JURISDICTIONS COMPARATIVE CHART:

ECONOMIC LOSS DOCTRINE

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ECONOMIC LOSS DOCTRINE

ALABAMA	
Doctrine	Bars tort claim for purely economic losses from product defect that does not damage other property, but exceptions include fraudulent inducement resulting in "purely economic loss to a product itself based upon value that is indicated by a seller's representations but not actually received, even where the product was in fact working properly." *Ford Motor Co. v. Rice,* 726 So. 2d 626 (Ala. 1998) (denying recovery to plaintiffs claim for unknown future risk that their vehicle might one day roll over). *See also Vesta Fire Insurance Corp. v. Milam & Co. Construction, Inc.,* 2004 WL 1909458 (Ala. 2004); *Lloyd Wood Coal Co. v. Clark Equipment Co.*, 543 So. 2d 671 (Ala. 1989) (stating that the rule applies to products liability cases involving manufacturers). "Under [the economic loss] rule, a cause of action does not arise under tort theories of negligence, wantonness, strict liability, or the Alabama Extended Manufacturer's Liability Doctrine where a product malfunctions or is defective and thereby causes damage only to the product itself." *Harris Moran Seed Co. v. Phillips*, 949 So.2d 916, 931 (Ala. Civ. App. 2006).
Exceptions	• **Other property:** *Ford Motor Co. v. Rice*, 726 So. 2d 626 (Ala. 1998) • **Fraudulent inducement:** *Ford Motor Co. v. Rice,* 726 So. 2d 626 (Ala. 1998).
ALASKA	
Doctrine	Implicitly recognizes the doctrine with the statement in *Northern Power and Engineering Corp. v. Caterpillar Tractor Co.,* 623 P.2d 324, 329 (Alaska 1981), that Alaska allows recovery of economic loss under a strict products liability theory if "the defective product creates a situation potentially dangerous to persons or other property, and loss occurs as a result of that danger."
Exceptions	• **Other Property:** *See Northern Power* • **Dangerous Situation:** *See Northern Power*
ARIZONA	
Doctrine	Where economic loss, in the form of repair costs, diminished value, or lost profits, is the plaintiff's only loss, the policy of the law generally would be best served by leaving the parties to their commercial remedies. *Salt River Project Agr. v. Westinghouse Elec.,* 694 P.2d 198 at 210, 211 (Ariz. 1984). Trial courts examine three factors to determine whether damage caused by a defective product may be recoverable in tort: (1) the nature of the product defect, (2) the manner in which the loss occurred, and (3) the type(s) of the loss or damage that resulted. *Id*. If the court determines that tort principles are appropriate under the circumstances, the plaintiff may rely on strict liability under section 402A of the Restatement, negligence or other applicable tort theories. If the court determines that tort principles are not appropriate, the plaintiff is limited to contractual remedies. *Id*. *See also Nastri v. Wood Bros. Homes*, 690 P.2d 158, 163-64 (Ariz. Ct. App. 1984) (affirming dismissal of negligence claim because there was no claim for damage to personal property or personal injury).
Exceptions	• **Other Property Nuances:** Where economic loss is accompanied by physical damage to personal or other property, the parties' interests generally will be realized best by the imposition of strict tort liability. *Salt River Project Agr. v. Westinghouse Elec.,* 694 P.2d 198 at 210, 211 (Ariz. 1984). • **Accidental Loss:** If the only loss is non-accidental and to the product itself, or is of a consequential nature, the remedies available under the UCC will govern and strict liability and other tort theories will be unavailable. *Salt River Project Agr. v. Westinghouse Elec.*, 694 P.2d 198 at 210, 211 (Ariz. 1984).
ARKANSAS	
Doctrine	Arkansas follows the minority doctrine allowing tort recovery even when the damages are purely economic or are to the product itself. *Farm Bureau Ins. Co. v. Case Corp.*, 317 Ark. 467, 878 S.W.2d 741 (1994); *Alaskan Oil, Inc. v. Central Flying Serv., Inc.*, 975 F.2d 553 (8th Cir. 1992).
CALIFORNIA	
Doctrine	California is considered the birthplace of the economic loss rule. In *Seeley v. White Motor Co.,* 403 P.2d 145 (Cal. 1965), the California Supreme Court distinguished between tort recovery for physical injury and warranty recovery for economic loss. The court held that a buyer should not bear the risk that a product will cause physical injury, but the buyer should bear the risk that the "product will not match his economic expectations." *Id*. at 151. The case involved a consumer transaction, the purchase of a defective truck. The court rejected the notion that the law of warranty should be "limited to parties in a somewhat equal bargaining position." *Id.* at 151.

Exceptions	• **Other Property** • **Special Relationship:** Allows limited exception where there is a "special relationship" between the plaintiff and the defendant. *Biakanja v. Irvine*, 49 Cal. 2d 647, 650 (1958); *J'Aire v. Gregory*, 24 Cal. 3d 799, 804 (1979). A "special relationship" exists between the plaintiff and the defendant where: (1) the plaintiff was an intended beneficiary of the defendant's obligations under a contract; (2) the plaintiff's loss was foreseeable; (3) there is a high degree of certainty that the plaintiff would suffer the loss from the defendant's conduct; (4) there is a close connection between the defendant's conduct and the plaintiff's loss; (5) the defendant's conduct is morally blameworthy; and (6) the public policy favors holding the defendant responsible for plaintiff's economic loss. *Biakanja* at 650; *J'Aire* at 804. • **Fraud:** *Robinson Helicopter Co., Inc. v. Dana Corp.*, 102 P.3d 268, 273-74 (Cal. 2004) ("[A] tortious breach of contract . . . may be found when (1) the breach is accompanied by a traditional common law tort, such as fraud or conversion; (2) the means used to breach the contract are tortious, involving deceit or undue coercion; or (3) one party intentionally breaches the contract intending or knowing that such a breach will cause severe, unmitigable harm in the form of mental anguish, personal hardship, or substantial consequential damages.")
COLORADO	
Doctrine	In *Town of Alma v. AZCO Constr., Inc.,* 10 P.3d 1256 (Colo. 2002), the Colorado Supreme Court expressly adopted the economic loss rule. A party suffering only economic loss from a breach of express or implied contractual duties may not assert a tort claim for such breach absent an independent duty under tort law. Colorado looks to the source of the duty not the nature of the damages, because different legal theories are designed to enforce and protect different risks.
Exceptions	• **Professional Negligence:** Economic loss rule bars a construction subcontractor's claims of negligent breach of professional duty and negligent misrepresentation against a design engineer and its agent. *BRW, Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66 (Colo. 2004).
CONNECTICUT	
Doctrine	Economic loss doctrine applies under the Connecticut Products Liability Act. The definition of "harm" under the Act "includes damage to property, including the product itself, and personal injuries including wrongful death. As between commercial parties, 'harm' does not include commercial loss. Conn. Gen. Stat. § 52-572m(d). *See also Connecticut General Life Insurance Co. v. Grodsky Service, Inc.,* 781 F.Supp. 897 (D. Conn. 1991) (phrase "commercial loss" in the CPLA includes all economic loss either direct or consequential such that commercial tenant could not recover for economic losses arising out of a water pipe rupture and subsequent flooding of the premises, including employee salaries and fringe benefits, taxes, rent, and the cost of expedited computer work). *See also McKernan v. United Technologies Corp.,* 717 F. Supp. 60 (D. Conn. 1989) (The district court held that the buyer of a helicopter could not recover in tort against the seller for economic damages arising out of the recall of the helicopter when no injury to persons or property other than to the helicopter itself were alleged); *Bosek v. Valley Transit District*, No. CV92039674 (Conn. Super. Dec. 10, 1993), (The Superior Court of Connecticut held that the plaintiff's claims for damages under the Connecticut Products Liability Act were barred. The action involved commercial parties, and alleged loss of profits, interruption of business and damage to business arising out of damage to machinery and a building); *Flagg Engergy Dev't Corp. v. General Motors Corp.,* 244 Conn. 126, 709 A.2d 1075 (1988) (The Connecticut Supreme Court upheld the trial court's order granting the defendant's motion to strike misrepresentation and unfair trade practices claims. The plaintiff alleged that gas turbine engines manufactured by the defendant were defective, and defendant failed to cure the defects. The court held that these claims between commercial parties were inconsistent with and precluded by breach of warranty claims).
Exceptions	• **Other Claims:** The Connecticut Products Liability Act was not designed as a bar to other claims, including claims under Connecticut's Unfair Trade Practices Act, either for an injury not caused by a defective product, or claims other than those for personal injury, death or property damage. *DiBello v. C.B. Fleet Holding Co*., 2007 Conn. Super. LEXIS 2404 (Conn. Sup. Ct. Aug. 31, 2007).
DELAWARE	
Doctrine	The economic loss doctrine "prohibits recovery in tort where a product has damaged only itself (*i.e.*, has not caused personal injury or damage to *other* property) and, the only losses suffered are economic in nature." *Danforth v. Acorn Structures, Inc.,* 608 A.2d 1194, 1195 (Del. 1990) (emphasis in original). In *Danforth*, the Delaware Supreme Court identified "economic loss" as "damages for inadequate value, cost of repair and replacement of the defective product, or consequent loss of profits -- without any claim of personal injury or damage to *other* property." *Id.* at 1201 n.3 (emphasis in original). The *Danforth* case applied the economic loss doctrine to preclude an action by a homeowner against the seller of building kits. In response to the decision in *Danforth,* the Delaware General Assembly passed the Home Owners Protection Act. See Del. Code Ann. tit. 6, § 3651-52 (1999). This act states: "No action based in tort to recover damages resulting from negligence in the construction or manner of construction of an improvement to residential real property and/or in the designing, planning, supervision and/or observation of any such construction or manner of construction shall be barred solely on the ground that the only losses suffered are economic in nature." Del. Code Ann. tit. 6, § 3652.

	Both parties argue that public policy supports their positions. This court has stated some of the general policies that support the application of the economic loss doctrine as follows: "(a) It encourages the party best situated to assess the risk of economic loss to insure against it; (b) it maintains a distinction between tort and contract law; and (c) it protects a party's freedom to allocate economic risks by contract."
Exceptions	• **Other Property** • **Misrepresentation:** A claim for negligent misrepresentation may allow for allow for a recovery in tort for economic loss. *Guardian Const. Co. v. Tetra Tech. Richardson, Inc.,* 583 A.2d 1378 (Del. Super. 1990).
FLORIDA	
Doctrine	Plaintiff cannot sue in tort for purely economic damages in the absence of personal injury or damage to "other property," regardless whether the injury was from a sudden or calamitous event. *Casa Clara Condominium Assn. V. Charley Toppino & Sons, Inc.,* 620 So. 2d 1244 (Fla. 1993). The doctrine applies to service contracts but not to professional services or to situations where the plaintiff is not in privity of contract with the service provider, i.e., the doctrine applies to non-professional services so long as the plaintiff is in privity of contract with the defendant but does not require privity if the claim is for a product defect. *Indemnity Insurance Co. of North America v. American Aviation, Inc.,* 891 So. 2d 532 (Fla. 2004) ("We conclude that the 'economic loss doctrine' or 'economic loss rule' bars a negligence action to recover solely economic damage only in circumstances where the parties are either in contractual privity or the defendant is a manufacturer or distributor of a product, and no established exception to the application of the rule applies.")
Exceptions	• **Other Property:** *i.e.,* non-integral property • Lack of privity if it is a service transaction as opposed to a product liability claim. *Indemnity Insurance Co. of North America v. American Aviation, Inc.,* 891 So. 2d 532 (Fla. 2004). • **Torts Independent of Contractual Duties:** *HTP v. Lineas Aereas Cosarricanses, S.A.,* 685 So. 2d 1238 (Fla. 1996) (allowing claim of fraud in the inducement to a contract, but barring claim of fraud in the performance of contract: "Where a contract exists, a tort action will lie for either intentional or negligent acts considered to be independent from acts that breached the contract."). *See also Alex Hofrichter, P.A. v. Zuckerman & Vendetti, P.A.*, 710 So. 2d 127 (Fla. 3d DCA 1998) (barring conversion, civil theft, and constructive fraud claims, but allowing claims of lawyer's alleged wrongful retention of certain fees as tantamount to "intentional misconduct*"); Bankers Risk Management Services, Inc. v. Av-Med Managed Care*, 697 So. 2d 158 (Fla. 2d DCA 1997) (allowing claim of tortious interference with contract as being independent of a contractual breach, but barring claim for fraud in the performance as not independent from a breach of contract claim). • **Statutory Violations:** *Comptech International, Inc. v. Milam Commerce Park, Ltd.,* 753 So. 2d 1219 (Fla. 1999) (commercial tenant can sue building owner in negligence for violation of Fla.Stat. § 553.84, which provides for a statutory civil remedy for violation of the State Minimum Building Codes). Note, however, that after *Comptech*, the legislature amended section 553.84 to create an "escape clause," stating: "[H]owever, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the violation existed." • **Professional Negligence:** *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999) (The economic loss rule does not bar a tort action for professional negligence against architects, engineers and lawyers, even where there is already a contract.).
GEORGIA	
Doctrine	Absent personal injury or damage to property other than to the allegedly defect product itself, an action in negligence does not lie and any such cause of action may be brought only as contract warranty action. *Long v. Jim Letts Oldsmobile*, 135 Ga.App. 293, 217 S.E.2d 602 (Ga. Ct. App. 1975); *Advanced Drainage Systems, Inc. v. Lowman*, 210 Ga.App. 731, 437 S.E.2d 604 (Ga. Ct. App. 1993); *Vulcan Matearials Co. v. Driltech, Inc.*, 306 S.E.2d 253, 257 (Ga. 1983) (stating that the rule applies "when a defective product has resulted in the loss of the value or use of the thing sold").
Exceptions	• **Other Property** • **Sudden and Calamitous Event:** Plaintiff can recover in tort when there is a sudden and calamitous event that not only causes damage to the product but poses an unreasonable risk of injury to persons and other property. *Vulcan Materials Co. v. Driltech*, 251 Ga. 383, 306 S.E.2d 253 (1983). *See also Squish La Fish, Inc. v. Thomco Specialty Products, Inc.,* 149 F.3d 1288 (11th Cir. 1998). • **Misrepresentation Exception:** "[O]ne who supplies information during the course of his business, profession, employment, or in any transaction in which he has a pecuniary interest has a duty of reasonable care and competence to parties who rely upon the information in circumstances in which the maker was manifestly aware of the use to which the information was to be put and intended that it be so used. This liability is limited to a foreseeable person or limited to a class of person for whom the information was intended, either directly or indirectly." *Robert & Co. Assoc. v. Rhodes-Haverty Partnership*, 250 Ga. 680, 681-82, 300 So.E.2d 503 (1983); *See also Squish La Fish, Inc. v. Thomco Specialty Products, Inc.,* 149 F.3d 1288 (11th Cir. 1998). Under this exception, "*false* information must be provide to a foreseeable person that the supplier of the information was manifestly aware would use the information and that foreseeable person must rely upon the information to their detriment." *Advanced Drainage Systems, Inc. v. Lowman*, 210 Ga.App. 731, 437 S.E.2d 604 (Ga. Ct. App. 1993) (emphasis in original).

HAWAII	
Doctrine	The economic loss rule bars claims based in negligence or strict liability for economic losses when the product damages only itself. *State ex rel. Bronster v. U.S. Steel Corp.,* 919 P.2d 294, 302 (Hawaii 1996) (adopting the rule "insofar as it applies to claims for relief based on a product liability or negligent design and/or manufacture theory")
Exceptions	• **Other Property** • **Misrepresentation:** The cause of action founded on negligent misrepresentation is not precluded by the economic loss doctrine. *Id.* at 302.
IDAHO	
Doctrine	Economic loss not recoverable in tort, only in warranty, for damage to product. *Ramerth v. Hart*, 133 Idaho 194, 983 P.2d 848 (1999); *Clark v. International Harvester Co.*, 99 Idaho 326, 581 P.2d 784 (1978).
Exceptions	• **"Parasitic Injury to Person or Property":** *Duffin v. Idaho Crop Improvement Ass'n*, 126 Idaho 1002, 895 P.2d 1195 (1995). • **"Unique circumstances requiring different allocation of risk":** *Duffin* • **"Special Relationship" between the parties:** *Duffin*
ILLINOIS	
Doctrine	"Economic loss is damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits-without any claim of personal injury or damage to other property." *In re Chicago Flood Litig.,* 680 N.E.2d 265, 274 (Ill. 1997), citing *Moorman Mfg. Co. v. National Tank Co., 435* N.E.2d 443, 449 (1982). Purely economic losses are generally not recoverable under the tort theories of strict liability, negligence, and innocent misrepresentation. *Moorman Mfg. Co.v. National Tank Co.,* 435 N.E.2d 443, 452-53 (1982); *In re Illinois Bell Switching Station Litigation,* 641 N.E.2d 440 (1994). Illinois expressly does not recognize the "professional negligence" exception as to architects and engineers, when the party's duty is based on the contract. *Fireman's Fund Ins. Co. v. SEC Donohue*, 679 N.E.2d 1197, 1200-01 (Ill. 1997).
Exceptions	• **Other Property:** Either personal injury or damage to "other property" damage [in addition to a "sudden and calamitous occurrence"] are required. *Trans States Airlines v. Pratt & Whitney Can.,* 682 N.E.2d 45, 55 (Ill. 1997) Under Illinois law, a product and one of its component constitute two separate products only if the purchaser bargained for each separately. If the components were purchased as a fully integrated product they cannot constitute "other property" for the purpose of the economic loss doctrine. *Trans States Airlines v. Pratt & Whitney Can.,* 682 N.E.2d 45, 55-59 (Ill. 1997). Damage to the product itself is exempted from the broad category of "property damage*." Id.* at 53. Therefore, even if damaged through a sudden and calamitous occurrence, damage to the product itself exempted from the category of injury that is recoverable in tort. *Id*. at 48, overruling *Vaughn v. General Motors Corp.,* 454 N.E.2d 740 (Ill. 1983). • **Sudden or Dangerous Event:** Illinois law requires a showing of either personal injury or damage to other property coupled with a "sudden or dangerous occurrence" to avoid the economic loss doctrine and recover in tort. *Trans States Airlines v. Pratt & Whitney Can.,* 682 N.E.2d 45, 55 (Ill. 1997), citing *Moorman Mfg. Co.v. National Tank Co.,* 435 N.E.2d 443 (1982). There must be a showing of harm above and beyond disappointed expectations. *Mars, Inc. v. Heritage Builders of Effingham*, 763 N.E.2d 428, 434 (Ill.App. 2002). "Damages which are the proximate result of a sudden and calamitous occurrence that causes harm to other property are compensable in tort. *Muirfield Village-Vernon Hills, LLC v. K. Reinke, Jr. and Co.,* 810 N.E.2d 235, 249 (Ill.App. 2 Dist. 2004). This means even damages that occur gradually over time, such as mold growth, fall under the exception. *Id.* • **Lack of Privity of Contract:** The Economic Loss Doctrine barred recovery of economic loss damages by one party involved in a construction project from another party involved in that project where the claimant had no privity of contract with the alleged wrongdoer. *Fence Rail Dev. Corp. v. Nelson & Assoc., Ltd.,* 528 N.E.2d 344, 348 (Ill. App. 1988). • **Applicability to Service Contracts:** "Just as a seller's duties are defined by his contract with a buyer, the duties of a provider of services may be defined by the contract he enters into with his client. When this is the case, the economic loss doctrine applies to prevent the recovery of purely economic loss in tort." *Fireman's Fund Ins. Co. v. SEC Donohue*, 679 N.E.2d 1197, 1200 (Ill. 1997), citing *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.,* 636 N.E.2d 503 (Ill. 1994). However, an important distinction must be made: the economic loss doctrine bars recovery in tort only when the duty breached was created by the service contract; violation of duties arising independently of the service contract remain recoverable in tort. *Id*. • **Applicability to Consumers:** "We recognize that some jurisdictions make a distinction between commercial transactions and consumer transactions, allowing tort recovery for consumer transactions. Although we are not now persuaded that the consumer/commercial transaction distinction makes any difference when the product damages only itself, we express no opinion in that regard." *Trans States Airlines v. Pratt & Whitney Can.,* 682 N.E.2d 45, 53-54 (Ill. 1997). • **Fraud and Misrepresentation Exceptions**: Under Illinois law, recovery of economic losses in tort is permitted: (1) where plaintiff's damages are proximately caused by defendant's intentional, false representation, i.e., fraud; or (2) where the plaintiff's damages are proximately caused by a negligent misrepresentation by a defendant in the business of supplying information for the guidance of others in their business transactions. *Moorman Mfg. Co. v. National Tank Co.,* 435 N.E.2d 443, 452-53 (1982); *In re Illinois Bell Switching Station Litigation,* 641 N.E.2d 440 (1994). Note, however, that the negligent misrepresentation exception does not apply when the information supplied is merely ancillary to the sale of a product or service in connection with the sale, as the information provider is not deemed to be in the business of providing information. *Fox Assocs. v. Robert Half Int'l, Inc.,* 777 N.E.2d 603, 606-7 (Ill.App. 2002).

	• **The Public Safety Exception:** Although Illinois has not adopted an explicit "public safety exception" to the economic loss doctrine, in *Board of Education v. A, C & S, Inc.,* 546 N.E.2d 580, 590-91 (Ill. 1989) the Illinois Supreme Court made an exception to the typical rule that damage to other property be caused by a "sudden or calamitous" event, requiring only a showing that asbestos contamination spread throughout different parts of the building, thus constituting damage to other property.
INDIANA	
Doctrine	"[D]amage from a defective product or service may be recoverable under a tort theory if the defect causes personal injury or damage to other property, but contract law governs damage to the product or service itself and purely economic loss arising from the failure of the product or service to perform as expected." *Gunkel v. Renovations, Inc.*, 822 N.E.2d 150, 153 (Ind. 2005). Economic loss in Indiana is defined as "the diminution in the value of a product and consequent loss of profits because the product is inferior in quality and does not work for the general purposes for which it was manufactured and sold. Economic loss includes such incidental and consequential losses as lost profits, rental expense and lost time." *Id.* at 154. The doctrine extends to construction projects. *Indianapolis-Marion County Pub. Library v. Charlier Clark & Linard, P.C.*, 900 N.E.2d 801, 811 (Ct. App. Ind. 2009).
Exceptions	• **Other Property:** Under Indiana law, when a manufacturer places an item into the stream of commerce, that item, together with its component parts, constitutes "the product" for purposes of the economic loss doctrine. *Hitachi Constr. Mach. Co. v. Amax Coal Co.,* 737 N.E.2d 460, 464 (Ind.App. 2000). If one component damages the whole, or another component thereof, no damage to "other property" has occurred *Id*. Items added to "the product" after it is placed into the stream of commerce, however, do constitute other property. *Id.* Damage to those items caused by "the product" or any of its components does constitute damage to other property recoverable in tort. *Id.* "Other property" is that which is "wholly outside and apart from the product itself." *I/N Tek v. Hitachi, Ltd.,* 734 N.E.2d 584, 588 (Ind.App. 2000). Accordingly, a person may not recover in tort when only the product itself has been destroyed. *Hitachi Constr. Mach. Co. v. Amax Coal Co.,* 737 N.E.2d 460, 463-64 (Ind.App. 2000). When a product defect damages both the product itself and other property, the damage to the other property is actionable under the Products Liability Act, but that does not create a claim under the Act for damage to the product itself. *Fleetwood Enters. v. Progressive Northern Ins. Co.,* 749 N.E.2d 492, 493 (Ind. 2001). In *Gunkel v. Renovations Inc., Ind.,* 822 N.E.2d 150, 153 (Ind. 2005), the Indiana Supreme Court held that property acquired separately from the defective product or service is "other property" whose damage is recoverable in tort. The case involved the negligent installation of a stone façade to a new home. The plaintiffs hired a separate company to install the façade. The court stated, "If a component is sold to the first user as a part of the finished product, the consequences of its failure are fully within the rationale of the economic loss doctrine. It therefore is not 'other property.' But property acquired separately from the defective good or service is 'other property' whether or not it is, or is intended to be, incorporated into the same physical object." In short, the product is that which is purchased by the plaintiff, not the product furnished by the defendant. • **Sudden or Dangerous Event:** Where recovery for property damage is sought under the Act, such damage "must have happened quickly, unexpectedly and be of a calamitous nature." *Martin Rispens & Son v. Hall Farms,* 621 N.E.2d 1078, 1088-89 (Ind. 1993), citing *Reed v. Central Soya Co.,* 621 N.E.2d 1069, 1074-75 (Ind. 1993). • **Lack of Privity of Contract:** Lack of privity is no defense in an action that is brought under the Product Liability Act. *Yasuda Fire & Marine Ins. Co. v. Lakeshore Elec. Corp.,* 744 F.Supp.864 (S.D. Ind. 1990). "A plaintiff may recover against a manufacturer for economic loss for breach of express warranties, even though the plaintiff is not in privity with the manufacturer" *Prairie Production, Inc. v. Agchem Division-Pennwalt Corp.,* 514 N.E.2d 1299, 1303 (Ind. App. 1987). *See also Indianapolis-Marion County Pub. Library*, 900 N.E.2d at 815 (comparing two cases and noting exception to economic loss doctrine arises in the absence of privity when an architect creates a condition that is imminently dangerous to third persona and injury has resulted, but no exception that permits recovery in negligence—absent privity---when there has been no physical injury or damage to property).
IOWA	
Doctrine	Where damages alleged are limited to the object of the contract, as opposed to personal injury or damage to other property, the harm alleged is pure economic loss. *Flom v. Stahly*, 569 N.W.2d 135, 141 (Iowa Sup. 1997). A plaintiff cannot maintain a claim for purely economic damages arising out of a defendant's alleged negligence. *Determan v. Johnson,* 613 N.W.2d 259, 261-62 (Iowa 2000), citing *Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.,* 345 N.W.2d 124 (Iowa 1984). Claims based on strict liability in tort are barred where a product sold by the defendant to the plaintiff failed to perform as it was expected, but caused no physical injury to person or property. *Nelson v. Todd's Ltd.,* 426 N.W.2d 120, 123 (Iowa 1988).

Exceptions	• **Other Property:** The economic loss doctrine bars tort claims for damage to the defective product itself. *Richards v. Midland Brick Sales Co.,* 551 N.W.2d 649, 651 (Iowa App. 1996). "We have required at a minimum that the damage for which recovery is sought must extend beyond the product itself." *Determan v. Johnson*, 613 N.W.2d 259, 262 (Iowa 2000). Where the damaged product was "an integral part of the finished product" bargained for by the plaintiff – concrete or bricks used to build a house the buyers had purchased, for example – the other property exception does not apply. *Richards v. Midland Brick Sales Co.,* 551 N.W.2d 649, 651 (Iowa App. 1996), citing *Pulte Home Corp. v. Osmose Wood Preserving*, 60 F.3d 734, 741 (11th Cir. 1995), citing *Casa Clara Condominium Ass'n, v. Charley Toppino & Sons, Inc.,* 620 So. 2d 1244, 1247 (Fla. 1993). • **Sudden or Dangerous Event:** The common thread running through our cases rejecting recovery is the lack of danger created by the defective product. *American Fire & Cas. Co. v. Ford Motor Co.*, 588 N.W.2d 437, 439-440 (Iowa 1999). These cases "emphasized that hazard and danger distinguished tort liability from contract law. They distinguished the disappointed consumers from the endangered ones." *Id.* When "the loss relates to a consumer or user's disappointed expectations due to deterioration, internal breakdown or non-accidental cause, the remedy lies in contract. Tort theory, on the other hand, is generally appropriate when the harm is a sudden or dangerous occurrence, frequently involving some violence or collision with external objects, resulting from a genuine hazard in the nature of the product defect." *Determan v. Johnson* , 613 N.W.2d 259, 261-62 (Iowa 2000). *See also Richards*, 551 N.W.2d at 651 ("On the other hand, when the harm is a sudden or dangerous occurrence resulting from a general hazard in the nature of the product defect, tort remedies are generally appropriate because the harm could not have been reasonably anticipated by the parites."). • **Lack of Privity of Contract:** Purchasers who lack privity of contract with the manufacturer of a defective product cannot recover solely consequential economic loss for breach of express warranty or the implied warranties of merchantability and fitness for a particular purpose. *Tomka v. Hoechst Celanese Corp.,* 528 N.W.2d 103, 107-08 (Iowa Sup.e 1995). However, non-privity buyers may recover for direct economic loss damages if the remote seller has breached an express warranty. *Beyond the Garden Gate v. Northstar Freeze-Dry Mfg.,* 526 N.W.2d 305, 310 (Iowa Sup. 1995). • **Applicability to Consumers:** Iowa courts have recognized, but not yet adopted or rejected the consumer transaction exception to the economic loss doctrine. "Some courts have pointed out the economic loss rule applies only in a commercial context, not to a consumer who purchases goods for personal, residential use. The plaintiff in this case does not argue the doctrine is inapplicable because the sale of the bricks was not a commercial transaction." *Richards v. Midland Brick Sales Co.,* 551 N.W.2d 649, 651-62 (Iowa App. 1996).
KANSAS	
Doctrine	The economic loss doctrine prohibits a buyer of defective goods from recovering in tort where the only damage is to the defective good themselves. *Prendiville v. Contemporary Homes, Inc.,* 83 P.3d 1257, 1259-1260 (Kan. App. 2004).
Exceptions	• **Other Property:** *Prendiville v. Contemporary Homes, Inc.,* 83 P.3d 1257, 1259-1260 (Kan. App. 2004). Kansas adopts the "integrated systems" approach. *Northwest Arkansas Masonry, Inc. v. Summit Specialty Products, Inc.,* 31 P.3d 982, 988 (Kan. App. 2001).
KENTUCKY	
Doctrine	The economic loss rule applies to claims arising from a defective product sold in a commercial transaction and the relevant product is the entire item bargained for by the parties and placed in the stream of commerce by the manufacturer. The economic loss rule applies regardless of whether the product fails over time or destroys itself in a calamitous event, and the rule's application is not limited to negligence and strict liability claims but also encompasses negligence misrepresentation claims. The Kentucky Supreme Court has not yet determined whether the rule is applicable to fraud claims. *Giddings & Lewis, Inc. v. Industrial Risk Insurers*, 2011 Ky. Lexis 90, 2011 WL 2436154 (Ky. 2011),
LOUISIANA	
Doctrine	No Louisiana court appears to have addressed the economic loss doctrine. However, under Louisiana's Product Liability Act ("LPLA"), the term "damage" that is recoverable in a products liability claim "includes damages to the product itself and economic loss arising from a deficiency in or loss of use of the product only to the extent that [the Civil Code articles on redhibition] do [] not allow recovery of such damage or economic loss." La. Rev. Stat. Ann. §§ 9:2800.53(5). The court in *R-Square Investments, Inc. v. Teledyne Industries, Inc.,* 1997 WL 436425 (E.D. La) held that the most plausible reading of that language would allow tort recovery where redhibition remedies (implied warranty remedies) are foreclosed. *See also Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 251 (5th Cir. 2002) ("Courts have interpreted the LPLA as preserving redhibition as a cause of action only to the extent the claimant seeks to recover the value of the product or other economic loss.").

MAINE	
Doctrine	The economic loss doctrine bars tort recovery for a defective product's damage to itself. *Oceanside at Pine Point Condo. Owners Ass'n v. Peachtree Doors, Inc.,* 659 A.2d 267, 270-71 (Me. 1995). The doctrine "marks the fundamental boundary between the law of contracts, which is designed to enforce expectations created by agreement, and the law of torts, which is designed to protect citizens and their property by imposing a duty of reasonable care." *Fireman's Fund Ins. Co. v. Childs,* 52 F. Supp. 2d 139, 141 (D. Me. 1999).
Exceptions	• **Other Property:** Maine applies the "integrated product rule" to distinguish the product from other property such that "the product" is the finished product into which the component is integrated. *Firemans Fund Ins. Co. v. Childs,* 52 F. Supp. 2d 139, 142-43 (D. Me. 1999) • **Professional Service Contracts:** A federal district court has inferred from *Oceanside* that Maine's economic loss doctrine extends to disputes over professional service contracts. *Me. Rubber Int'l v. Envtl. Mgmt. Group, Inc.,* 298 F. Supp. 2d 133, 137–138 (D. Me. 2004). • **Negligent Misrepresentation:** "if the conduct of one party would constitute a tort in the absence of the contract, then that cause of action is not extinguished simply because some aspects of the relationship between the parties happen also to be governed by [an] independent agreement." *Pendleton Yacht Yard, Inc. v. Thomas H.H. Smith*, No. CV-01-047, 2003 Me. Super. Lexis 49, *14 (Mar. 20, 2003).
MARYLAND	
Doctrine	Maryland does not allow tort recovery for damages to a product causing purely economic losses, unless the defect causes a dangerous condition creating a risk of death or personal injury. *Morris v. Osmose Wood Preserving,* 340 Md. 519, 535-36, 667 A.2d 624, 632-33 (1995) (barring homeowners' tort claims for failure to show defects in plywood created serious and unreasonable risk of death or personal injury*); A.J. Decoster Co. v. Westinghouse Elec. Corp.,* 333 Md. 245, 250, 634 A.2d 1330, 1332 (1994); *Council of Co-Owners v. Whiting-Turner,* 308 Md. 18, 33-42, 517 A.2d 336, 344-48 (1986); *Nat'l Coach Works v. Detroit Diesel Corp.*,128 F.Supp.2d 821 (D. Md. 2001).
Exceptions	• **Other Property: "**Maryland law plainly permits recovery for other property damaged by a defective product." *Nat'l Coach Works v. Detroit Diesel Corp.*, 128 F.Supp.2d 821, 831 (D. Md. 2001). • **Dangerous Condition and Risk of Death or Personal Injury:** *Morris*. *See also Lloyd v. GMC*, 916 A.2d 257 (Md. 2007) (restating dangerous condition and risk of death or personal injury exception).
MASSACHUSETTS	
Doctrine	The Supreme Judicial Court follows the majority rule, holding that "purely economic losses are unrecoverable in tort and strict liability actions in the absence of personal injury or property damage." *FMR Corp. v. Boston Edison Co.,* 613 N.E.2d 902, 903 (Mass. 1993) (rejecting claim that negligent repair of electric lines caused power outages which caused loss of profits); accord *Garweth Corp. v. Boston Edison Co.,* 613 N.E.2d 92, 93-94 (Mass. 1993) (rejecting claim that negligent oil spill caused damages for delay in ability to complete contract work).
Exceptions	• **Other Property**: "Plaintiffs have a right to recover where losses sustained by the plaintiff result from physical harm to property proximately caused by the defendant's alleged negligence." *Brennan v. Morano***,** 2008 Mass. Super. Lexis 137, *4 • **Misrepresentation:** A "plaintiff may recover if there has been an intentional or negligent misrepresentation and the action has resulted in a loss that is economic in nature, even if there is no privity between the parties, as long as the design professional knew or reasonably could foresee a third person would rely on his services." *Brennan v. Morano*, 2008 Mass. Super. Lexis 137, *3 (citing *Nota Constr. Co. v. Keyes Assoc., Inc.*, 694 N.E.2d 401 (1998)).
MICHIGAN	
Doctrine	"Where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses." *Niebarger v. Universal Cooperatives, Inc*., 486 N.W.2d 612, 615 (Mich. 1992), quoting *Kennedy v. Columbia Lumber & Mfg Co.,* 384 S.E.2d 730, 736 (1989). *See also Huron Tool & Eng'g Co. v. Precision Consulting Servs.,* 532 N.W.2d 541, 543-44 (Mich.App. 1995). "[W]here a plaintiff seeks to recover for economic loss caused by a defective product purchased for commercial purposes, the exclusive remedy is provided by the UCC, including its statute of limitations." *Niebarger*, 486 N.W.2d at 618.

Exceptions	• **Other Property:** Michigan law prohibits recovery of damages to "other property" where that damage was foreseeable to the parties at the time when the contract for sale was entered into. *Affiliated F.M. Ins. Co. v. Abolite Lighting, Inc.,* 1998 Mich.App. LEXIS 2558 (Mich.App. 1988), citing *Neibarger v. Universal Coops.,* 486 N.W.2d 612, 620 (Mich. 1992). As such, the distinction between the defendant's product and "other property" is significantly less important in Michigan than in most other jurisdictions. If the potential for damage to other property was within the contemplation of the parties when the ultimately defective product was purchased, and the parties had an opportunity to negotiate an allocation of risk to address damage to that other property in the event that the product proved to be defective, then the economic loss doctrine would bar tort claims for "other property" damage. *Neibarger v. Universal Cooperatives, Inc.,* 486 N.W.2d 612, 620 (Mich. 1992). • **Lack of Privity of Contract:** Michigan courts have "expressly rejected the argument that the economic loss doctrine does not apply in the absence of privity of contract." *Citizens Ins. Co. v. Osmose Wood Preserving, Inc.,* 585 N.W.2d 314, 316 (Mich.App. 1998), citing *Freeman v. DEC Int'l, Inc.,* 536 N.W.2d 815 (Mich.App. 1995). • **Applicability to Service Contracts:** Michigan does not apply the economic loss doctrine to preclude tort recovery of economic loss where the claim emanates from a contract for services. *Quest Diagnostics, Inc. v. MCI WorldCom, Inc.,* 656 N.W.2d 858, 863 (Mich.App. 2002), quoting *Higgins v. Lauritzen*, 530 N.W.2d 171 (1995). • **Applicability to Consumers:** Michigan has not adopted an exception to economic loss doctrine for consumer transactions. Like sophisticated commercial purchasers, consumers will not be permitted to recover economic loss in tort. *Sherman v. Sea Ray Boats, Inc.,* 649 N.W.2d 783, 786-88 (Mich.App. 2002). Consumers are limited to whatever contractual remedies they negotiate at the time of purchase without regard to whether the seller was an entity of greater knowledge or bargaining power. *Id.* • **Fraud and Misrepresentation:** Michigan recognizes an exception to the economic loss doctrine for fraud in the inducement. *Huron Tool & Eng'g Co. v. Precision Consulting Servs.,* 532 N.W.2d 541, 544-45 (Mich.App. 1995). When one party was tricked into contracting, it will not be limited to its contractual remedies when seeking recovery of economic losses. *Id.* • **No underlying contract**: "In order for the economic loss doctrine to bar recovery in tort, there must be a transaction that provides an avenue by which the parties are afforded the opportunity to negotiate to protect their respective interests. . . . Given that this case involves only negligence claims and there is no underlying contract governing the parties' economic expectations, the economic loss doctrine does not apply.e" *Quest Diagnostics, Inc. v. MCI WorldCom, Inc.*, 656 N.W.2d 858, 864 (Mich. App. 2002).
MINNESOTA	
Doctrine	"A buyer may not bring a product defect tort claim against a seller for compensatory damages unless a defect in the goods sold or leased caused harm to the buyer's tangible personal property other than the goods or to the buyer's real property. In any claim brought under this subdivision, the buyer may recover only for: (1) loss of, damage to, or diminution in value of the other tangible personal property or real property, including, where appropriate, reasonable costs of repair, replacement, rebuilding, and restoration; (2) business interruption losses, excluding loss of good will and harm to business reputation, that actually occur during the period of restoration; and (3) additional family, personal, or household expenses that are actually incurred during the period of restoration." Minn. Stat. § 604.101.
Exceptions	• **Other Property:** *See* Minn. Stat. § 604.101(3). • **Lack of Privity of Contract:** The economic loss doctrine statute applies "regardless of whether the seller and the buyer were in privity regarding the sale or lease of the goods . . . .:" Minn.Sstat. § 604.101(2)(1). • **Fraud and Misrepresentation:** *See* Minn. Stat. § 604.101(4) (permitting recovery and tort for intentional or reckless misrepresentation claims relating to goods sold or leased.) • **Public Safety Exception:** Asbestos contamination of the building itself, other parts of the building, and the building contents, is damage to "other property" that is recoverable in tort in spite of the Economic Loss Doctrine. *80 S. 8th St., Ltd. Partnership v. Kerry-Canada,* 486 N.W.2d 393 (Minn. 1992); *Independence School District No. 197 v. WR Grace & Co.,* 752 F.Supp. 286 (D. Minn. 1990).
MISSISSIPPI	
Doctrine	Adopts the general rule set forth *in East River Steamship Corp. v. Transamerica Delaval, Inc.,* 476 U.S. 858 (1986), barring claims of strict liability and negligence claims against product manufacturers for economic damages to the product itself. *State Farm Mutual Automobile Ins. Co. v. Ford Motor Co.,* 736 So.2d 384 (Miss. Ct. App. 1999). See also Miss. Code Ann. §11-1-63
Exceptions	• **Other Property**

MISSOURI	
Doctrine	"Economic loss is distinguished from harm to person or damage to property: Economic loss includes cost of repair and replacement of defective property which is the subject of the transaction, as well as commercial loss for inadequate value and consequent loss of profits or use." *Groppel Co. v. United States Gypsum Co*., 616 S.W.2d 49, 55 (Mo.App. 1981). There can be no recovery in strict liability in tort where the only damage is to the product sold. *Clayton Ctr. Assocs. v. W.R. Grace & Co*., 861 S.W.2d 686, 692 (Mo.App. 1993), citing *Sharp Bros. Contracting Co. v. American Hoist & Derrick Co.,* 703 S.W.2d 901, 903 (Mo.banc 1986).
Exceptions	• **Other Property:** "Recovery in tort for purely economic damages limited to those cases whether it is personal injury, damage to property other than that sold, *or destruction to the property sold* due to some violent occurrence." *Wilbur Waggoner Equip. & Excavating Co. v. Clark Equip. Co.,* 668 S.W.2d 601, 603 (Mo. App. 1984), citing *Crowder v. Vandendeale*, 564 S.W.2d 879, 881 (Mo. Banc 1978). Economic losses cannot be recovered under the tort theories of strict liability or negligence in the absence of personal injury or damage to other property. *Landmark Am. Ins. Co. v. Paccar, Inc.,* 103 S.W.3d 894, 895 (Mo.App. 2003). • **Sudden and Calamitous Event:** "The line between economic loss and direct property damage is not always easy to discern, particularly when the plaintiff is seeking compensation for loss of the product itself. We cannot lay down an all inclusive rule to distinguish between the two categories; however, we note that sudden and calamitous damage will almost always result in direct property damage and that deterioration, internal breakage and depreciation will be considered economic loss." *Gibson v. Reliable Chevrolet, Inc.,* 608 S.W.2d 471, 474 (Mo.App. 1980). • **Lack of Privity of Contract:** *Groppel Co. v. United States Gypsum Co.,* 616 S.W.2d 49, 59 (Mo.App. 1981) ("economic loss is potentially devastating to the buyer of an unmerchantable product. It is unjust to preclude recovery for a consumer economic loss from the manufacturer for such loss because of a lack of privity"). • **Fraud and Misrepresentation Exceptions:** *See Huttegger v. Davis*, 599 S.W.2d 506, 515 (Mo. 1980) (Welliver, J., dissenting) ("This Court has never passed directly on the question whether Missouri recognizes a right of action for economic loss caused by negligent misrepresentation," and suggesting that the court should "acknowledge that a cause of action exists in this state for the recovery of pecuniary loss caused to persons who justifiably rely on information supplied for their guidance in a business by one who provides the information in the course of his business, profession or other transaction in which he is interested, if the information is false and the supplier of the information failed to exercise reasonable care or competence in obtaining or communicating the information."
MONTANA	
Doctrine	In *Jim's Excavating Service, Inc. v. HKM Associates*, 265 Mont. 494, 878 P.2d 248 (Mont. 1994), the Court addressed whether the economic loss doctrine should apply to a claim against a design professional despite lack of privity with the professional. The court began by noting the following: "Although this Court has not addressed this specific question, the majority of jurisdictions have done so and have rejected the economic loss doctrine." (citing Annotation, *Tort Liability of Project Architect for Economic Damages Suffered by Contractor,* 65 A.L.R.3d 249 (1975)). The court concluded that the doctrine does not bar such a professional negligence claim: "Thus, we hold that a third party contractor may successfully recover for purely economic loss against a project engineer or architect when the design professional knew or should have foreseen that the particular plaintiff or an identifiable class of plaintiffs were at risk in relying on the information supplied." Although no cases have been uncovered explicitly refining the economic loss doctrine in the product liability context subsequent to this decision, Montana has held that a strict liability action can lie when the only damage suffered is to the defective product itself. *Thompson v Nebraska Mobile Homes Corp.,* 198 Mont. 461, 647 P.2d 334 (1982).
Exceptions	• **Other Property** • **Professional Negligence:** A third party contractor may successfully recover for purely economic loss against a project engineer or architect when the design professional knew or should have foreseen that the particular plaintiff or an identifiable class of plaintiffs were at risk in relying on the information supplied. *Jim's Excavating Service v HKM Associates,* 265 Mont. 494, 878 P.2d 248 (1994). • **Misrepresentation:** "One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information." *Id.* at 254.
NEBRASKA	
Doctrine	The purchaser of a product pursuant to contract cannot recover economic losses from the seller manufacturer on claims in tort based on negligent manufacture or strict liability in the absence of physical harm to persons or property caused by the defective product. *Hilt Truck Line, Inc. v. Pullman, Inc.,* 382 N.W.2d 310, 222 Neb. 65 (Neb. 1986); *Nat'l Crane Corp. v. Ohio Steel Tube*, 332 N.W.2d 39, 43 (Neb. 1983).
Exceptions	**Other Property**

NEVADA	
Doctrine	No recovery for negligence or strict liability for purely economic damages. Central Bit Supply, Inc v. Waldrop Drilling and Pump, Inc., 102 Nev. 139, 717 P.2d 35 (1986).
Exceptions	**Other Property**
NEW HAMPSHIRE	
Doctrine	Economic Loss is generally defined as "that loss resulting from the failure of the product to perform to the level expected by the buyer and is commonly measured by the cost of repairing or replacing the product." *Nichols v. General Motors Corp.,* 1999 WL 33292839 (N.H. Super. Ct. 1999) (quoting *Lempke v. Dagenais,* 130 N.H. 782, 792). A plaintiff may not recover in a negligence claim or a tort claim in general for purely economic loss. *Nichols; Border Brook Terrace Condo. Assoc. v. Gladstone,* 137 N.H. 11, 18; *Lempke v. Dangenais,* 130 N.H. 782; The Nichols court rejected the holding in *Town of Hooksett School Dist. v. W.R. Grace & Co.,* 617 Supp. 1276 (D.N.H.1984), which allowed recovery in tort for purely economic loss, noting, "A Federal Court's interpretation of New Hampshire law has no value as precedent in New Hampshire State Courts. Furthermore, *Town of Hooksett* predates the above cited New Hampshire cases which have held that economic loss is not recoverable in tort in New Hampshire."
Exceptions	• **Other Property** • **Special Relationship:** "A growing number of states have refused to apply the 'economic loss' rule to actions against design professionals when there is a 'special relationship' between the design professional and the contractor." *Plourde Sand & Gravel Co. v. JGI Eastern, Inc.*, 917 A.2d 1250, 1254-55 (N.H. 2007). "These cases hinge upon the presence of an independent duty owed to the plaintiff because of the nature of the 'special relationship' with the defendant. They are narrow exceptions to the rule . . . . We have declined to extend the special relationship principle beyond [certain circumstances]." *Id.* at 1255. • **Fraud and Misrepresentation:** "Negligent misrepresentation is a recognized exception to the economic loss doctrine that has been adopted by some courts." *Id.* at 1257. "However, a negligent misrepresentation claim in the context of the economic loss doctrine is narrower than the traditional tort claim." *Id.*
NEW JERSEY	
Doctrine	The New Jersey Supreme court first adopted the economic loss rule in *Spring Motors Distributors, Inc. v. Ford Motor Co.,* 98 N.J. 555, 489 A.2d 660 (1985), where a commercial restorer of vehicles sought to recover repair cost, lost profits and decreased market value of trucks due to difficulties with the vehicles' transmissions. The court decided that neither negligence nor strict products remedies were available between commercial parties for these economic losses. The New Jersey Legislature also approved the economic loss rule by adopting the Product Liability Act in 1987. The statute provides, in pertinent part, that, with respect to products liability actions in New Jersey, "harm" means physical damage to property, other than to the product itself," N.J.S.A. § 2A:58C-1. In *Easling v. Glen-Gery Corp.,* 804 F. Supp. 585 (D.N.J. 1992), the purchasers of a large apartment complex sued the manufacturer of allegedly defective bricks used in the apartment construction for strict products liability. The federal district court dismissed the claim, holding that the plaintiffs, as commercial purchasers, could not recover in tort without more than economic loss. The plaintiffs had alleged that the bricks were deteriorating, caused substantial damage to the apartment and also presented a hazard to apartment residents. The court reasoned that it should look to the product purchased by the plaintiff, and accepted the argument that the "product" purchased was the apartment complex rather than the bricks. *See also Marrone v. Greer & Polman Const., Inc.,* 964 A.2d 330, 340 (N.J. Super. Ct. App. Div. 2009) (concluding that plaintiffs bought a house and not individual components). In *Alloway v. General Marine Industries, L.P.,* 149 N.J. 620, 695 A.2d 264 (1997), the New Jersey Supreme Court held that the subrogated insurer of the purchaser of a luxury boat that sank while docked, but caused no personal injury or damage to other property was limited in a suit against the manufacturer to breach of warranty remedies under the UCC. The plaintiff-buyer was not a commercial party, but, according to the court, the parties' relative bargaining power was not greatly disproportionate. Therefore, the court held that the parties' contractual allocation of risk would decide recovery of economic losses, including cost of repair and lost trade-in value of the boat.

Exceptions	• **Other Property**: In *Naporano Iron & Metal Co. v. American Crane Corp.,* 79 F.Supp.2d 494 (D.N.J. 1999), the federal district court, while recognizing the "other property" exception, limited its application where the other property is not owned by the plaintiff but was owned by third parties. The case involved a claim for product liability damages stemming from three collapses of a crane that the defendants had manufactured. In each instance, the crane itself and property belonging to the plaintiff's customers sustained damage, but no person or other property of the plaintiff had been injured. The district court held that the plaintiff failed to state a claim with respect to the property of third parties, which the court found did not fall within the "other property" exception to the economic loss doctrine. The court reasoned that a third party injured by a defective product is able to recover under tort law from the manufacturers of defective products, but the fact that the plaintiff, a party to a commercial agreement, had reimbursed its customers for the harm did not preclude application of the economic loss doctrine. • **Fraud and Misrepresentation:** In *Coastal Group, Inc. v. Dryvit Systems, Inc.,* 274 N.J. 171, 643 A.2d 649 (1994), the court held that the economic loss rule did not preclude a commercial buyer's claim for fraud and misrepresentation. A condominium project owner and developer filed a breach of contract action against the contractor who installed a well system and the materials supplier alleging negligence, breach of contract and fraud. The Appellate Division held that the negligence claim had been properly dismissed, but that the plaintiff could pursue claims for fraud and misrepresentation under the New Jersey Consumer Fraud Act. • **Sudden and Calamitous Events:** In *Naporano Iron & Metal Co. v. American Crane Corp.,* 79 F.Supp.2d 494 (D.N.J. 1999), discussed above, the plaintiff alleged that a crane failed in a "sudden and calamitous manner." The district court determined that the New Jersey Superior Court had rejected the sudden and calamitous exception. *Id.* at 503.
NEW MEXICO	
Doctrine	In commercial transactions without great disparity in bargaining power, economic loss may only be recovered in contract, not in tort actions for negligence or strict liability. *Utah International, Inc. v. Caterpillar Tractor Co.,* 108 N.M 539, 775 P.2d 741 (N.M.App. 1989), *cert denied,*, 108 N.M. 354, 772 P.2d 884 (N.M. 1989).
Exceptions	• **Other Property:** If economic loss doctrine applies, neither damage to the product nor damage to property other than the product can be recovered in tort. *Spectron Dev. Lab. v. American Hollow Boring Co.,* 123 N.M. 170, 936 P.2d 853 (N.M.App. 1997).
NEW YORK	
Doctrine	In *Bocre Leasing Corp. v. General Motors Corp.,* 84 N.Y.2d 685, 645 N.E.2d 1195, 621 N.Y.S.2d 497, (1995), the Court of Appeals of New York adopted the economic loss rule set forth in *East River v. Transamerica Delaval, Inc., supra.* In Bocre Leasing, the court held that a purchaser in a commercial transaction may not recover in tort under a strict products liability or negligence theory from the manufacturer, where only the product itself is damaged and there is no allegation of physical injury or other property damage. The court also appears to reject an "unduly hazardous" exception to the rule. *Id.* at 691. Bocre Leasing dealt with a remote purchaser of a product. Recent New York decisions have extended the economic loss rule in cases involving more immediate purchasers as well. *See, e.g., 7 World Trade Co. v. Westinghouse Electric Corp.,* 256 A.D.2d 263, 682 N.Y.S.2d 385, 387 (1st Dept. 1998) (two workers for an electrical subcontractor could not bring negligence or products liability actions against the manufacturer of the building's bus ducts which exploded during building renovations, where plaintiffs alleged losses only of an economic nature). Generally, where courts have deemed the underlying transaction to be a sale of goods, and no damage to other property or physical injury are alleged, New York courts have ruled that the plaintiff is limited to contractual remedies and typically may not maintain tort causes of action. In numerous recent decisions, courts applying New York law have precluded tort recovery for economic losses. *Travelers Insurance Cos. V. Howard E. Conrad, Inc.,* 233 A.D.2d 890, 649 N.Y.S.2d 586 (4th Dept. 1996), (A subrogation action alleging negligence and strict products liability to recover for economic loss arising out of sinking of a yacht was precluded). **See also** 532 Madison Ave. *Gourmet Foods, Inc. v. Finlandia Ctr., Inc.,* 750 N.E.2d 1097, 1101 n.1 (N.Y. 2001) (stating that the rule applies to suits by "an end-purchaser of a product" against a manufacturer).

Exceptions	• **Other Property:** New York courts have held that the economic loss rule does not apply where the defective product causes damage to "persons or property other than the product itself." *Arkwright Mut. Ins. Co. v. Bojoirve, Inc.,* 1996 WL 361535 at *3 (S.D.N.Y. June 27, 1996) (citations omitted). In that case, the plaintiff alleged that a defective component part damaged not only the generator in which it was housed, but also adjacent generators, floors, ceilings, furniture and other real and personal property. Thus, because "other property" beyond the product itself was damaged, the plaintiff could recover in tort. • **Abrupt, Cataclysmic Occurrences:** In *State Farm Fire & Casualty Co. v. Southtowns Tele-Communications, Inc.,* 245 A.D.2d 1028, 667 N.Y.S.2d 157 (4th Dept. 1997), the court permitted a subrogation action against a contractor that had installed a music-on-hold system. The owners alleged that the system resulted in a fire causing extensive damage to the building and its contents. The court rejected the defendant's argument that plaintiffs were limited to breach of contract remedies, holding that the plaintiffs had asserted a valid tort claim for negligent installation, "because the damages alleged sustained by the plaintiff do not arise from the failure of a music-on-hold system to perform as intended, but arise instead from an 'abrupt, cataclysmic occurrence' allegedly caused by defendant's negligence." *Id*. at 159 (citations omitted). "Moreover, the legal duty allegedly breached by defendant, failure to exercise reasonable care while connecting electrical wires, does not arise solely from the contract." *Id. See also, LaBarre v. Mitchell*, 256 A.D.2d 850, 681 N.Y.S.2d 653 (3d Dept. 1998) (holding that a defectively designed fire alert system may be considered an inherently dangerous product and its failure to perform can have catastrophic consequences, therefore permitting plaintiffs' cause of action for damage to real and personal property and lost income); *Village of Groton v. Tokheim Corp.,* 202 A.D.2d 728, 608 N.Y.S.2d 565 (3d Dept. 1994) (regulator in underground fuel dispensing system failed to operate, leading to fuel leak; the court noted the potential for fire or explosion, notwithstanding that no actual cataclysmic event occurred, and permitted tort recovery).
NORTH CAROLINA	
Doctrine	North Carolina has adopted the economic loss rule. *Terry's Floor Fashions, Inc. v. Georgia-Pacific Corp.,* 1998 U.S. Dist. Lexis 15392 (E.D. N.C. 1998) (citing *Chicopee, Inc. v. Sims Metal Works, Inc.,* 98 N.C.App, 423, 432, 391 S.E.2d 211, 217 (1990) (adopting rule that "purely economic losses are not ordinarily recoverable under tort law" in context of products liability suit)). "[W]hen a plaintiff seeks recovery for damage to a product that is the subject of the contract between the parties, a plaintiff is limited to a contract or warranty action." *Terry's Floor Fasions, Inc.,* 1998 U.S. Dist. Lexis 15392, at *10. *See also AT&T Corp. v. Medical Review of North Carolina, Inc.*, 876 F.Supp. 91, 91 (E.D. N.C. 1995) (noting that, with respect to losses recoverable in product liability suits, North Carolina follows the majority rule and does not allow recovery of purely economic losses in negligence actions); *North Carolina State Ports Authority v. Lloyd A. Fry Roofing Company,* 294 N.C. 73, 81, 240 S.E.2d 345, 350 (1978) ("Ordinarily, a breach of contract does not give rise to a tort action by the promisee against the promisor."), *rejected in part on other grounds, Trustees of Rowan Tech. College. v. J. Hyatt Hammond Assoc., Inc.,* 313 N.C. 230, 328 S.E.2d 274 (1985)); *Spillman v. American Homes*, 108 N.C.App. 63, 65, 422 S.E.2d 740, 741-42 (1992) ("a tort action does not lie against a party to a contract who simply fails to properly perform the terms of the contract, even if that failure to properly perform was due to the negligent or intentional conduct of that party, when the injury resulting from the breach is damage to the subject matter of the contract. It is the law of contract and not the law of negligence which defines the obligations and remedies of the parties in such a situation.")
Exceptions	• **Other Property:** "A claimant may . . . recovery in tort rather than contract for damages to property other than the product itself, if the losses are attributable to the defective product." *Lord v. Customized Consulting Specialty, Inc.*, 643 S.E.2d 28, 30 (N.C. Ct. App. 2007). Certain language in *Moore v. Coachmen Indust., Inc.*, 499 S.E.2d 772 (N.C. Ct. App. 1998), however, can be used to argue that the "other property" exception does not apply if there is an express warranty expressly disclaiming against liability for damage other property. The "other property" exception was recognized in *Terry's Floor Fashions, Inc. v. Georgia-Pacific Corp.,* 1998 U.S. Dist. Lexis 15392 (E.D. N.C. 1998), where the plaintiff, a flooring installer, sued defendant, a plywood manufacturer, on the ground that the plywood underlayment sold by defendant to plaintiff had caused discoloration of the vinyl flooring plaintiff had sold and installed for various customers. The court held that plaintiff's claim for recovery of damages to the underlayment itself was barred by the economic loss rule. As to the vinyl flooring above that underlayment, the court noted that such property was "other property" within the meaning of the economic loss rule, but held that plaintiff lacked standing to recover those damages inasmuch as that property was owned by the customers and not by the plaintiff. In the unpublished decision of *Land v. Tall House Building Co.,* COA03 (NC Ct. App. Aug. 17, 2004), the court deemed an entire house not to be "other property" in relation to the defective synthetic stucco that coated it, citing *Wilson v. Dryvit Systems, Inc.,* 206 F. Supp. 2d 749, 753 (E.D.N.C. 2002), *aff'd,* 71 Fed. Appx. 960 (2003). North Carolina courts have the view that when a component part of a product or a system injures the rest of the product or the system, only economic loss has occurred. *Wilson*, 206 F.Supp.2d at 753. • **Torts Independent from Contract:** In a prior unpublished decision involving a contract to repair certain equipment, the North Carolina Court of Appeals held that the existence of a service contract precluded an action in tort for breach of the duties that arose from the contract. *Kaplan Companies, Inc. and Guidecraft USA, Inc. v. Stiles Machinery, Inc. and Robert J. Kostelnik,* unpublished opinion, Docket No. 01 CVS 3447 (N.C. App. May 6, 2003). However, unlike in *Ellis-Don Construction*, there was a governing contract in place between the parties. Moreover, the case involved service to equipment. Accordingly, even the unpublished cases applying North Carolina law stand for the proposition that the ELR only applies where there is a contract in place between the parties, the subject matter of which is physical property. Damages to property other than that designated in the contract would, arguably, be recoverable under tort theories.

NORTH DAKOTA	
Doctrine	Manufacturer not liable in tort for damage to the product itself, even though the event may have created a risk of harm. *Cooperative Power Assoc. v. Westinghouse Elec. Corp.,* 493 N.W.2d 661, 665 (N.D. 1992). The doctrine applies to consumer transactions as well as commercial transactions. *Clarys v. Ford Motor Co.,* 592 N.W.2d 573, 578 (N.D. 1999).
Exceptions	• **Other Property**
OHIO	
Doctrine	Ohio initially rejected the rule and allowed tort recovery for economic losses. *See Inglis v. Am. Motors Corp.,* 209 N.E.2d 583 (Ohio 1965); *Iacono v. Anderson Concrete Corp..,* 326 N.E.2d 267 (Ohio 1975). However, in *Chemtrol Adhesives, Inc. v. Am. Mfrs. Mut. Ins. Co.,* 537 N.E.2d 624, 629 (Ohio 1989), the Ohio Supreme Court limited its previous holdings by applying the economic loss rule to parties in privity of contract, stating: "a commercial buyer seeking recovery from the seller for economic losses resulting from damage to the defective product itself may maintain a contract action for breach of warranty under the Uniform Commercial Code; however, in the absence of injury to persons or damages to other property the commercial buyer may not recover for economic losses premised on tort theories of strict liability or negligence. " 537 N.E.2d at 635. Thus, if the parties have a contractual relationship, they may not sue in strict liability or implied warranty for their economic damages, but instead must rely on the Uniform Commercial Code's contractual remedies. *See also Floor Craft Floor Covering, Inc. v. Parma Community Gen. Hosp. Assn.,* 560 N.E.2d 206, 208 (1990). The *Chemtrol* court noted that where there is privity of contract and the parties have negotiated that contract from relatively equal bargaining positions, the parties are able to allocate the risk of all loss, including loss of the subject product itself, between themselves. Chemtrol Adhesives, 42 Ohio St. 3d at 45, 537 N.E.2d at 631. However, the Court expressly declined to consider whether the economic loss rule should also apply to parties lacking privity, but cast doubt on previous Ohio Supreme Court holdings allowing such recovery.
Exceptions	• **Other Property:** In determining whether damage to the product constitutes economic loss, Ohio focuses not on the nature of the product and its components, but rather on the relationship between the parties. *See Chemtrol Adhesives, Inc. v. American Manufacturers Mutual Insurance Co.,* 42 Ohio St. 3d 40, 44, 537 N.E.2d 624, 630 (1989). • Negligent Misrepresentation: "Responding to modern economic realities, Ohio has recognized one of the exceptions to the economic-loss rule: the tort of negligent misrepresentation . . . ." *Universal Contr. Corp. v. Aug*, 2004 Ohio App. Lexis 6661, *10 (Ohio Ct. App. Dec. 30, 2004).
OKLAHOMA	
Doctrine	Plaintiff cannot bring product liability tort action when injury occurs solely to the product itself. *Oklahoma Gas & Elec. v. McGraw-Edison*, 1992 OK 108, 834 P.2d 980; *Waggoner v. Town & Country Mobile Homes*, 1990 OK 139, , 808 P.2d 649, 653
Exceptions	• **Other Property:** *Oklahoma Gas; Waggoner*
OREGON	
Doctrine	Under the version of the economic loss doctrine that is recognized in Oregon, a plaintiff seeking damages for purely economic losses in negligence can do so only on the basis of the breach of a duty other than the ordinary duty to exercise reasonable care to avoid foreseeable harm. *Harris v. Suniga*, 149 P.3d 224, 227 (Or. Ct. App. 2006). *Harris* noted that the Oregon Supreme Court defined "economic loss" as "financial losses such as indebtedness incurred and return of monies paid, as distinguished from damages for injury to person or property." *Id.* The court concluded that the plaintiffs' negligence claim against a contractor for construction defects were not barred by the economic loss doctrine because it was based on damage to property, not economic loss. *Id.* at 230.
PENNSYLVANIA	
Doctrine	Pennsylvania adopted the majority rule that no cause of action exists for negligence that causes only economic loss. *Aikens v. Baltimore & O.R. Co.*, 501 A.2d 277, 279 (Pa. Super. Ct. 1985). Federal courts have guessed that the Pennsylvania Supreme Court would not draw a distinction between commercial and noncommercial plaintiffs would be entirely impracticable. *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 674 (3d Cir. 2002).

Exceptions	• **Other Property:** Doctrine does not preclude recovery of contents of collapsed warehouse. *2J Corp. v. Tice*, 126 F.3d 539 (3d Cir. 1997). • **Misrepresentation or Fraud:** Economic loss doctrine does not bar a claim for negligent misrepresentation. *Bilt-Rite Contractors, Inc., v. The Architectural Studio*, 581 Pa. 454, 866 A.2d 270 (Pa. 2005); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D 266 (E.D. Pa. 2003); *Oppenheimer v. York Int'l,* 2002 WL 31409949 (Pa. Com. Pl. Oct. 25, 2002); *but see Wersinski v. Ford Motor Co.,* 286 F.3d 661 (3d Cir. 2002) (fraud claim barred). • **Architectural Services:** Professional negligence claim against architects not barred by economic loss doctrine. *Bilt-Rite Contractors, Inc. v. The Architectural Studio,* 581 Pa. 454, 866 A.2d 270 (Pa. 2005).
RHODE ISLAND	
Doctrine	"The economic loss doctrine provides that a plaintiff is precluded from recovering purely economic losses in a negligence cause of action. In other words, under this doctrine, a plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007). The application of this doctrine is limited to disputes involving commercial entities. *Id.* at 1276. The economic loss doctrine does not turn on how sophisticated the business are. *Id.* at 1277. Instead, the proper focus is on the nature of the parties. *Id.*
Exceptions	• **Other Property** • **Consumer Transactions:** *Franklin Grove Corp.*
SOUTH CAROLINA	
Doctrine	A party who has a commercial relationship or contract with another party cannot sue the other party in tort for purely economic damages to personal or commercial property. *Brendle's Store, Inc. v. OTR,* 978 F.2d 150 (4th Cir. 1992) (commercial tenant cannot sue builder in tort for economic losses resulting from defective construction, even where there is no contract between the two commercial entities); *Myrtle Beach Pipeline Corp. v. Emerson Electric Co.,* 843 F.Supp. 1027 (D.S.C. 1995) (purchaser of fuel metering system barred by economic loss rule from negligence claim against seller of the device which had ruptured resulting in large fuel spill); *Tommy L. Griffin Plumbing and Heating C. v. Jordan, Jones and Goulding, Inc.,* 463 S.E.2d 85 (S.C. 1995) (if contract exists, then cannot sue in tort for purely economic damages, but can do so for breach of duty arising independently of any contract duties such as violation of statute). *See also Koontz v. Thomas,* 511 S.E.2d 407 (S.C. Ct. App. 1999) (the question of whether the plaintiff may maintain an action in tort for purely economic loss turns on the determination of the source of the duty plaintiff claims the defendant owed; a breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie; however, a breach of a duty arising independently of any contract duties between the parties may support a tort action, such that when there is a special relationship between the alleged tortfeasor and the injured party not arising in contract, the breach of that duty of care will support a tort claim*); Beachwalk Villas Condo Ass'n v. Martin*, 406 S.E.2d 372, 374 n.1 (S.C. 1991) (stating that the rule applies only to product defect cases in which the "duties are created solely by contract") ; *Kennedy v. Columbia Lumber & Mfg. Co.*, 384 S.E.2d 730, 737 (S.C. 1988) ("Thus, a cause of action in negligence will be available where a builder has violated a legal duty, no matter the type of resulting damage. The 'economic loss' rule will still apply where duties are created *solely* by contract."). Because of this "legal duty" exception, the economic loss rule is now less restrictive in South Carolina. *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 666 S.E.2d 247, 251 (S.C. 2008)
Exceptions	• **Other Property:** The "other property" exception was severely limited in the case of *Palmetto Linen Service, Inc. v. U.N.X., Inc.,* 205 F.3d 126 (4th Cir. 2000), though it remains to be seen whether a South Carolina state court would apply similar reasoning. In *Palmetto Linen*, a linen cleaning service sued a company which installed a chemical dispensing system in service's washers, and manufacturer of certain components of the system, for damages resulting from the alleged malfunction of the system, resulting in destruction of linens. The Fourth Circuit court of appeals affirmed dismissal of negligence claims based on the South Carolina economic loss rule. Significantly, the court found the "other property" exception inapplicable to damage outside the product itself, as follows: "Palmetto finally argues that the "other property" exception to the economic loss rule permits it to proceed in tort. We reject this argument as well. Although the economic loss rule generally "does not apply where other property damage is proven," *Kershaw County Bd. of Educ. v. United States Gypsum Co.,* 302 S.C. 390, 396 S.E.2d 369, 371 (S.C.1990), "courts have tended to focus on the circumstances and context giving rise to the injury" in determining whether alleged losses qualify as "other property" damage, *Myrtle Beach Pipeline Corp.,* 843 F.Supp. at 1057. Specifically, in the context of a commercial transaction between sophisticated parties, injury to other property is not actionable in tort if the injury was or should have been reasonably contemplated by the parties to the contract." 205 F.3d at 129-130. • **Industry Standard: If a user of a product is a member of the class for which the product was manufactured, the user is entitled to a duty of care in manufacturing commensurate with industry standards.** If a duty of care is owed to the consumer, a breach of industry standards would serve as evidence of the defendant's breach of that duty of care. Being that the duty of care does not arise out of a contract, the fact that only the product itself is injured is irrelevant. *Colleton Preparatory Acad., Inc.*, 666 S.E.2d at 252. • **Serious Threat of Bodily Harm:** Parties should not have to wait until a dangerous and defective product causes serious bodily injury before seeking a tort action. *Id.* at 252. The court adopted Maryland's balancing test for the exception: "the nature of the damage threatened and the probability that the damage would occur should be examined to determine whether there is a "clear, serious, and unreasonable risk of death or personal injury." *Id.* at 254.

SOUTH DAKOTA	
Doctrine	Economic losses arising out of commercial transactions are not recoverable under the tort theory of negligence in the absence of personal injury or damage to other property. *City of Lennox v. Mitek Industries, Inc.* 519 N.W.2d 330, 333 (S.D. 1994); *Diamond Surface, Inc. v. State Cement Plant Comm'n,* 583 N.W.2d 155, 160 (S.D. 1998); *Northwestern Pub. Serv. v. Union Carbide Corp.,* 115 F. Supp. 1164, 1167 (D.S.D. 2000); *Corsica Coop. Ass'n v. Behlen Mfg. Co., Inc.,* 967 F. Supp. 382, 395 (D.S.D. 1997).
Exceptions	• **Other Property:** Defined as collateral to the property itself. *City of Lennox v. Mitek Industries, Inc.* 519 N.W.2d 330, 333 (S.D. 1994). *See also Diamond Surface, Inc. v. State Cement Plant Comm'n*, 583 N.W.2d 155, 160 (S.D. 1998).
TENNESSEE	
Doctrine	In Tennessee, a consumer does not have an action in tort for economic damages under strict liability. *Ritter v. Custom Chemicides, Inc.*, 912 S.W.2d 128, 133 (Tenn. 1995). The Tennessee Supreme Court has recently adopted the United States Supreme Court's view from *East River*. *Lincoln Gen. Ins. Co. v. Detroit Diesel Corp.*, 2009 Tenn. Lexis 512, *17 (Tenn. Aug. 21, 2009). The Tennessee Supreme Court explicitly stated that it will not adopt exceptions for unreasonably dangerous products or damages by means of a sudden, calamitous event. *Id.* at *18.
Exceptions	• **Other Property** • **Fraud and Misrepresentation:** Tennessee courts will allow claim of misrepresentation against a third party with whom there is no privity. *John Martin Company, Inc. v. Morse/Diesel, Inc*., 819 S.W.2d 428 (Tenn. 1991). *John Martin* was an action for negligent misrepresentation by subcontractor against construction manager and on-site superintendent. The Tennessee Supreme Court held that the subcontractor, despite lack of privity, could make claim against the construction manager based upon negligent misrepresentations, whether negligence was in the form of direction or supervision. In so ruling, the court recognized that there is a split of authority on the issue of whether the "economic loss doctrine" bars recovery in tort for economic damages absent privity.
TEXAS	
Doctrine	Under Texas's economic loss rule, no duty in tort exists when plaintiffs have suffered only economic losses. *Mem'l Hermann Healthcare Sys. v. Eurocopter* Deutschland, 524 F.3d 676 (5th Cir. 2008). The economic loss doctrine applies to both negligence and strict liability claims. *Pugh v. General Terrazzo Supplies, Inc.*, 243 S.W.3d 84 (Tex. App. – Houston (1st Dist. 2007). Texas law expressly precludes the recovery of purely economic losses via tort claims in three instances. First, the Economic Loss Doctrine precludes a negligence cause of action for economic damages when the loss is the subject matter of a contract between the parties. *Coastal Conduit & Ditching, Inc. v. Noram Energy Corp.,* 29 S.W.3d 282, 285 (Tex.App.—Houston [14th Dist.] 2000, no pet.); *see also Southwestern Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991) (Economic Loss Doctrine barred recovery where injury was lost profits resulting from telephone company's failure to properly publish ad as contracted for); *Jim Walter Homes, Inc. v. Reed,* 711 S.W.2d 617, 618 (Tex. 1986) (Economic Loss Doctrine barred recovery in tort where injury was that the house they were promised and paid for was not the house they received); *Essex Ins. Co. v. Blount, Inc.,* 72 F. Supp.2d 722, 724 (E.D. Tex. 1999) (Economic Loss Doctrine barred recovery where injury was only to the heavy timber equipment that was the subject of the purchase contract). Second, the Economic Loss Doctrine bars recovery of economic damages in a negligence claim brought against the manufacturer or seller of a defective product where the defect results in damage only to the product itself and not to a person or to other property. *Hininger v. Case Corp.,* 29 F.3d, 124, 126-27 (5th Cir. 1994); *Indelco, Inc. v. Hanson Indus. N. Am.—Grove Worldwide*, 967 S.W.2d 931, 932-33 (Tex.App.—Houston [14th Dist.] 1998, pet. denied) (damages caused by a defective crane were not recoverable where damages were only to crane itself). Third, Texas law precludes the recovery of economic damages in a negligence cause of action where the parties are contractual strangers and the damages are purely economic and there is no accompanying claim for damages to a person or property. *Coastal Conduit & Ditching, Inc.,* 29 S.W.3d at 288-90; *See also Trans-Gulf Corp. v. Performance Aircraft Services, Inc.,* 82 S.W.3d 691 (Tex.App.—Eastland 2002, n.p.h.) (Economic Loss Doctrine barred negligence and negligence per se claims brought by purchaser of airplane against contractors hired to repair airplane months before it was sold, where contractors were contractual strangers with purchaser, and purchaser sought only to recover damages to the subject of the contract).

Exceptions	• **Other Property:** Recognizes this exception. *See Signal Oil & Gas Co. v. Universal Oil Products*, 572 S.W.2d 320 (Tex. 1978). The Dallas Court of Appeals in *Murray v. Ford Motor Company*, 97 S.W.3d 888 (Tex.App.—Dallas 2003) limits any tort recovery to the damage caused **only** to the "other property." The Fifth Circuit Court of Appeals has held that Texas does not recognize a negligence cause of action when a component part is involved. *See Hininger v. Case Corp.,* 23 F3d 124, 126-27 (5th Cir. 1994). • Texas considers the property to be the overall finished product bargained for by the buyer rather than its individual components. *See Alcan Aluminum Corp. v. BASF Corp.,* 133 F.Supp.2d 482 (N.D.Tex.2001); *Mid-Continent Aircraft Corp., 572 S.W.2d 308; Equistar Chemicals, L.P. v. Dresser-Rand Company*, 2003 WL 22672205 (Tex.App.—Houston [14th Dist.] 2003). • **Professional Malpractice:** The Texas Supreme Court and the Dallas Court of Appeals have both specifically noted that the Economic Loss Doctrine does not apply in cases of professional malpractice. *See DeLanney,* 890 S.W.2d at 494 n.1; *Express One Int'l, Inc.,* 53 S.W.3d at 898 n.1. In Texas, "it is a well settled rule that an architect must use skill and care in the performance of his duties commensurate with the requirements of his profession, and he is liable in damages if he is negligent in the performance of those duties." *Ryan v. Morgan Spear Assoc., Inc.,* 546 S.W.2d 678, 681 (Tex.Civ.App.—Corpus Christi 1977, writ ref'd n.r.e.); *Romero v. Parkhill, Smith & Cooper, Inc.,* 881 S.W.2d 522, 525 (Tex.App.—El Paso 1994, writ denied: *I.O.I. Systems, Inc. v. City of Cleveland*, 615 S.W.2d 786, 790 (Tex.Civ.App.—Houston [1st Dist.] 1980, writ ref'd n.r.e.). Consequently, the Economic Loss Doctrine does not prohibit a professional negligence lawsuit.
UTAH	
Doctrine	The Utah Supreme Court adopted the interpretation of the economic loss rule that "[t]he proper focus in an analysis under the economic loss rule is on the source of the duties alleged to have been breached. Thus, our formulation of the economic loss rule is that a party suffering only economic loss from the breach of an express or implied contractual duty may not assert a tort claim for such a breach absent an independent duty of care under tort law." *Hermansen v. Tasulis*, 48 P.3d 235, 240 (Utah 2002). In 2008, the Utah Legislature codified the economic loss rule in Utah Code § 78B-4-513 and should be enforced pursuant to Utah Supreme Court precedent. *Davencourt at Pilgrims Landing Homeowners Ass'n v. Davencourt at Pilgrims Landing, LC*, 2009 Utah Lexis 193, at *12 (Utah Oct. 2, 2009)
Exceptions	• **Independent Duty**: The economic loss rule does not bar tort claims when those tort claims are based on a duty independent of those found in the contract. *Grynberg v. Questar Pipeline Co.*, 70 P.3d 1, 13(Utah 2003). • **Other Property**: The economic loss doctrine does not preclude when there is damage to other property, but other property does not include individual component parts of a separate product. *Davencourt*, 2009 Utah Lexis 193, at *15-16.
VERMONT	
Doctrine	Adopted the doctrine in *Pacquette v. Deere & Co.,* 168 Vt. 258, 719 A.2d 410 (1998), holding that where a plaintiff incurs a purely economic loss from a product defect, plaintiff's claim is limited to breach of warranty theory, not tort theory.
Exceptions	• **Other Property**

VIRGINIA	
Doctrine	In contrast to most jurisdictions, one line of Virginia cases holds that the economic loss rule does **not** bar a negligence claim so long as there **is** privity of contract between the parties, in which case a party may be able to sue in negligence even if the losses are purely economic. Under this line of cases, if there is no privity, there is no recovery for "purely economic" damages, but recovery for damage to "other property" is allowed. *Sensenbrenner v. Rust, Orling & Neale*, 236 Va. 419, 425 S.E.2d 55, 58 (1988). *See also Gerald M. Moore and Son, Inc. v. Drewry*, 467 S.E.2d 811 (Va. 1996) (absent of privity of contract, a person cannot be held liable for economic loss damages caused by his negligent performance of a contract, even if that person is an agent of an entity with whom the plaintiff does have privity of contract.); *Miller v. Quarles*, 242 Va. 343, 410 S.E.2d 639 (1991) (permitting recovery in tort where defendant's negligence arose from the performance of a contract); *Copenhaver v. Rogers*, 384 S.E.2d 593 (Va. 1989) (no cause of action for legal malpractice where plaintiff was not in privity with lawyer); *Redman v. Brush & Co.,* 111 F.3d 1174, 1182 (4th Cir. 1997) (Under Virginia law, plaintiff who lost coin collection could not bring a product liability action for purely economic damages against a safe manufacturer with whom plaintiff was not in privity.); *Filbert v. Joel Stowe Assoc., Inc.*, 40 Va. Cir. 197 (1996) (claim by home purchaser against company hired by seller that allegedly negligently performed repair dismissed under economic loss rule for lack of privity); *243 Industrial Assoc., L.P. v. Consumer Fuelco*, 35 Va. Cir. 322 (1994) ("[A]n action seeking damages for a purely economic loss does not lie where the loss results from negligent performance of a contractual commitment brought by a non-party to the contract."). However, another line of cases has questioned this approach to the ELR. *Rotonda Condominium Unit Owners Ass'n v. Rotonda Assoc.,* 380 S.E.2d 876 (Va. 1989) (condominium association, despite privity with condominium developer, cannot recover in negligence for purely economic damages); *P&T Associates v. Paciulli, Simmons & Assoc., Ltd,* 27 Va. Cir. 405 (1992) (economic loss rule warranted dismissal of a negligence claim even where privity was present; but tort remedy is available when the "safety" of a person or property is at issue); *Fournier Furniture, Inc. v. Waltz-Holst Blow Pipe Co.,* 1997 U.S. Dist. LEXIS 2797 (W.D. Va., March 13, 1997) (same result as *P&T Assoc.)*; C. Kailani Memmer, Evolution of Economic Loss Rule 15, at 21-22 JOURNAL OF CIVIL LITIGATION, VOL X, No. 1 (1997). In any event, privity is critical in a case involving the sale of goods, as demonstrated by *Beard Plumbing and Heating, Inc. v. Thompson Plastics, Inc.*, 254 Va. 240, 491 S.E.2d 731 (Va. 1997). There, the Virginia Supreme Court noted that the plaintiffs had attempted to circumvent the privity requirement for recovery of consequential damages by arguing that consequential damages are impliedly allowed under §§Va.Code 8.2-318, which provides in pertinent part: "Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer or seller of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant, if the plaintiff was a person whom the manufacturer or seller might reasonably have expected to use, consume, or be affected by the goods[.]" In rejecting plaintiff's agument, the Virginia Supreme Court held that §§ Va.Code 8.2-318 is superseded by the more specific UCC provision of §§Va.Code 8.2-715(2)(a) which requires the presence of a contract to recover consequential damages. The court began its analysis by citing, at 244, to § 8.2- 715(2), which states: "Consequential damages resulting from the seller's breach include (a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) injury to person or property proximately resulting from any breach of warranty." The court noted, at 255, that "the language of the section itself contains a presumption that there is a contract between the parties" in that "[t]he phrase 'at the time of contracting' in subparagraph (a) conveys the understanding of a contract between two parties." The court thus concluded "that § 8.2- 715(2)(a) requires a contract between the parties for the recovery of consequential economic loss damages incurred as a result of a breach of warranty by the seller." The court then noted that this contract requirement appears to conflict with 8.2-318, but resolved the conflict by holding that the more specific provision, 8.2-715(2)(a) prevails. The case of *Printpack, Inc. v. Pak-Tec, Inc*., 2000 WL 890729 (Va. Cir. Ct. June 29, 2000), suggests that privity can be established by virtue of the warranty being conferred directly to the purchaser: "[A]ccording to Printpack's allegations, there was privity. In its warranty counts (III and IV), Printpack alleges that Imaje (and Pak-Tec) warranted the printing system, breached the warranties, and those breaches caused the loss suffered by Printpack. If these allegations are proven, there was a contractual relationship between Printpack and Imaje. Such a relationship establishes privity. With privity, Printpack's loss would be consequential damages resulting from breach of warranty instead of a non-recoverable economic loss."
Exceptions	• **Other Property:** But, when a product injures itself because one of its component parts is defective, a purely economic loss results to the owner for which no action in tort will lie. *Cincinnati Ins. Co. v. Puckett Bros. Constr. Co.*, 48 Va. Cir. 271, 273 (1999) • **Actual Fraud:** Plaintiff must show actual fraud, not constructive fraud, to get around the ELR. *Virginia Transformer Corp. v. P.D. George Co.*, 932 F.Supp. 156, 163 (W.D. Va. 1996). "The essence of constructive fraud is negligent misrepresentation." *Richmond Metro. Auth. V. McDevitt Street Bovis, Inc.,* 256 Va. 553, 559, 507 S.E.2d 344, 347 (1998). Therefore, where the basis of constructive fraud is negligence, the economic loss rule applies. *Virginia Beach Rehab Specialists, Inc. v. Augustine Medical, Inc*., 58 Va. Cir. 379 (Va. Cir. Ct. 2002) (slip copy). "[T]the economic loss rule traditionally bar claims based on tort theory and is intended to restrain efforts to prevent parties from bringing claims in tort that should be claims only for breach of contract." *Richmond v. Madison Management Group*, 918 F.2d 438, 446 (4th Cir. 1990), *see* William L. Prosser, *Handbook of the Law of Torts* 92, at 614 (4th ed.1971). If a defendant breaches a duty imposed by law, however, rather than by contract, the economic loss rule should not apply. *Richmond*, 918 F.2d at 446.

WASHINGTON	
Doctrine	Recognizes the doctrine in both the product liability and construction context. *WWP v. Graybar Electric Co.*, 112 Wn.2d 847, 774 P.2d 1199 (Wa. 1989); *Berschauer/Phillips Constr. Co. v. Seattle School District,* 124 Wn.2d 816 (1994). *See also Stanton v. Bayliner Marine Corp.,* 123 Wn.2d 64, 866 P.2d 15 (Wa. 1993). The purpose of the economic loss rule is to bar recovery for alleged breach of tort duties where a contractual relationship exists and losses are economic losses. If the economic loss rule applies, the party will be held to contract remedies, regardless of how the plaintiff characterizes them. *Alejandre v. Bull*, 153 P.3d 864, 868 (Wash. 2007). "Harm," for the purposes of a product liability claim includes any damages recognized by courts, but does not include direct or consequential economic losses. RCW 7.72.010(6); *Berschauer/Phillips Constr. Co. v Seattle School Dist. No. 1,* 124 Wn.2d 816 (1994). Purely economic damages under the WPLA are limited to contract claims under the Uniform Commercial Code. *Id.* at 827. "Economic loss" is defined as the "diminution of product value that results from a product defect" and sounds in contract, specifically warranty. *Id*. at 856, 860. *Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 856, 774 P.2d 1199 (1989).
Exceptions	• **Other Property** • **Sudden and Dangerous Event:** Recognizes this exception. *WWP*. In *Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 774 P.2d 1199 (1989), the Court noted the two tests used to evaluate the "risk of harm" exception, but did not expressly adopt either one. *Id*. at 866-67. The Court noted the two tests used to analyze the exception, namely the "sudden and dangerous" test and the "evaluative" approach. *Id*. at 866-67, *see also, Touchet Valley v. Opp & Seibold Const*., 119 Wn.2d 334, 351 831 P.2d 724 (1992). The "evaluative" approach is based on the idea that a "product user should not have to suffer a calamitous event before earning his remedy." *Stanton v. Bayliner Marine Corp.,* 123 Wn.2d 64, 72, 866 P.2d 15 (1994). This approach takes a number of factors into consideration including the nature of the defect, the type of risk, and "the manner in which the injury arose." *Touchet*, 119 Wn.2d at 351. Accordingly, Washington courts appear to use two tests, "the sudden and dangerous test" and "the risk of harm evaluation" to determine whether damages are purely economic losses not recoverable under the WPLA. *See, Touchet Valley,* 119 Wn.2d 334, and *Staton Hills Winery Co., Ltd. v Collons,* 96 Wn. App. 590, 980 P.2d 784 (1999). • **Professional Malpractice:** "The economic lose rule . . . [does not] abrogate[] all professionl malpractice claims, particularly where a client hires a professional and, therefore, establishes a privity of contract with that professional. . . . We are not willing at this time to expand our Supreme Court's holding in *Alejandre* to preclude all recovery for economic loss against professional agents, as to do so would be to abrogate professional malpractice claims for all cases not involving physical harm." *Jackowski v. Borchelt*, 209 P.3d 514, 520 (Wash Ct. App. 2009). • It appears that the Negligent Misrepresentation exception would not apply. *See Jackowski*, 209 P.3d at 520 (concluding trial court did not err by finding the economic loss rule applied to bar the plaintiff's negligent misrepresentation claims).
WEST VIRGINIA	
Doctrine	"[S]trict liability in tort is available in cases involving physical injury as well as when there is damage to the defective product itself or to other property if such damage is the result of a 'sudden calamitous event.' However, where the only loss suffered is an economic loss, as in the case of losses which are associated with a 'bad bargain,' the injured party must pursue the remedies provided in the Uniform Commercial Code, subject to the statute of limitations contained therein. We will not circumvent the Uniform Commercial Code's remedial scheme by applying the discovery rule to a contract action in a manner not prescribed by the Code." *Basham v. General Shale*, 180 W. Va. 526, 377 S.E.2d 830 (WV 1988) (barring homeowners' strict liability claim against brick manufacturer for defective brick that allegedly caused damages to home).
Exceptions	• **Other Property** • **Special Relationship:** *E. Steel Constructors, Inc. v. City of Salem*, 549 S.E.2d 266 (W. Va. 2001); Aikens *v. Debow*, 541 S.E.2d 576, 589-90 (W. Va. 2000)
WISCONSIN	
Doctrine	The economic loss doctrine prevents a commercial purchaser of a product from recovering solely economic losses from the manufacturer under negligence or strict liability theories. *Sunnyslope Grading, Inc. v. Miller, Bradford & Risberg, Inc.*, 437 N.W.2d 213 (1998). Economic loss is that loss "in a product's value which occurs because the product is inferior in quality and does not work for the general purposes for which it was manufactured or sold." *Wasusau Tile, Inc. v. County Concrete Corp.,* 593 N.W.2d 445, 451 (Wis. 1999).

Exceptions	• **Other Property:** "Economic losses do not include property damage to property other than the defective product or a system in which it is incorporated, nor do economic losses include damage arising from personal injury caused by the product." *Prent Corp. v. Martek Holdings, Inc.,* 618 N.W.2d 201, 206 (Wis. App. 2000), citing *Daanen & Janssen, Inc. v. Cedarrapids, Inc.,* 573 N.W.2d 842, 845 (Wis. 1998). "Once a part becomes integrated into a completed product or system, the entire product or system ceases to be 'other property' for the purposes of the economic loss doctrine." *Seltzer v. Brunsell Bros., Ltd*., 652 N.W.2d 806, 817 (Wis.App. 2002), citing *Wasusau Tile, Inc. v. County Concrete Corp.,* 593 N.W.2d 445 (Wis. 1999). The economic loss doctrine does not bar recovery of economic losses in tort when economic loss is alleged in combination with damage to other property. *Bay Breeze Condominium Ass'n, Inc. v. Norco Windows, Inc.,* 651 N.W.2d 738, 742 (Wis.App. 2002), citing *Wasusau Tile, Inc. v. County Concrete Corp.,* 593 N.W.2d 445, 451 (Wis. 1999). • **Lack of Privity of Contract:** The economic loss doctrine precludes recovery in tort for solely economic losses, regardless of whether privity of contract exists between the parties. *Digicorp, Inc. v. Ameritech Corp.,* 2003 WL 21267123 *1 (Wis. 2003); *Daanen & Janssen, Inc. v. Cedarrapids, Inc.*, 573 N.W.2d 842 (Wis. 1998). • **Applicability to Service Contracts:** The economic loss doctrine does not apply to service contracts. *Ins. Co. of N. Am. v. Cease Elec. Inc.*, 688 N.W.2d 462, 469 (Wis. 2004). • **Applicability to Consumers**: The economic loss doctrine has been held to bar recovery of economic losses in tort in consumer transactions as well as commercial transactions. *State Farm Mut. Auto Ins. Co. v. Ford Motor Co.*, 592 N.W.2d 201, 205 (Wis. 1999); *Seltzer v. Brunsell Bros., Ltd.,* 652 N.W.2d 806, 817 (Wis.App. 2002). • **Fraud and Misrepresentation:** The economic loss doctrine bars misrepresentation claims based in negligence. *Kaloti Enters. v. Kellogg Sales Co.*, 699 N.W.2d 205, 216 (Wisc. 2005). The economic loss doctrine also bars common law claim for intentional misrepresentation in real estate transactions. *Below v. Norton*, 751 N.W.2d 351, 354 (Wisc. 2008). Wisconsin does, however, recognize a narrow fraud in the inducement exception. *Kaloti Enters.*, 699 N.W.2d at 219. • **The Public Safety Exception:** The public safety exception to the economic loss doctrine was designed "to address special public safety concerns present in claims involving contamination by inherently dangerous substances like asbestos." *Bay Breeze Condominium Ass'n, Inc. v. Norco Windows, Inc.,* 651 N.W.2d 738, 742 (Wis.App. 2002), citing *Northridge Co. v. W.R. Grace & Co.,* 471 N.W.2d 179 (1991). *Northridge*, however, does not create a broad public safety exception to the economic loss doctrine, and courts have read it narrowly, refusing to apply its rule in cases not involving asbestos or other inherently dangerous contaminants. *Wausau Tile, Inc.*, 593 N.W.2d at 458-59.
WYOMING	
Doctrine	Bars recovery under tort theory where plaintiff claims purely economic damages unaccompanied by physical injury to persons or other property. *Continental Ins. v. Page Engineering Co.,* 783 P.2d 641, 649 (Wyo. 1989)
Exceptions	• **Other Property:** *Continental Ins.*

Note: This document is intended to provide a general overview of the laws enacted in each state. Many of the statutes listed are complex, and do not lend themselves to a concise summary. Also, while we have made every effort to verify the accuracy of the materials summarized as of the date indicated, these statutes and cases are subject to revision, amendment and modification, as well as to differing court interpretations. It therefore is intended that this document should serve only as a guideline, for purposes of general reference, and is not a substitute for legal advice from a qualified attorney. Please feel free to contact any Cozen O'Connor attorney for additional information and assistance.