

Utah Code Ann. § 78B-5-817

Current through the 2024 4th Special Session.

Utah Code Annotated > Title 78B Judicial Code (§§ 78B-1-101 — 78B-25-115) > Chapter 5 Procedure and Evidence (Pts. 1 — 9) > Part 8 Miscellaneous (§§ 78B-5-801 — 78B-5-828)

78B-5-817. Definitions.

As used in [Sections 78B-5-817](#) through [78B-5-823](#):

- (1) “Defendant” means a person, other than a person immune from suit as defined in Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.
- (2) “Fault” means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product.
- (3) “Person immune from suit” means:
 - (a) an employer immune from suit under Title 34A, Chapter 2, Workers’ Compensation Act, or Chapter 3, Utah Occupational Disease Act; and
 - (b) a governmental entity or governmental employee immune from suit pursuant to Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- (4) “Person seeking recovery” means any person seeking damages or reimbursement on its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

History

C. 1953, 78-27-37, enacted by L. 1986, ch. 199, § 1; [1994, ch. 221, § 2](#); [1996, ch. 240, § 374](#); [1999, ch. 95, § 1](#); 2003, ch. 131, § 70; [2005, ch. 102, § 30](#); renumbered by L. 2008, ch. 3, § 849; 2008, ch. 382, § 2233.

Annotations

Notes

Repeals and Reenactments.

Laws 1986, ch. 1989, § 1 repeals former § 78-27-37, as enacted by Laws 1973, ch. 209, § 1, relating to diminishment of damages and assumption of risk, and reenacts the above section.

NOTES TO DECISIONS

Attorney's fees.

Contract specifications defense.

Fault.

Immunity.

Liability.

Multiple actions.

Preemption.

Attorney's fees.

Liability Reform Act, [Utah Code Ann. § 78B-5-817](#) et seq., does not require apportionment of attorney fees. [Bieselev. Mattena, 2019 UT 30, 449 P.3d 1, 2019 Utah LEXIS 111 \(Utah 2019\)](#).

Contract specifications defense.

The contract specifications defense precluded the court from holding contractor liable for design defects when the contractor followed the specifications and directions of its customer, and did not know of the product's defective design. [Herrod v. Metal Powder Prods., 886 F. Supp. 2d 1271, 2012 U.S. Dist. LEXIS 79562 \(D. Utah 2012\)](#).

Fault.

The definition of fault encompasses both negligent and intentional conduct. [Field v. Boyer Co., L.C., 338 Utah Adv. 10, 952 P.2d 1078, 1998 Utah LEXIS 11 \(Utah 1998\)](#); [Jedrzejewski v. Smith, 2005 UT 85, 539 Utah Adv. 47, 128 P.3d 1146, 2005 Utah LEXIS 132 \(Utah 2005\)](#).

When a trust beneficiary alleged the beneficiary was forced into an underage marriage with a third party at the behest of the trust's trustee, the trust was not entitled to summary judgment based on the beneficiary's release of the third party because, inter alia, the beneficiary's claims based on the trustee's torts independent of the third party's fault fell under the Liability Reform Act, [Utah Code Ann. § 78B-5-817\(2\)](#), not the Joint Obligations Act, [Utah Code Ann. § 15-4-1](#) et seq. [M.J. v. Wisan, 2016 UT 13, 371 P.3d 21, 2016 Utah LEXIS 34 \(Utah 2016\)](#).

When a trust beneficiary alleged the beneficiary was forced into an underage marriage with a third party at the behest of the trust's trustee, the trust was not entitled to summary judgment based on the beneficiary's release of the third party because, inter alia, respondeat superior could apply, as (1) the trustee did not have to act within employment hours or boundaries, and (2) it was not settled law that the trustee's sexual misconduct with the beneficiary was not within the scope of employment, given the trustee's leadership of church which sanctioned underage marriages. [M.J. v. Wisan, 2016 UT 13, 371 P.3d 21, 2016 Utah LEXIS 34 \(Utah 2016\)](#).

When a trust beneficiary alleged the beneficiary was forced into an underage marriage with a third party at the behest of the trust's trustee, the trust was not entitled to summary judgment based on the beneficiary's release of the third party because, inter alia, other beneficiaries' innocence did not bar liability. [M.J. v. Wisan, 2016 UT 13, 371 P.3d 21, 2016 Utah LEXIS 34 \(Utah 2016\)](#).

When a trust beneficiary alleged the beneficiary was forced into an underage marriage with a third party at the behest of the trust's trustee, the trust was not entitled to summary judgment based on the beneficiary's release of the third party because, inter alia, [Utah Code Ann. § 75-7-1010\(2\)](#) provided a cause of action against a trust for a trustee's acts in the course of trust administration. [M.J. v. Wisan, 2016 UT 13, 371 P.3d 21, 2016 Utah LEXIS 34 \(Utah 2016\)](#).

On claims for defamation and tortious interference with economic relations, a district court did not err in instructing the jury that it could allocate fault between plaintiff and defendants under Utah's Liability Reform Act, as the Utah Supreme Court had interpreted the Act to encompass intentionally tortious activity. Further, so long as plaintiff committed a wrongful act, and so long as that act contributed to his damages, the wrongful act did not have to be related to defendants' defamatory statements to allocate fault between him and defendants. [Rowe v. DPI Specialty Foods, Inc., 727 Fed. Appx. 488, 2018 U.S. App. LEXIS 5716 \(10th Cir. 2018\)](#).

Immunity.

In a products liability claim, the district court erred in dismissing plaintiffs' strict products liability and breach of warranty claims under the passive retailer doctrine because the Liability Reform Act did not create immunity for a retailer, whether passive or not, as the retailer—just as a distributor, wholesaler, manufacturer, and any other in the chain of distribution—was strictly liable for breaching its duty not to sell a dangerously defective product. [Bylsma v. Willey, 2017 UT 85, 416 P.3d 595, 2017 Utah LEXIS 204 \(Utah 2017\)](#).

Liability Reform Act (LRA) does not create immunity for retailers, whether passive or not, and the supreme court therefore overrules the court of appeals' conclusion to the contrary in [Sanns v. Butterfield Ford, 94 P.3d 301 \(2004\)](#). In so doing, the supreme court holds that the LRA does not upend the long standing precedent that retailers are strictly liable for breaching their duty not to sell a dangerously defective product. [Bylsma v. Willey, 2017 UT 85, 416 P.3d 595, 2017 Utah LEXIS 204 \(Utah 2017\)](#).

Liability.

Because Utah has explicitly rejected the application of strict liability to sellers of defective products without regard to fault, it can be inferred that its courts would follow the growing majority of jurisdictions that recognize the contract specifications defense regardless of the underlying theory of liability. [Herrod v. Metal Powder Prods., 886 F. Supp. 2d 1271, 2012 U.S. Dist. LEXIS 79562 \(D. Utah 2012\)](#).

In a products liability case, a jury must determine whether defendants breached their duty not to sell a defective product and should be held strictly liable; then, the jury must allocate the fault in the case by determining the proportion of the injury caused by the defective product and the proportion of the injury caused by the plaintiff's misuse, modification, or abuse of the product. Once the jury has performed that allocation, whichever party is present in the suit that has been found to be strictly liable for selling the defective product must pay an amount equal to the proportion of the injury found to be caused by the defective product; that party would then have the right to assert an indemnification claim. [Bylsma v. Willey, 2017 UT 85, 416 P.3d 595, 2017 Utah LEXIS 204 \(Utah 2017\)](#).

Multiple actions.

Plaintiffs who entered into a judicially approved settlement with multiple defendants after a trial in which a jury allocated 100% of fault among the parties pursuant to the Utah comparative fault scheme may also maintain a subsequent tort action for the same injuries, arising out of the same transaction or occurrence, against additional known defendants

who were not parties to the first action. [Richardson v. Navistar Int'l Transp. Corp., 2000 UT 65, 402 Utah Adv. 11, 8 P.3d 263, 2000 Utah LEXIS 81 \(Utah 2000\).](#)

Preemption.

Utah Liability Reform Act (LRA) (now [§§ 78B-5-817](#) through [78B-5-823](#)), does not preempt the common law civil conspiracy cause of action. The court did not address the question of whether the LRA applies to intentional tortfeasors, instead leaving that question to be determined by the legislature or the court when necessary. [Jedrzejewski v. Smith, 2005 UT 85, 539 Utah Adv. 47, 128 P.3d 1146, 2005 Utah LEXIS 132 \(Utah 2005\).](#)

Research References & Practice Aids

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Liability to one struck by golf ball, [53 A.L.R.4th 282](#).

Applicability of comparative negligence doctrine to actions based on negligent misrepresentation, [22 A.L.R.5th 464](#).

Validity and effect of “Mary Carter” or similar agreement setting maximum liability of one cotortfeasor and providing for reduction or extinguishment thereof relative to recovery against nonagreeing cotortfeasor, 22 A.L.R.5th 483.

Utah Code Annotated

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