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PRODUCT LIABILITY

Background:

1. *Contract*-express warranty claims-typically economic harm only-no bodily injury
Implied warranty under the Uniform Commercial Code-fitness, merchantability, & title
2. *Tort*-non contractual wrongs
Negligence-duty, breach, cause, damages-usually includes economic and bodily injury
Strict liability-(for products)-duty and breach are presumed-leaving cause and damages to be proven
Defendants are all in the product supply chain-supplier, manufacturer, distributor, retailer, and any others
3. *Statutory*-consumer fraud statutes-false, misleading, deceptive-product representations-examples would be "lite" cigarettes and drugs; a broken manufacturer promise-usually stronger for plaintiff, statute of limitations usually run 1-6 years

Key Issues:

4. Design for *foreseeable* product misuse-typical negligence not gross negligence
5. Incorporate regulatory design / approval where applicable
6. Prohibit material alteration and misuse

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Product Manufacturer Duties;

7. Duty to warn against risk-product damage "caution" and bodily harm "warning"

- a. State the *nature* of the risk
- b. State *how* the risk is effectuated for the user
- c. State the *consequences* of the risk

8. Duty to monitor defects

Warranty claims

Online-social media, i.e. blogs, comments, reviews, etc.

Customer interaction-complaints etc.

9. Duty to report defects

To applicable regulatory agencies

10. Duty to recall

Effectuate repairs and inform customers

Subsequent remedial measures-usually cannot be used against the manufacturer

Foreign countries typically don't have U.S. product liability-but have regulations

The point is to avoid punitive damages for the manufacturer-that come from intentional wrongdoing-i.e. knowing of a defect and not doing anything

Checklist of considerations;

- a. Product safety testing and backup to support limits
- b. Engineering calculations to show diligence in design "state of the art"
- c. Regulatory review and approval
- d. Warnings review
- e. Feedback on product problems and tracking of components records
- f. Insurance-Commercial General Liability-duty to defend and duty to indemnify