In tort law, one exception to the requirement of fault is strict liability, also known as liability without fault. Strict liability means that the defendant is liable to the plaintiff regardless of fault. In some situations, even if the defendant acted in a reasonable and prudent manner and took all the precautions necessary, liability is imposed without proof of fault. Strict liability is applied to ultrahazardous activities such as storing or transporting dangerous substances or using explosives. It is also applied to harm caused by dangerous animals and to harm caused by the manufacture and sale of defective products to consumers.

Proving negligence involves establishing four elements: duty, breach, causation, and damages. To prove strict liability, however, you must prove only causation and damages. However, you must also convince the court that the activity that caused the harm is the type of unreasonably dangerous activity to which strict liability should be applied. Public policy and common sense require people who conduct dangerous activities to accept responsibility for any harm they caused, even if they were not negligent.

The company in charge of this demolition is liable without fault if a bystander is injured.
Dangerous Activities

Strict liability applies to activities that are seen as unreasonably dangerous. Activities are considered unreasonably dangerous when they involve a risk of harm that cannot be eliminated even by reasonable care. These activities may be socially useful or necessary, but because of their potential for harm, those who engage in them are held to the strict liability standard. For example, assume that a demolition company has been hired to dynamite an old downtown building. While demolition may be necessary, it is inherently dangerous to use dynamite in a populated area. No amount of care by the demolition team can totally eliminate the risk. Therefore, the law imposes strict liability. This means that the demolition company must assume the risk of any foreseeable harm, even if the company is careful and not negligent.

Companies conducting dangerous activities know that they are strictly liable for any harm they cause. Therefore, they include this potential cost in the price they charge for the work. In the example above, the company using the dynamite has a financial incentive to be as careful as possible because of strict liability.

Problem 21.1

In which of the following situations should the plaintiff be able to recover damages based on strict liability? Explain your reasons.

a. Anytown’s waste treatment plant develops a leak, and harmful bacteria are released into the water supply. Hundreds of families become sick.

b. Anita takes her car to a mechanic for repairs. As she enters the garage, she slips on spilled motor oil and breaks her ankle.

c. Donna drives by a construction site in a downtown shopping district. Following a sudden blast from the site, a piece of cement crashes through her windshield and injures her.

d. Kyung Lee is eating lunch at a cafeteria. A waiter races by and spills a pot of coffee on Kyung Lee’s arm, badly burning him.

In recent years, a concept called toxic torts has been introduced in court to address harm resulting from the use of toxic chemicals and other hazardous materials. Historically, some industrial manufacturers disposed of their wastes by dumping them into the nearest river or other convenient location. It was not until the 1960s that the public began to understand that prolonged exposure to toxic chemicals could cause illness and even death.
The toxic torts concept was developed to allow injured parties who are harmed by the manufacture or disposal of hazardous materials to recover damages from industrial polluters if the injured parties can establish causation. For example, when a Massachusetts mother found that her son and a dozen other neighborhood children had leukemia, she successfully sued a chemical company that had contaminated local drinking water by dumping its waste products into a nearby stream.

**Problem 21.2**

Mr. Mattingly, a well-to-do farmer, has a legal right to apply pesticides to his fruit trees. One year, he decided to hire a crop-dusting airplane to spread a pesticide on his orchard. An unexpected gust of wind blew the chemical onto a neighbor’s beehives, killing all the bees. The neighbor sued Mattingly for the value of the 60 beehives. Mattingly argued that a good fruit farmer has to apply pesticides and that the crop duster had exercised extreme caution in applying the chemicals.

a. Was Mr. Mattingly negligent? Should strict liability apply to this case? Give your reasons.

b. How should Mr. Mattingly defend this case?

c. How would you decide this case? Explain your answer.

**Animals**

The law has traditionally held owners strictly liable for any harm caused by their untamed animals. Even the owner of a tamed wild animal such as a lion may be held strictly liable for any harm it causes because of the nature of the animal itself. The situation differs, however, for household pets. In most states, a pet owner is strictly liable only if he or she knew, or should have known, that the pet was dangerous or destructive. There is a saying that “Every dog is entitled to one free bite.” However, an owner who knows that his or her dog is vicious may be liable for the first bite. There may also be liability if “near misses” have put the owner on notice of the dog’s viciousness.

Even the first bite by a pet with no history of violent behavior can result in liability if the owner is negligent. For example, some states and localities have leash laws requiring that pets be kept under the owner’s control and on a leash in public places. If you violate the duty to keep your pet under control, you can be sued based on your negligence. In extreme situations, a pet owner might even be held criminally responsible for the harm caused by a pet if the owner knows that the pet is dangerous or cannot be controlled.
Defective Products

Harm caused by defective products is a significant social problem. Product liability—the legal responsibility of manufacturers for injuries caused by defective products—is an important legal issue. In fact, some lawyers specialize in product liability law. In a typical year, more than one million consumers suffer product-related injuries and nearly half of them sue to recover damages. In many cases, the manufacturer is held strictly liable for harm caused by the defective product. In some instances, injured consumers bring cases together as a class action against a manufacturer.

The U.S. Consumer Product Safety Commission (CPSC) was created in 1972 to deal with this problem. It protects the public by issuing and enforcing mandatory product standards or, in some cases, banning consumer products. The commission has the power to force many dangerous products off the market and advises consumers on product safety. It also maintains a Web site (www.cpsc.gov) describing recent product recalls and allowing consumers to report injury-causing incidents with products.

As a matter of public policy, manufacturers and sellers are frequently held strictly liable for harm caused by their products. Strict liability is meant to create a strong incentive for companies to design safe products, to test products thoroughly, and to include clear directions and warnings on products. Strict liability causes companies to spend more money on research and development, safety features, and insurance. This increase in spending usually results in higher prices for consumers. Some people criticize these higher prices, while others say that safer products are worth the extra cost.

Problem 21.3

a. What arguments can you make for Matthew’s parents?

b. What arguments can you make for the dog’s owners?

c. How should this case be decided? Explain the reasons for your answer.

d. Would you have decided this case differently if Matthew had been 15? What if he had been 35? What arguments could you make for each situation? How would they differ?

The Dangerous Dog

Five-year-old Matthew opens a gate and walks into his neighbors’ yard to play with their dog, a pit bull terrier. The dog—which had never attacked anyone before—attacks Matthew, badly mauling his hand. Matthew’s parents sue the dog’s owners for not keeping the animal inside or in a pen in the yard. The owners defend themselves by saying that even though there have been reports of attacks by other pit bull terriers, their dog had been affectionate with family members and had never shown any dangerous or destructive tendencies.
An unsafe product that causes many injuries and subsequent lawsuits may become too expensive to compete successfully with safer products in the marketplace. For example, in the 1990s, more than 5.8 million Americans began taking weight-loss drugs, including a product called fen-phen. About 20 percent of those taking fen-phen developed serious heart problems, and some of them lost normal heart function. In a successful class action, several people recovered damages from the pharmaceutical company that made fen-phen. As a result, fen-phen is no longer on the market in the United States.

The fear of expensive lawsuits may also discourage the production of new and useful—but unavoidably dangerous—products such as vaccines. Some people argue that this is a reasonable restraint on research and development. Other people argue that the government should provide some type of insurance or immunity from lawsuits as an incentive for companies to develop new products in the spirit of progress.

Courts have been reluctant to apply strict liability to unavoidably unsafe products whose benefits outweigh the dangers. Certain vaccines are unavoidably risky to use. For example, even when the rabies vaccine is properly tested, prepared, and labeled, some people who receive it have become sick. However, if untreated, rabies leads to death. Because the benefits of the vaccine have proven to outweigh the danger, strict liability does not apply. This does not mean that drug manufacturers are

The Case of . . .

**The First Responders**

Gabriella, a doctor, is a member of the first-responders team her city established in case of a bioterrorist attack. As part of her preparation for such an event, Gabriella and her colleagues are each required to be vaccinated for smallpox, a highly infectious and deadly disease that kills 30 percent of those who contract it. The government believes that the smallpox virus could be used in a terrorist attack. Even though Gabriella does not want to receive the vaccination because she knows there is a minor risk (1 in 1,000,000) that she could contract smallpox, she is forced to do so in order to keep her job.

**Problem 21.4**

a. If Gabriella becomes sick after having the vaccination, should the drug company that manufactures the vaccine be held strictly liable for Gabriella’s injury?

b. Is the risk of getting sick from the vaccine unreasonable? Do the benefits outweigh the dangers?

c. What arguments can the drug company make to defend itself? Identify the public policy issues that the company might use in its defense.

d. Should Gabriella be able to sue the government for forcing her to take a drug she doesn’t want to take? Why or why not?
automatically protected from any liability. If a drug that causes harm has not been properly tested, prepared, or labeled, the plaintiff may be able to recover damages based on negligence rather than on strict liability.

**Defenses to Strict Liability**

There are very few defenses in strict liability cases. The defendant’s best strategy may be to argue that the plaintiff should have to prove negligence in a particular case and that sound public policy does not require the use of a strict liability standard. It is almost always more difficult for the plaintiff to win a negligence suit, because there must be proof of the defendant’s fault, or breach of duty.

While you do not have to prove fault in a strict liability case, you do have to prove both causation and damages. Therefore, a defendant could try to show that there is no causation or that there are no damages. For example, suppose that a person has a heart attack and dies instantly while driving a car with faulty brakes. That person’s family might argue that the car manufacturer is strictly liable. However, if the defect (the faulty brakes) did not cause the damage (the death), the manufacturer would not be liable.

In product liability cases, manufacturers or sellers may have a defense if the consumer misuses a product or ignores clear safety warnings. Many courts, however, require manufacturers to anticipate some misuse and to make products safe against any foreseeable misuse. For example, a manufacturer should assume that a stool meant for seating at a kitchen counter might also be used as a stepladder. The stool should be built to hold a person whether seated or standing.

**The Exploding Tire**

M yra purchased a new set of tires and had them mounted and balanced at the store. Several months later, Myra was killed in an accident on a two-lane highway. She was driving at or near the speed limit in dry weather when a front tire exploded, causing her to lose control and crash into a ditch.

Investigators found that one of the tires that had not exploded was overinflated by 15 pounds. Myra’s husband filed a lawsuit against the tire store and the tire manufacturer.

**Problem 21.5**

a. What are the strongest arguments available to the plaintiff in this case?

b. What are the strongest arguments available to the defendants in this case?

c. Should the plaintiff be able to use strict liability in this case or should the plaintiff be required to prove that the defendant was negligent? Explain your answers.

d. How should this case be decided? Give the reasons for your answers.