

euerable, light-weight vehicle, contains an open and obvious risk of [lower-leg injury](#).

... [The plaintiff] would now have the court characterize *the intended use* of motorcycles as simply a means of transportation. Such a characterization, however, fails to consider the intended differences between a truck or an automobile and a motorcycle.... *To require a manufacturer to eliminate all the dangers associated with motorcycle accidents would require a manufacturer to deprive the motorcycle of its intended use* and turn the motorcycle into an enclosed vehicle. The risk associated with being in an accident while operating a motorcycle is just as open and obvious as the risk associated with using a knife which could slip and cut a finger.

[*Id.* at 260 (emphasis added).]

The District Court granted the defendant manufacturer's motion for summary judgment. The Third Circuit found that summary judgment was inappropriate because there was a "material issue of fact as to whether the addition of crash bars would have eliminated the risk of [lower leg injury](#)... without impairing the usefulness" of the motorcycle. [McWilliams, supra, 987 F.2d at 206](#). However, the Court of Appeals focused on whether adding crash bars would eliminate the danger, *not* on whether adding crash bars would impair the usefulness of the motorcycle. [Id. at 205-06](#). For that reason, the opinion of the Court of Appeals is not directly on point.

[12] Taking our lead from the legislative history's stress on the word "inherent," we hold that "impairing the usefulness of the product" means significantly diminishing its intended use. Even where it is economically and technologically feasible to eliminate \*382 the danger, section 3a(2) still provides a defense if eliminating the danger would require eliminating an inherent characteristic.

[13][14] Thus, a plaintiff seeking to establish the second exception to the 3a(2) defense must prove

that the defendant could have eliminated the danger without eliminating an inherent characteristic of the product, and thereby significantly diminishing the product's intended use. We emphasize, however, that a feature of a product that is desirable but not necessary is not an inherent characteristic: an inherent characteristic is an essential characteristic. The elimination of an essential characteristic might not render the product totally useless, but it would measurably reduce the product's appropriateness for its central function. We make one final observation about jury evaluation of the second \*\*1374 exception to the 3a(2) defense: juries will inevitably weigh the extent to which the elimination of the inherent danger would impair usefulness against the extent to which the change would improve a hazardous condition.

## V

In the present case, Roberts bears the burden of proving "by a preponderance of the evidence that the [X-300] ... was not reasonably fit, suitable or safe for its intended purpose because it ... was designed in a defective manner." [N.J.S.A. 2A:58C-2](#). Cadec bears the burden of proving the 3a(2) absolute defense: that the danger is open and obvious and that the harm was caused by an inherent and known characteristic of the product. Roberts then bears the burden of proving that, because Cadec could feasibly have eliminated the danger without impairing the X-300's usefulness, the 3a(2) defense is not available to Cadec.

Cadec argues that part of the intended use of the X-300 is to accept data entry while in motion. That would mean that operating while in motion is an inherent characteristic of the X-300, and that diverting the driver's eyes from the road is an inherent danger. Although Roberts discounts the reasons that Cadec's witnesses offered for making the computer operable while in \*383 motion-convenience and precision-Cadec claims that those two characteristics are integral to the X-300.