Product liability is part of **Tort Law**

A tort is a civil wrong recognized by law as grounds for a lawsuit. There must be a loss for a lawsuit.

**Aim of tort law** is to provide relief for injured party and deter further actions.

**Awards can be:**
- Compensatory – compensation for loss
- Punitive – punishment for behavior
Background

National:

Product liability laws are not federal but handled at state level. US Government has produced Model Uniform Products Liability Act (MUPLA) as a voluntary guide to states.

State:

Laws vary from state to state. This document will generalize as to statutes.

Actions may be filed in
  State that is site of injury
  State of company HQ
  State where company has facilities
Three Theories of Law

Strict Liability (quality of product)

Negligence (behavior/conduct of the producer)

Breach of Warranty (improper claims)
Strict Liability

Product is:

Defective and Unreasonably Dangerous

“Dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.”
Strict Liability

To prevail in case, plaintiff must show;

1) Product is defective
2) Defect existed when product left control of manufacturer
3) Defect caused tort loss (e.g. injuries, costs)
Strict Liability

Does not depend upon degree of carefulness by manufacturer.

Product must be “defective”. Defects can be...
   Design defects (structural, lack of safety features)
   Manufacturing defects

Strict Liability can apply to anyone in the distribution chain of product. (see “privity of contract”)
   manufacturer > wholesaler > retailer
Strict Liability

Obvious inherently dangerous products.

Generally no Strict Liability cause of action if the product has an obvious inherent danger.

(examples: firearms*, chainsaws, powertools)
*see Protection of Lawful Commerce Act

However, may be an action for failure to warn.
Negligence

Based upon conduct of manufacturer:

Did the company fail to exercise reasonable care in the design, manufacture or distribution of the product(s)?

Did the company ignore its own (or industry) standards for production, inspection and safety guidelines
Negligence

Manufacturer may be found liable if they;

• carelessly designed the product;
• carelessly manufactured the product;
• carelessly performed (or failed to perform) reasonable inspections of products
• failed to package and ship in a reasonably safe fashion;
• did not take reasonable care to obtain quality components from a reliable source.
Contributory Negligence

May assign a percentage of fault to plaintiff and if that level is high enough (compared to defendant) may limit or preclude recovery.

Some states will reduce damages awarded by a percentage proportional to the level of fault assigned to the plaintiff.
Breach of Warranty

Warranty is manufacturer’s promise product will perform as intended. If not an injury occurs, manufacturer may be liable.

Warranties can be “express” or “implied”

Express: manufacturer expressly represents product to have certain qualities (often through advertising)

Implied: “Goods must be fit for the ordinary purpose for which such goods are used” *

* Uniform Commercial Code (UCC), Warranty of Merchantability
§ 2-314. Implied Warranty: Merchantability; Usage of Trade.

(1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

- (a) pass without objection in the trade under the contract description; and
- (b) in the case of fungible goods, are of fair average quality within the description; and
- (c) are fit for the ordinary purposes for which such goods are used; and
- (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (e) are adequately contained, packaged, and labeled as the agreement may require; and
- (f) conform to the promise or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (Section 2-316) other implied warranties may arise from course of dealing or usage of trade.
Privity of Contract

Direct contract between plaintiff and defendant.

Generally no privity of contract required for Strict Liability.

  e.g. May recover from manufacturer even if did not purchase directly from manufacturer.
Protection of Lawful Commerce Act (2005)

Essentially states that a manufacturer should not be held liable for criminal misuse of a lawful product.

By association, extends to dealers (retail)

Claims have been made that manufacturers have marketed/distributed firearms in ways they know (or should know) create an illegal secondary market.
Joint and Several Liability

Apportionment of damages independent of level of defendant(s) liability.

Applied to multiple defendants, those financially solvent may be held responsible for entire judgment.
Safe Design Practices

Strict Liability

Design out defects (FMEA, inspections, etc.)

Design a product for which there is no reasonable safer alternative design.

Employ the state of the art. Keep up with safety feature innovations. (magnitude of danger is great and feature can be installed with little cost, compared to price of product)

Design in protection (shields and guards)

Closely monitor competing products.
Safe Design Practices

Strict Liability

Comply with applicable regulatory and industry standards.

Conduct safety testing.

Design against foreseeable misuse of your product.

Design to function safely in its operating environment.

Consider safety problems created by worn parts.

Identify and strive to eliminate manufacturing defects.
Safe Design practices

Incorporate appropriate warnings and instructions to mitigate risks that could not be eliminated through design.

Place warnings properly to ensure that the information is delivered to the end user.

Provide first aid or antidote information if applicable.

Provide an instruction manual containing:
- a safe method for assembly of the product;
- instructions for safe use of the product;
- a description of the product's intended uses and its limitations;
- warnings of any dangers inherent dangers in the product;
- a recommended frequency for maintenance;
- warnings against misuse or modification that stress the consequences of misuse or modification.
Foreseeable Misuse

Duty to warn:
Must go beyond simple warning if:
  risk is great
  danger is not obvious
  misuse of product is foreseeable
Post Sale Duty to Warn

A manufacturer may be under a duty to warn consumers of danger arising from the use of a product based upon knowledge acquired after the product is sold.

This responsibility may not be clearly defined in every state.
Labeling of Hazards

This example shows a typical label or signage used to indicate a hazard.
ANSI Z535.5 Designs and Definitions

Caution indicates a potentially hazardous situation, which if not avoided, will result in minor or moderate injury. It may also be used to alert against unsafe practices.

Warning indicates a potentially hazardous situation, which if not avoided, will result in death or serious injury.

Danger indicates an imminently hazardous situation, which if not avoided, will result in death or serious injury. This signal word is limited to the most extreme situations.