

was caused by an unsafe aspect of the product that is an inherent characteristic of the product and that would be recognized by the ordinary person who uses or consumes the product with the ordinary knowledge common to the class of persons for whom the product is intended, except that this paragraph shall not apply to industrial machinery or other equipment used in the workplace and it is not intended to apply to dangers posed by products such as machinery or equipment that can feasibly be eliminated without impairing the usefulness of the product....

[3] In construing a statute we first look at its plain language. *Merin, supra*, 126 N.J. at 434, 599 A.2d 1256. The Senate Judiciary Committee Statement notes that section 3a(2) adopts the “consumer expectations” test that we recognized in *O'Brien v. Muskin Corp.*, 94 N.J. 169, 463 A.2d 298 (1983) and *Suter v. San Angelo Foundry & Machine Co.*, 81 N.J. 150, 406 A.2d 140 (1979). However, examining the language of section 3a(2), we recognized in *Dewey, supra*, that the test is really a “‘hybrid’ provision [that] combines the ‘consumer expectations’ doctrine for determining whether a product is defective with the obvious-danger factor of the risk-utility analysis to create a defense to a design-defect claim.” 121 N.J. at 96, 577 A.2d 1239 (citations omitted).

[4] Under pre-Act New Jersey case law, the risk/utility analysis determined whether or not a product was defectively designed—that is, whether its design was fit for its intended purpose. In ***1371***Cepeda v. Cumberland Engineering Co.*, 76 N.J. 152, 386 A.2d 816 (1978), *overruled in part by Suter, supra*, 81 N.J. 150, 406 A.2d 140, we listed the factors of that analysis:

(1) The usefulness and desirability of the product—its utility to the user and to the public as a whole.

(2) The safety aspects of the product—the likelihood that it will cause injury, and the probable seriousness of the injury.

(3) The availability of a substitute product which would meet the same need and not be as unsafe.

(4) The manufacturer's ability to eliminate the unsafe character of the product without impairing its usefulness or making it too expensive to maintain its utility.

***377** 5) The user's ability to avoid danger by the exercise of care in the use of the product.

(6) The user's anticipated awareness of the dangers inherent in the product and their avoidability, because of general public knowledge of the obvious condition of the product, or of the existence of suitable warnings or instructions.

(7) The feasibility, on the part of the manufacturer, of spreading the loss by setting the price of the product or carrying liability insurance.

[*Id.* 76 N.J. at 174, 386 A.2d 816 (quoting John W. Wade, *On the Nature of Strict Tort Liability For Products*, 44 *Miss.L.J.* 825, 837-38 (1973)).]

Under *O'Brien, supra*, a product was defective, and unfit for its intended purpose, if its risks outweighed its utility: “In a design-defect case, the plaintiff bears the burden of both going forward with the evidence and of persuasion that the product contained a defect. To establish a *prima facie* case, the plaintiff should adduce sufficient evidence on the risk-utility factors to establish a defect.” 94 N.J. at 185, 463 A.2d 298.

[5] The Act, however,

converted into absolute affirmative defenses what had been under the common law merely factors in the overall risk/utility analysis. *Dewey v. R.J. Reynolds*, 121 N.J. at 96 [577 A.2d 1239]. Specifically, it created as absolute defenses a state-of-the-art defense, N.J.S.A. 2A:58C-3a(1); an obvious-danger/consumer expectations defense, N.J.S.A. 2A:58C-3a(2); and an unavoidably un-