

A consumer became physically ill after drinking part of a bottle of soda that contained a large decomposed snail. The consumer sued the store from which she had bought the soda to recover damages for her injuries. The parties agreed that the snail had been put into the bottle during the bottling process, over which the store had no control. The parties also agreed that the snail would have been visible in the bottle before the consumer opened it.

Will the consumer likely prevail in an action against the store?

- A. No, because the consumer could have seen the snail in the bottle before she drank out of it.
- B. No, because the store was not responsible for the bottling process.
- C. Yes, because the consumer was injured by a defective product sold to her by the store.
- D. Yes, because the store had exclusive control over the bottle before selling it to the consumer.

## Explanation:

**Commercial suppliers** (eg, manufacturers, distributors, retailers) are **strictly liable** for harm caused by **manufacturing defects** in products that they produced or sold. Manufacturing defects include any deviation from a product's intended design that renders it more dangerous than a reasonable consumer would expect—eg, damaged or incorrectly assembled products.

Here, the store (commercial supplier) sold a bottle of soda that contained a decomposed snail (deviation from intended design). And since this manufacturing defect caused the consumer to become physically ill (unreasonable danger to consumer's health), the consumer will likely prevail against the store.

**(Choice A)** Under pure comparative fault (default rule), a plaintiff's contributory negligence may *reduce* his/her recovery of damages but will not *absolve* the defendant of strict liability. Therefore, the store is strictly liable even though the consumer could have avoided harm by inspecting the bottle before drinking.

**(Choice B)** Every commercial supplier along the chain of distribution—even one that did not create the defect—is subject to strict liability if the defect was present when the product left the **supplier's control**. Here, although the store did not bottle the soda, it is strictly liable because the bottle contained a snail at the time of sale (when the bottle left the store's control).

**(Choice D)** Exclusive control is relevant to a negligence claim based on **res ipsa loquitur**. However, strict products liability may be imposed on any commercial supplier in the chain of distribution, regardless of whether it had exclusive control over the product before it reached the consumer. Here, the store did not have exclusive control of the bottle. But even if it did, that control has no effect on the store's strict liability.

## Educational objective:

A commercial supplier is strictly liable for harm caused by a manufacturing defect—any deviation from a product's intended design that renders it more dangerous than a reasonable consumer would expect—in a product that it produced or sold.

## References

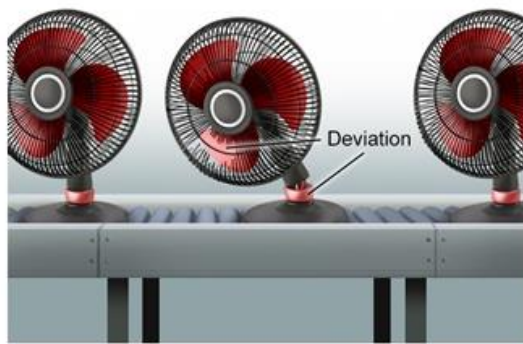
Restatement (Third) of Torts: Prods. Liab. § 1 (Am. Law Inst. 1998) (liability of commercial supplier).

Restatement (Third) of Torts: Prods. Liab. § 2(a) (Am. Law Inst. 1998) (manufacturing defect).

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### Manufacturing defect



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v.

### Design defect

