage can be prevented, the defendant must by due care prevent the damage.

If not so, the defendant may be held liable for his act. This principle is laid down in *Richards Vs Lothian* (21). In this case, some strangers blocked the waste pipes of a wash basin, which was otherwise in the control of the defendants, when opened the tap, and the overflowing water damaged the plaintiff's goods. The defendants were held not liable.

5) Statutory authority:

Generally an act done under the authority of a statute is defense to an action for tort. But it cannot be pleaded as a defense when there is negligence. In *Green Vs Chelsea Waterworks Co.* (22) the defendant co. had a statutory duty to maintain continuous supply of water. A man belonging to the company burst without any negligence on its part, as a consequence of which plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty. (Salmond, 1996)(23) In practice, the defendant may argue the defenses adopting the following claims.

1. The defendant may forward an argument on the basis of misuse of the product sold. But it is to be remembered that the misuse of products can not be forceable or there is a chance of rebut this argument by the plaintiff that there should have some kind of anticipation on the part of the manufacturer and prevented such misuse by its product design or in its warning.
2. Secondly the defendant can claim that the product has been altered and modified. In order to prove this he has to take adequate measures to provide warnings in connection with the alteration of the products.
3. If there is any complaint by the buyer about the defective design, then the defendant may rebut his claim by demonstrating that the product was at state of art at the time of manufacture.
- 4) A manufacturer might be allowed to adduce the evidence on the basis of industry custom and standards and government standards related to the manufacture and design. (Faegre & Benson, 2003)(24)

Before the buyers of tacky products were not allowed to sue a manufacturer of or seller of a harmful product in commerce. The decision owes to the principle of “caveat emptor” “let the Buyer beware”. Now the burden to prove a products sticks on the other claims of product defect, inadequate instructions, or warnings. Here the plaintiff must prove that that the product caused him harm when it was used for its intended purpose as well. More he has to prove that the manufacturer knew or should have known the product would be used in such a way that would cause harm.

Strict liability and Negligence

Negligence is an important element to determine the strict liability of a defendant. Negligence is considered to be the oldest theory of product liability as well as the strict liability. As a general rule it is for the plaintiff to prove that the defendant was negligent. The initial burden of making out at least prima facie case of negligence as against the defendant lies heavily on the plaintiff, but once this onus is discharged, it will be for the defendant to prove that the incident was the result of inevitable accident or contributory negligence on the part of the plaintiff.

(Jones, 2007)(25) There are some elements should be proved by the plaintiff in order to make claim against the defendants under the rule of strict liability. Duty of care: The plaintiff must prove that a duty of care was owed by the defendant to the plaintiff. Mere carelessness on the part of defendant doesn't entitle the plaintiff to sue him.

He has to establish that the defendant owed to him a specific legal duty to take care of which he has made a breach. In this connection, in famous case of Donogue Vs Stevenson it was held that a manufacturer of the products

which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of reasonable care in the preparation of putting up of the products will result in an injury to consumer's life or property, owes a duty to the consumer to take that reasonable care.

(26) Breach of duty: Breach of duty means non observance of due care which is required in a particular situation. But here the defendant acted like a reasonable prudent man there is no negligence. In Blyth Vs Birmingham waterworks Co(27). it was clearly explained that negligence is the omission to do something which a reasonable man , guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do.

Proximate cause: The plaintiff should prove that the breach of duty proximately caused the plaintiff's injuries. Finally there should be lawful and sufficient injury happened to the plaintiff due to the defective /dangerous product.

The manufacturers always have the duty to exercise reasonable care in manufacturing the products.

Poor assembling the products, difference in use of component parts and its design specifications, failure to inspect the finished products, component parts and failure in correction in any defective products are some examples to lead the plaintiff to claim under the rule of strict liability. (Faegre & Benson, 2003) (28) In R Vs Lemon (29) the publisher of a gay news were

charged with blasphemous libel against Christ through a poem which was considered as an slur to Christianity.

The court held that it is the pure case of blasphemy as they had intention to publish so they are responsible for their act. Moreover in *Alpha cell Vs Woodward*,⁽³⁰⁾ the company was accused of causing polluted water to enter river by using equipment to prevent any overflow in to the river. But due to the collapse of the machine, the polluted things leaked out to the water. There was no evidence that the defendant is negligent but the court held that the defendant had caused the pollution in the water and they held liable.

Strict liability in product liability

The “ product liability” defined as the liability of manufacturer, during the chain of distribution, for personal injury, economic loss or property damage caused by sale or use of the product. Here the term ‘ product’ denotes the finished goods as well as those items which may have some impact on the consumer expectations, product safety etc. In order to brought the action under strict liability the plaintiff must prove that injury occurred by a defective product whose defect existed at the time of injury and at the time which the product left the control of manufactures control. Such product liability is the legal responsibility of the manufacturer to the buyers. It can be occurred at time of the transaction. Generally there are three defects in the product make defendants liable for their act.

1. Manufacturing: even though a few products turns in to the fault during the process of a manufacturing the plaintiff may held liable under rule of strict liability.

2. Marketing: In the case of lack of product warning or instructions, the plaintiff can bring an action against the defendant under such liability.
3. Design: A fault in design from previously mentioned might enable the plaintiff to claim for damages against the defendants. (Miller, Goldberg 2004)(31) Usually the defective and unreasonably dangerous product denotes the desirability or usefulness of the product, the availability of safer goods in same need, likelihood of injury and its possible seriousness and danger.

In such cases entitles the plaintiff to recover from the defendants for the injury caused by the product. Here he need not prove any misconduct on the part of the defendant. The law framed such a provision to make the manufacturer vigilant about their production in safe manner. It is the duty of the manufacturer to produce the goods which will not create an unreasonable risk of injury to the consumer at any cost. Such claim can be made against the manufacturer, wholesaler, distributor, retailer and the maker of component parts. (Restatement, 1999)(32) In recent case of *Escola v. Coca-Cola Bottling Co.*, (33) 24 Cal. 2d 453 (1944) (Traynor, J., concurring) it was clearly stated that on the demand of public policy the responsibility should be fixed even though there is no element of negligence under the circumstances of hazardous and dangerous to life and health due to the defective products. In cost of the cases the injured would be such persons who are not aware and unprepared to meet the consequences. It is to the public interest to discourage the marketing of defective products that are a menace to the public.

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edition Publisher: Oxford University Press, USA; ISBN-13: 978-
0198256786 Strict Liability17