

One weekend, a retired man conducted a garage sale at his home. A woman came to the garage sale in search of a power drill to use in her home-remodeling business. The man happened to have a power drill for sale that fit the woman's needs. The power drill had never been used and was still sealed in its original box. The power drill was manufactured by a drill company, which uses all available techniques to inspect its products for defects. The drill company only intended the power drill to be used on plywood.

One week later, the woman suffered a severe eye injury while using the power drill to put holes in a thick metal sheet when the drill bit flew off the drill due to a defective component and caused her eye injury.

Traditional common law rules regarding contributory negligence apply in this jurisdiction.

If the woman asserts a claim based on strict products liability against the drill company, which of the following facts will most likely negate the drill company's liability?

- A. The drill company used every available means to inspect the drill for defects.
- B. The drill was being put to an improper use.
- C. The woman did not directly purchase the drill from the drill company.
- D. The woman was contributorily negligent in using the drill on a thick sheet of metal.

### Explanation:

When a commercial supplier's defective product causes harm to the plaintiff, the supplier is subject to **strict products liability** absent some defense. One **defense** that negates a commercial supplier's strict liability is the plaintiff's **improper use** of a product—ie, using the product in an **unintended and unforeseeable** manner.

Here, the woman used the drill in an *unintended* manner because the drill was intended to be used only on plywood—not metal. So if it is established that the woman's use of the drill was also *unforeseeable*, then her improper use of the drill would negate the company's strict liability.

**(Choice A)** A commercial supplier's use of every available means to inspect a product would be relevant to a *negligence* action, which considers the defendant's use of reasonable care. But the drill company's reasonable care is irrelevant to the woman's *strict liability* action, which imposes liability without proof of culpability.

**(Choice C)** A commercial supplier is strictly liable when its defective product causes harm to any foreseeable plaintiff—not just direct purchasers. Therefore, the fact that the woman did not purchase the drill directly from the drill company is irrelevant.

**(Choice D)** Contributory negligence refers to the plaintiff's failure to use the standard of care that a person should use for his/her own protection. This is no defense to strict products liability in this jurisdiction, which follows the traditional common law rules of [contributory negligence](#).

### Educational objective:

A plaintiff's improper use of a defective product—ie, using the product in an unintended and unforeseeable fashion—negates a commercial supplier's strict liability.

### References

Restatement (Third) of Torts: Prods. Liab. § 15 (Am. Law Inst. 1998) (misuse of a product).

**Foreseeable use**  
(intended + foreseeable)



**Misuse**  
(unintended + unforeseeable)

