Glossary of terms

Products Liability Glossary

**Assumption of Risk**: The rule that persons accept the risks inherent in situations they willingly enter, like the taking

of a dangerous job, and therefore cannot claim damages, if they are injured

**Comparative Negligence**: The rule that the plaintiff's recovery will be reduced in proportion to the degree that his

own negligence was responsible for that injury.

**Contributory Negligence:** The rule that plaintiff may not recover damages if he or she is wholly or partially responsible

for the injury.

**Design Defect:** A defect in a product resulting from the fact that, although the product was manufactured as it was

designed, the design was not as safe as it could have been.,

**Enterprise Liability:** Under this standard, liability rests upon each member of an industry that produced a product that harmed consumers with liability apportioned according to each member's share of the market for that product.

**Failure to warn**: the failure of a defendant in a products liability case to have provided adequate warning or instructions regarding the use of its product.

**Fellow Servant rule**: The rule that employers were not liable for worker's injuries brought about by the negligence of a fellow worker; they were liable only when they were personally at fault.

**Manufacturing Defect**: A defect resulting form a product's not having been manufactured as it had been designed.

**Negligence:** Breach of a duty by a defendant to exercise due care.

**Privity of Contract:** The contractual relationship between buyer and seller, which provided a basis for liability for defective products. Traditionally, however, consumers under this doctrine could not sue manufacturers for defective goods unless they had bought the goods directly from the manufacturer.

**Punitive damages**: In cases in which it is proved that the defendant acted willfully, malicious, or fraudulently, a plaintiff may be awarded punitive or exemplary damages in addition to compensatory damages to punish the defendant or set an example for similar wrong doers.

**Res Ipsa Loquitur:** Doctrine that switches burden of proof from plaintiff proving defendant acted negligently to defendant having to prove that he did not cause the accident. The doctrine does not apply unless (1) defendant had exclusive control of the thing causing the injury and (2) the accident is of such a nature that it ordinarily would not occur in the absence of negligence by the defendant.

**State-Of-The-Art Defense:** That defense that permits a defendant to avoid liability in a design defect case if at the time of manufacture there was no safer design available, or in a failure to warn case if at the time of manufacture there was no way for the defendant to have known of the danger he failed to warn against..

**Strict Liability:** Under this standard, one who sells a product in a defective condition unreasonably dangerous to a consumer is held liable for harm caused by the defect.

**Tort:** Any civil wrong, other then a breach of contract, that results in personal injury, death or property damage, and

for which a person can sue to recover damages.