

# Product Liability: Manufacturing a problem

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# What is product liability?

- Product liability is the area of law under which a manufacturer, or another party in the manufacturing or distribution chain, is held responsible for a defective product that has caused damage



# Overview

- Types of defects
- How to prove a defect
- Sources of liability
- Potential parties - who may be liable
- Defences available
- Types of damages
- Things to consider when investigating a product liability claim

# Famous cases:

- *Donoghue v Stevenson, 1932*
  - *snail found in bottle of ginger beer*
- *Buckley v Mott, 1919*
  - *powdered glass in chocolate candy bar*
- *Cohen v Coca-Cola, 1967*
  - *exploding glass Coke bottle*

...and

# McDonald's coffee case

*Liebeck v McDonald's*, 1994



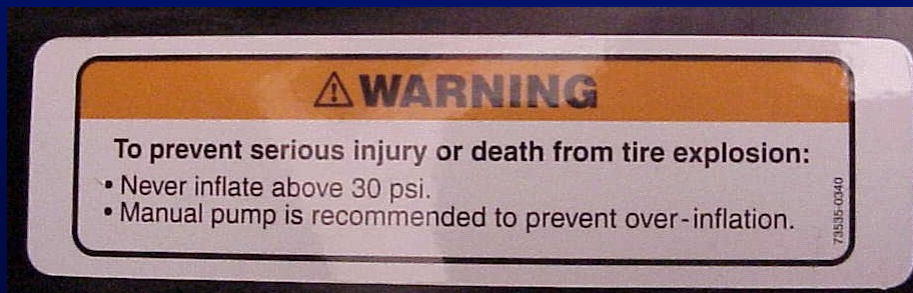
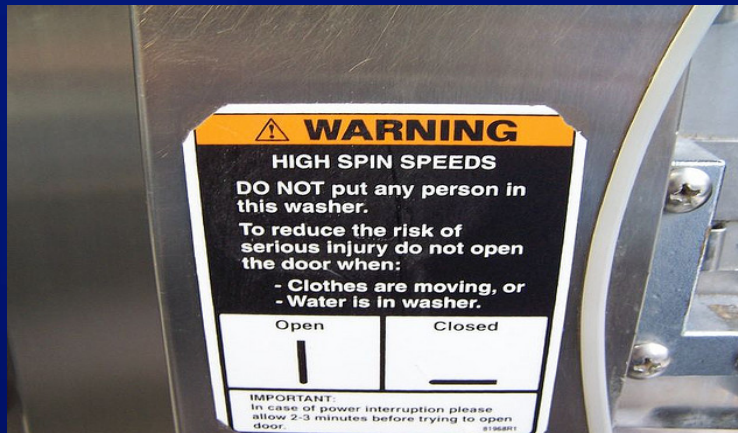
- 79 year old woman spilled coffee on her lap
- Coffee was too hot
- Originally awarded \$2.7 million, adjusted to \$600,000 on appeal

# What is a defect?

## Three Types of Defects

- Manufacturing defects
- Design defects
- Marketing defects/Failure to warn defects

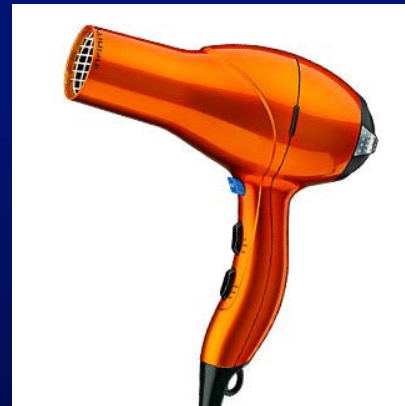
# Warning Labels





# How do you prove a defect?

- Onus on the plaintiff
- Factual evidence
- Expert evidence





# Other elements to consider

- Time of testing
- Recalls
- Misuse of product
- Inherent risks

# Sources of liability

## 1. Tort

- A. Does the manufacturer owe a duty of care?
  - Neighbour principle
  - “Persons who are so closely and directly affected by my act that I thought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called into question”  
*Donoghue v Stevenson*, 1932 AC 562
  
- B. Did the manufacturer breach the standard of care?
  
- C. Are there damages?
  
- D. Did the manufacturer’s breach cause the damages suffered?

# Sources of liability

## 2. Contract

- Product sale agreements
- Consider who is a party to the contract
- Warranties or representations

## 3. Statute

- *Sale of Goods Act*
- *Canada Consumer Product Safety Act (CCPSA)*
- *Convention on Contracts for the International Sale of Goods Act (CISG)*

# Who can be liable?

Manufacturers

Importers,  
Distributors,  
Retailers &  
Wholesalers



Users

Installers &  
Repairers

Occupiers

Inspectors &  
Certifiers

# Where: Jurisdiction

- Where can the plaintiff sue?
- What law applies to the plaintiff's claim?
- Foreign judgments

# What are the damages?

- Non-pecuniary loss
- Pecuniary loss
- Punitive damages
- Pure economic loss

“People should not look to tort law to negotiate a better bargain for themselves.” - Justice Perrell, *Arora v Whirlpool LP*, 2012 ONSC 4642

# Defences

- Factual dispute
- Voluntary assumption of risk
- Contributory negligence
- Limitation period



# What do you need to consider when investigating a claim?

- Defective product
- Design process
- Manufacturing process
- Product testing / Quality control
- Oversight during production
- Component materials – “material fade”
- Warnings
  - Placement of label / Visibility
  - Diagram/Image, Words or a combination of both
  - Translation

# What do you need to consider when investigating a claim?

- Other parties in the distribution chain
- Contracts
- Packaging
- Shipping records
- Marketing messages
- Return of goods procedure
- Discovery of claim
- Jurisdiction issues

# ⚠ DANGER



READING DOCUMENTATION  
AND WARNING NOTICES  
MAY LIMIT YOUR LEGAL  
OPTIONS SHOULD THIS  
DEVICE MALFUNCTION.  
BEST TO IGNORE THEM.

QUESTIONS?