

1201. Strict Liability—Manufacturing Defect—Essential Factual Elements

[Name of plaintiff] claims that the [product] contained a manufacturing defect. To establish this claim, [name of plaintiff] must prove all of the following:

1. That [name of defendant] [manufactured/distributed/sold] the [product];
2. That the [product] contained a manufacturing defect when it left [name of defendant]’s possession;
3. That [name of plaintiff] was harmed while using the [product] in a reasonably foreseeable way; and
4. That the [product]’s defect was a substantial factor in causing [name of plaintiff]’s harm.

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Directions for Use

Product misuse is a complete defense to strict products liability if the defendant proves that an unforeseeable abuse or alteration of the product after it left the manufacturer’s hands was the sole reason that the product caused injury. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 56 [148 Cal.Rptr. 596, 583 P.2d 121].) See CACI No. 1245, *Affirmative Defense—Product Misuse or Modification*. Misuse or modification that was a substantial factor in, but not the sole cause of, plaintiff’s harm may also be considered in determining the comparative fault of the plaintiff or of third persons. See CACI No. 1207A, *Strict Liability—Comparative Fault of Plaintiff*, and CACI No. 1207B, *Strict Liability—Comparative Fault of Third Person*.

Sources and Authority

- “Regardless of the theory which liability is predicated upon . . . it is obvious that to hold a producer, manufacturer, or seller liable for injury caused by a particular product, there must first be proof that the defendant produced, manufactured, sold, or was in some way responsible for the product” (*Garcia v. Joseph Vince Co.* (1978) 84 Cal.App.3d 868, 874 [148 Cal.Rptr. 843], internal citation omitted.)

- “[W]here a plaintiff alleges a product is defective, proof that the product has malfunctioned is essential to establish liability for an injury *caused by the defect*.” (*Khan v. Shiley Inc.* (1990) 217 Cal.App.3d 848, 855 [266 Cal.Rptr. 106], original italics.)
- In California, there is no requirement that the plaintiff prove that the defect made the product “unreasonably dangerous.” (*Cronin v. J.B.E. Olson Corp.* (1972) 8 Cal.3d 121, 134–135 [104 Cal.Rptr. 433, 501 P.2d 1153].) Also, the plaintiff does not have to prove that he or she was unaware of the defect. (*Luque v. McLean* (1972) 8 Cal.3d 136, 146 [104 Cal.Rptr. 443, 501 P.2d 1163].)
- “A manufacturer is liable only when a defect in its product was a legal cause of injury. A tort is a legal cause of injury only when it is a substantial factor in producing the injury.” (*Soule v. General Motors Corp.* (1972) 8 Cal.4th 548, 572 [34 Cal.Rptr.2d 607, 882 P.2d 298], internal citations omitted.)

Secondary Sources

- 6 Witkin, Summary of California Law (10th ed. 2005) Torts, §§ 1428–1437
California Products Liability Actions, Ch. 2, *Liability for Defective Products*, § 2.11, Ch. 7, *Proof*, § 7.06 (Matthew Bender)
- 40 California Forms of Pleading and Practice, Ch. 460, *Products Liability*, §§ 460.11, 460.30 (Matthew Bender)
- 19 California Points and Authorities, Ch. 190, *Products Liability*, § 190.140 (Matthew Bender)