

## Product Liability for the Informed Consumer

Hundreds of thousands of injuries are caused by defective products each year in the United States. That's why *product liability law* exists. This area of law is practiced by experienced personal injury attorneys every day. It includes but is not limited to the legal rules consisting of who's responsible for defective or inherently dangerous merchandise.

### Product liability law in personal injury: a whole different "marketplace"

This differs from the broader aspect of personal injury law and the rules set forth for product liability occasionally makes it simpler for the injured party to obtain damages. Product liability law relates to a seller or manufacturer being held accountable for providing a defective product to the consumer. Product defects are the responsibility of every seller of the product within the chain of command.

Products are required by law to meet the needs and expectations of the consumer in normal-use circumstances. That means, if the consumer is using the product the way the manufacturer intended, and harm still comes to them (i.e. a crockpot starting a fire when it was being used to cook a meal according to instructions provided).

### The historical precedence of "privity of contract"

So, who, in the end, is responsible for a defective product or piece of equipment that causes serious and irreversible bodily injury such as a traumatic brain or spinal cord injury? That lies in the product being bought and sold within a "marketplace" setting.

A relationship known in law as "privity of contract" had to exist between the consumer that became injured and the supplier of that product. This, historically, is where the precedent for *product liability law* comes from.

"Privity of contract" is defined within the context of law as:

"Privity of Contract refers to relationship between the parties to a contract which allows them to sue each other but prevents a third party from doing so. It is a doctrine of contract law that prevents any person from seeking the enforcement of a contract, or suing on its terms, unless they are a party to that contract."

The chain of distribution, responsibility from the top down

**Product defect liability can fall within any party in the product's distribution. These parties are:**

- The manufacturer
- The manufacturer of component [third-party] parts for the product
- A wholesaler who distributes the product
- The party that assembles, installs, or inspects the product
- The retail store where the consumer purchased the product

Differentiating product defects: design, manufacturing, marketing

There are three inherently separate areas of product defects that we need to look at to get a full understanding of how a product can become so defective as to cause the consumer serious bodily injury or death.

1. **Design defect:** this kind of defect is found within the product from the very beginning, before it's even manufactured. It's caused by something unsafe from the get-go, within the design of the product.
2. **Manufacturer's defect:** these occur over the course of the product's assembly and/or manufacture.
3. **Marketing defect:** a marketing defect is a flaw in the way a product is presented (marketed) to the consumer. This could be anything from improper labeling, lack of instructions, or insufficient safety warnings in the package.

### Determining responsibility: "res ipsa loquitur" for the legal jargon savvy

The principle of "res ipsa loquitur" places the burden of proof in some product liability cases to the defendant. The Latin "res ipsa loquitur" translates to "the thing speaks for itself". This indicates that the defective issue would not have existed unless someone acted negligently.

If this principle is applied successfully, the plaintiff is not required to prove how, exactly, the defendant acted negligently. The defendant is required to prove that they did not act negligently anywhere in the design, manufacturing, or marketing of the product that caused injury.

**Contact us to schedule a complimentary consultation. There's no obligation. Take the first step and call today: (877). 529-0080**

