

# Strict liability



**ASSIGN  
BUSTER**

When the product does not act the way it should act and cause injuries or damage to us. Then we come to law to solve our problem and the product liability in that occasion is the most important tool. Product liability is the area of law where manufacturers, suppliers, retailers are held responsible for any injuries product cause. Regardless of any contractual limitation of liability, if a product or any of its component parts are defective its manufacturer may be liable for damage under the Consumer Protection Act (CPA) or the common law of negligence (Out-law, 2011) .

Before *Donahue v Stevenson* (1932) the remedies available to a consumer who actually injured by a defective product was so limited.

Today the picture is totally different. Now there are lots of remedies available depend on whether the claimant is the person who bought the product or not, whether the product is dangerous where it can cause harm. In this report it will be discussed that whether Friday and Benny are able to claim in terms of Consumer Protection Act (CPA) 1987 and Contracts (Rights of Third Parties) Act 1999.

Friday bought some items for her husband as birthday and items are include radio, drill and Friday later bought some cakes from parents cheer association programmer in her daughter school.

Here Benny was delighted to have his gift but later on when he tried his radio it was not working and when he tried to check his drill it injured him and burned a section of the wall in his house. There are some potential claim arises. As the radio did not work properly so only claim is in contract.

But Benny don't have any contract with the retailer so Contracts (Rights of Third Parties) Act 1999 can be a potential claim, the drill offers more possibilities because it caused harm to Benny and also it caused damage to his property so he may be able to claim under both the common law of negligence and the Consumer Protection Act. Finally about the cake, as it was not sold for business so the Consumer protection Act is unlikely to apply. (Elliott & Quinn, 2009) Benny got the radio as a gift.

In the doctrine of priority it says that there was not any contract claim available, for example, to anyone who received a defective product as a gift.

The Contracts (Right of Third Parties) Act 1999 say a third party can enforce a contractual term where the contract say the right also given to the third party. If a shopper buying a gift for someone else and write in the receipt that the recipient have the right under the contract of sale and get the sign of the retailer on it then if the product then turns defective, the recipient can sue them. If the contract does not state that whether it should give rights to third party then court will look at if there is any evidence which suggests the relevant term purports to confer a benefit on a third party.

According to the priority rule only the person who sold the product can be sued but if the seller cannot be traced or is bankrupt then the consumer has no claim in contract against anyone else involved in the product supply.

If actually the fault comes from the manufacturer then to make the manufacturer responsible at first the consumer has to sue the seller. As the radio was defective but not dangerous so Benny cannot go to the retailer because Friday bought the product. In the Contract (Right of third party) Act <https://assignbuster.com/strict-liability/>

1999 there are possible threat is that it is easy for sellers to exclude their contracts from the Act.

In many consumer transaction, the consumer simply accepts the term offered by the seller that actually restrict the practical value of the act, so that many third parties will still be unable to sue in contract. So or Benny is less likely to claim for the defective radio because it did not cause any damage.

(Elliott & Quinn, 2009) Drill actually has more possibilities because it caused physical harm to Benny and damaged his property as well. Anyone injured by a defective product can bring an action in negligence. This allows a remedy to the people who actually given a defective product.

It now seems that anyone who involved in the supply chain of a defective product can be sued because of negligence, including seller.

In *Andrews v Hopkins* (1957), the defendant, a second-hand car dealer, he sold an 18 year old car to he claimant without checking whether it is in a roadworthy condition. The car had dangerous steering defect; a week after buying it, the steering failed and the claimant was injured. The court held that the supper owed a duty to have the car examined or at least to warned the buyer if no examination had been made.

In *Andrews*, it was emphasized that the defect would have been very easy for the seller to discover, whereas a food retailer would not be expected to open tins of food to check their contents.

They would however be expected to make sure they buy the food from a reputable supplier so the seller of the drill should have made sure they buy the drill from a reputed manufacturer. As the manufacturer went bankrupt so Benny can sue the seller. A product liability action in negligence can only be brought if the products which are dangerous. Defects which make a work less will not be covered.

An action for negligence requires proof of damage, so product must not only be dangerous, but must actually have caused some harm as a result.

Type of damage that a negligence claim will compensate, it is clear that both personal injury and damage to other property is covered. However damage to defective product normally classified as pure economic loss and is not recoverable in negligence. In product liability the claimant must prove that the defendant's failure to take reasonable care and that actually made the product dangerous.

In Consumer Protection Act 1987 anyone who suffers from personal injury or property damage that is actually caused by a defective product can sue. The act only covers personal injury and damage to property that is worth more than £1000.

They do not have to prove that it was the defendant's fault. When a court judge this kind of situation then the court will look at the requirements for negligence. During the use of the drill Benny got hurt and also that the drill caused fire in his property and it obviously cost more than £1000 so Benny can claim under this act. (Elliott & Quinn, 2005). The development risk defense is the most controversial part of the act.

It is similar to the state of the art defense developed in negligence from the case of *Roe v Minister of Health* and allows the defense where: The state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have covered the defect if it had existed in his products while they were under his control.

The defense can apply where, for example, a drug turns out to have harmful side-effects, but at the time when it was launched, no-one in the drug industry would have been able to spot the risk, or where, for example, a car is fitted with a faulty brake system, but at the time when it was launched, no car manufacturers have been able to spot it. So in Benny case same thing happen. As the drill manufacturer said in the newspaper that they had no idea fifths before the report was published. So Benny is not able to claim for he damage to the manufacturer.

The Consumer Protection Act was designed to impose liability on businesses rather than individuals, so it does not apply to goods which have not been supplied in the course of business, or with a view to making a profit.

Examples would be home-made products sold at village fairs, or cakes sold at a school fete. (Elliott & Quinn, 2005) Conclusion: According to all facts mention above it would be suitable for Benny to claim for his damage to the retailer as retailer has a duty to make sure their supplier are well known and have a good business record.

The manufacturer already gone bankrupt and they don't even know the problem in the casing before the report came so it would be a good decision for Benny to claim for the damage to the retailer.

Friday cannot claim for the cake which was defeated by a stone inside it as the cake was not sold for the business purpose. Task 2 The Consumer Protection Act was passed against a background of negligence to protect consumers against dangerous product.

The Thalidomide scandal, which emerge when it was discovered that thalidomide, a drug actually widely given to treat pregnant women during the sass, had caused severe damage o their babies during pregnancy. The parents and later the children themselves had to fight to prove that the drug caused their injuries and receive compensation. The aim of this new protection law was the to drive towards establishing a single market across the countries of the SEC.

To make this possible it was necessary to harmonies laws affecting trade in different countries so that one would not have advantage over those in another.

The Consumer Protection Act 1987 was passed to give effect to these requirements. The main purpose of this act is to impose strict liability, but here is considerable debate whether this has been the result. (Elliott & Quinn, 2005) British press have criticized the willingness to sue over injuries caused by defective products. The threat of strict liability strangles innovation and enterprise.

Manufacturers argued that we will be less likely to launch new products if they are afraid of being sued if those products turn out to be dangerous. If the manufacturers take extra care to make the product safe it will increase the production cost so high.

A further argument suggests that the producers are in the best position to insure against injury from defective reduces. Many people have insurance for cars and household so strict liability for damage to such property may be nothing more than double insurance.

The argument is more weaker when it comes to personal injury. It can be argued that the risk of product innovation come with the potential for huge social benefits, society, rather than individual producers, should pay when the risks cause harm, in the form of welfare benefit rather than tort damage. So it is suggested that within the current system, product liability actions should be scrapped because people can claim benefits as a result of heir injuries would be a recipe for lowering safety standard. Elliott & Quinn, 2009)

Task 3 Introduction: There is some situation when one person held legally liable for torts committed by someone else and this is called vicarious liability.

Vicarious liability arises when there is a relation between the toreadors and the party who becomes vicarious liable. This is normally the relation been the employee and the employer. Organization or a person should bear in mind that if the have the degree of authority over someone actions, then they should bear some responsibility for their work especially when they making refit.



In this report it will be discussed that Daily Deliveries Ltd should be vicariously liable for the incident happened with Drain's, who is a delivery man in this company, boy James when they was working in the company. In James situation, there are two possible option , to sue his father for his negligence or to sue Daily Deliveries Ltd( ODL) on the basis of their vicarious liability for his fathers negligence.

It will only be worthwhile suing his father if his father has got his own insurance.

If he has, there is no problem as James owed a duty of care as a passenger. James can also sue ODL if he can prove his father s on duty during the accident. The business is vicariously liable in term of the case Rose v Plenty (1976) in that case a milkman had been told by his employer that not to permit any passengers on his float, nor any child let him help delivering the milk delivery. But the milkman disagreed the the orders of his employer and paid the claimant who was 13, to help him.

The claimant was injured when riding on the vehicle because of the milk man negligent driving. The defendants were held vicariously liable, because the prohibition of the employer did not affect the job which the milkman had to do, only the ay in which he should do it. He was doing his allocated job Of delivering the milk even though in a way that his employer doesn't want. So Rose v Plenty (1976) case is approximately similar to the James case because James has been employed by his father to help him at the work. And it is in the course of employment.

Though it is restricted for Adrian not to employ or give lift in his van but as it is said in the *Rose v Plenty* (1976) that the prohibition of the employer did not affect the job which the milkman had to do, only the way in which he should do it.

So the ODL has a duty of care on James. Employees traveling within working hours are more likely to be acting in the course of employment. In *Whitman v Pearson* (1868) the employee had an hour lunch break and he was forbidden to go home or to leave his horse and cart unguarded.

Though he was not allowed to go home but he went home for lunch which was quarter of an hour away from workplace. While having his lunch he left his horse in the street and it ran off and it damaged the claimant property.

The employee was found to be acting in the course of his employment as he was still within the general scope of his job which included raising the horse and cart all day. *Whitman v Pearson* (1868) case contrasted with the case of *Storey v Gaston* (1869) and in *Storey* case some employee had finished delivering wine for their employers and was on their way back after their official work hours were over.

They decided to take a detour to visit a relation of one of the employees; on the way there they negligently ran over the claimant, his attempt to sue their employer failed as they were treated as being on a new and independent journey from their work trip at the time of the accident. In this case employer has got no vicarious liability because the employee finished their working hour and they are doing the trip as 'frolics of their own'.

In *Whitman v Pearson* (1868) case was in an hour break but in *Storey v Gaston* (1869) the employees was not in the break so the employer was not vicariously liable. In *Twine v Bean's Express Ltd* (1946) case the defendant employee gave the claimants husband a lift in a van and as a result of the employees negligence the claimants husband killed. The driver been told that not to give lift any one who doesn't work within the group and there was a notice in the site that who could be aird and who not.

The defendants were held not to be vicariously liable because the driver was doing an unauthorized act and was therefore outside the course of his employment. Conclusion: According to the *Rose v Plenty* (1976) the 13 year old boy win the claim though he was not directly employed by the organization so James also in the same situation. In *Whitman v Pearson* (1868) case the launch break consider as the course of employment.

So though James had a accident in the launch break because of his father negligence so it will be counted in the course of employment.