Common Law Strict Liability – Prima Facie Case

(1) Abnormally dangerous activity
   – (a) Foreseeable significant risk, and
     • D’s activity creates highly significant risk of physical harm
     • Activity is unavoidably risky: Risk exists even if
       – Everyone exercises reasonable care, including P (Restatement (3rd))
       – D exercises reasonable care (some jurisdictions)
   – (b) Activity is not common/normal

(2) Actual harm

(3) Factual cause

(4) Proximate cause
   – Limited to foreseeable risks that make activity abnormally dangerous
   – Unforeseeable intervening actor/event breaks causal chain (majority rule)
Common Law Strict Liability – Defenses

- P contributes to activity (Restatement (3^{rd}))
  * Not followed in some jurisdictions

- P’s contributory negligence:
  - Traditional rule: not a defense
  - Modern rule: apply comparative fault rules (Restatement (3^{rd}))
    * Check statute

- P’s implied assumption of risk:
  - Traditional rule: complete defense
  - Modern rule: apply comparative fault rules (Restatement (3^{rd}))
Products Liability – Prima Facie Case

(1) Defective product
(2) Actual harm
(3) Factual cause
(4) Proximate cause
# Res Ipsa Loquitur and Manufacturing Defects

<table>
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<tr>
<th>Key Issues</th>
<th>Negligence</th>
<th>Manufacturing Defect</th>
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<td>• Whether accident ordinarily would not occur in absence of negligence</td>
<td>• Whether accident ordinarily would not occur in absence of defect</td>
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<td>• Whether defendant’s negligence is the most probable cause</td>
<td>• Whether most probable cause of defect is product was defective when left manufacturer</td>
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<th>Factors</th>
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<td>• Evidence eliminating non-negligent causes</td>
<td>• Evidence eliminating causes other than product defect</td>
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<td>• Evidence eliminating other actors as tortfeasors</td>
<td>• Evidence eliminating other actors as causing defect/incident</td>
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<td>• Failure by plaintiff/defendant to present available evidence</td>
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<td>• Control condition</td>
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Reasonable Alternative Design (RAD)

1. Safer alternative design:
   - Would have prevented or significantly reduced risk that materialized
   - Not less safe in other circumstances/increase risk other users

2. Alternative design does not substantially impair product’s utility

3. At time of manufacture, safer alternative was both
   - Technologically feasible
   - Economically feasible

4. Product (current design) unreasonably dangerous
“Defective Product”

(1) **Manufacturing Defect**
   - Either –
     - Product unreasonably dangerous for its intended use (*Lee*, “consumer expectations test”), or
     - Departs from intended design (Restatement Products Liability); and
   - Defective when leaves M’s hands

(2) **Design Defect -- Approaches**
   - Consumer expectation test (*Leichtamer*)
   - Reasonable alternative design
   - Manifestly unreasonable design

(3) **Information Defect (*Liriano*, Restatement, *Carruth*)**
   - Foreseeable risk of harm,
   - Risk reduced or avoided if provide reasonable warning,
   - Reasonable and prudent manufacture would give warning, and
   - Warning given is adequate
Information Defect – Prima Facie Case (Revised)

(1) Defective product (i.e., information defect)
(2) Actual harm
(3) Factual Cause
(4) Proximate cause
Pool Hypo

XYZ Co. manufactures above-ground swimming pools that are four feet deep. Doug, age 21, dove head first into an XYZ pool and suffered serious head and neck injuries. There was no warning on the pool or in the user manual cautioning against diving. Expert testimony established that when Doug’s outstretched hands hit the pool’s slippery vinyl bottom his hands slid apart, causing him to strike his head against the bottom of the pool. Doug sues XYZ Co. He alleges that an alternative design would have been less slippery and would have prevented his hands from sliding apart, thereby preventing his injuries. The expert witnesses agree that the vinyl pool liner used by XYZ at the time it manufactured the pool was the safest liner available. They also testify that each year dozens of users of above-ground swimming pools experience dive-related injuries. Six months after Doug’s family purchased their pool, ABC Co. began manufacturing an above-ground pool that used a new, less slippery vinyl bottom that significantly reduces the risk of injuries similar to Doug’s injuries. They also included in the user manual a warning not to dive. Discuss the merits of Doug’s products liability claim.
Products Liability – Prima Facie Case

(1) Defective product
(2) Actual harm
(3) Factual cause
(4) Proximate cause