

## Legal Definitions of Manufacturing, Design, and Marketing Defects

### What proof is needed to claim that a product is defective?

The plaintiff must establish that the product was in a defective condition at the time it left the hands of the particular seller.

### What constitutes “Manufacturing Defect” or “Impure Product”?

According to section PJC 71.3 of Products Liability – Theories of Recovery, a “defect” means a condition of the product that renders it unreasonably dangerous. An “unreasonably dangerous” product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary user of the product, with the ordinary knowledge to the community as to the product’s characteristics.

### What constitutes “Design Defect”?

According to section PJC 71.4B of Products Liability – Theories of Recovery, a “design defect” is a condition of the product that renders it unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use. For a design defect to exist, there must have been a safer alternative design, other than the one actually used that in reasonable probability:

- 1) would have prevented or significantly reduced the risk of the [occurrence] [injury] [ occurrence or injury] in question without substantially impairing the product’s utility, and
- 2) was economically and technologically feasible at the time the product left the control of *ABC Company* by the application of existing or reasonably achievable scientific knowledge.

### What constitutes “Marketing Defect”?

According to section PJC 71.5 of Products Liability – Theories of Recovery, a “marketing defect” with respect to the product means the failure to give adequate warnings of the product’s dangers that were known or by application of reasonably developed human skill and foresight should have been known, or failure to give adequate instructions to avoid such dangers, which failure rendered the product unreasonably dangerous as marketed.

“Adequate” warnings and instructions mean warnings and instructions given in a form that could reasonably be expected to catch attention of a reasonably prudent person in the circumstances of the product’s use; and the content of the warnings and instructions must be comprehensible to the average user and must convey a fair indication of the nature and extent of the danger and how to avoid it to the mind of a reasonably prudent person.

An “unreasonably dangerous” product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary user of the product with the ordinary knowledge common to the community as to the product’s characteristics.

### **When a defective product is not considered defective - Substantial Change in Condition or Subsequent Alteration by Affirmative Conduct**

According to section PJC 70.5 of *Products Liability – Theories of Recovery*, a product is not in a defective condition, thus not unreasonably dangerous when sold, if the unreasonably dangerous condition is solely caused by a substantial change or alteration of the product after it is sold, and but for which unreasonably dangerous condition the event would not have occurred. “Substantial change or alteration” means that the configuration of operational characteristics of the product are changed or altered by affirmative conduct of some person in a manner that the defendant could not have reasonably foreseen would occur in the intended or foreseeable use of the product. Substantial change or alteration does not include reasonably foreseeable wear and tear or deterioration.