

STRICT LIABILITY

Strict Liability & The Economic Loss Rule

Aas v. Superior Court (2000) 24 Cal.4th 627

Construction defects - causes of action

Strict liability

Economic Loss Rule

Strict liability is not intended to apply to products that simply do not perform to the consumers expectation.

Strict liability does not allow recovery for solely "economic losses."

Economic losses, generally, are the loss of value or the cost of repair or replacement of the "product" when there has been no claim of personal injury or property damage.

TORT REMEDIES FOR PHYSICAL PROPERTY DAMAGE

“Construction defects that have not ripened into property damage . . . do not comfortably fit the definition of ‘appreciable harm,’ an essential element of a negligence claim. . . . The breach of a duty causing only speculative harm or the threat of future harm does not normally suffice to create a cause of action.”

***Aas v. Superior Court* (2000) 24 Cal.4th 627, 646**

TORT REMEDIES FOR PHYSICAL PROPERTY DAMAGE

"No element of 'damage' exists for a negligence cause of action by the owners of homes without leaks in their plumbing systems. Although the 14 homeowners assert that their PB pipes are inherently defective and have suffered degradation and 'micro-cracking,' these factors, if true, do not show that there has been the requisite 'damage' for a negligence cause of action."

Zamora v. Shell Oil Company (1997) 55 Cal. App.4th 204, 211

Robinson Helicopter Company, Inc., v.

Dana Corporation

(2004) 34 Cal 4th 979

Facts in Robinson v. Dana

- A supplier (Dana) provided defective sprag clutches to its buyer (Robinson Helicopter).
- The components of the clutches had to be ground to precise tolerances in order to avoid distortions leading to failure.
- After providing clutches for more than 12 years, Dana changed its grinding process without notifying Robinson.
- Dana continued to provide written certifications that the clutches were manufactured in conformance with Robinson's specs.
- These new clutches failed at an alarmingly high rate.

Facts in Robinson v. Dana (Cont.)

- The clutch failures did not result in any personal injury or property damage, nor did any of the defective clutches cause any damage to other parts of the helicopters in which they had been installed.
- Robinson was required to recall and replace all of the newer clutch assemblies.
- This led to a total expense to Robinson of \$1,555,924.
- Dana disputed liability and refused to pay for the costs of making the necessary replacements.

Facts in Robinson v. Dana (Cont.)

- The jury in the trial court found that Dana had breached its contract with Robinson and the warranties made to Robinson.
- In addition, the jury found that Dana had made false representations of fact and had knowingly misrepresented or concealed material facts with the intent to defraud.
- Therefore, the jury awarded Robinson \$1,555,924 compensatory damages as well as \$6 million in punitive damages.

Facts in Robinson v. Dana (Cont.)

- Dana appealed. The court of appeal affirmed on the contract and warranty causes of action.
- However, based upon the economic loss rule, the court of appeal held that since Robinson suffered only economic losses, it could not recover in tort.
- Robinson appealed, contending that the economic loss rule does not bar fraud and misrepresentation claims.

Economic Loss Rule

Strict liability is not intended to apply to products that simply do not perform to the consumers expectation.

Strict liability does not allow recovery for solely "economic losses."

Economic losses, generally, are the loss of value or the cost of repair or replacement of the "product" when there has been no claim of personal injury or property damage.

Holding in Robinson v. Dana

The Supreme Court of California ruled that the Economic Loss Rule did not bar Robinson's fraud and intentional misrepresentation claims because they were independent of Dana's breach of the contract.



Reasoning in Robinson v. Dana

- When a purchaser's expectations are not met because the product she bought is not working properly, her remedy is in contract alone, since she has suffered a purely economic loss.
- A breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law, such as fraud.
- Dana's issuing false certificates of compliance was a tort, which was independent of the breach of contract that occurred when Dana provided the nonconforming clutches.

Impact of Construction Defect Litigation on Residential Construction

- Limitations on liability insurance
- Right to repair laws
- Project specific liability insurance
- Limitations on contractual indemnities