INDEX

(References are to paragraphs or chapters)

A
Absent parties
  comparative apportionment implications 14.08[D][6]
Academic experts, 23.07[A][1]
Active-passive distinction 14.04[B]
Accident-proof products
  not required 5.02[B], 5.08[D]
Activities
  abnormally dangerous 7.01[A]
Addiction, contributory
  negligence/assumption of risk 20.03[1][2]
Admiralty actions
  comparative principles, application of 22.13
  economic loss, and 27.04[E]
  economic policy and 22.13[B][2]
  equity, emphasis on 22.13[B][1]
  alternative, failure to develop 26.04[B][2][c]
Advertising
  contributory negligence and 20.01[K]
  express warranty 3.04
  images created by, effect on contributory
  negligence 20.01[K]
  magazines, liability of 12.18[A][4]
  mass media 1.01[B]
  part of basis 3.09
  proximate cause 1.01[C]
  punitive damages and 29.04[E]
  techniques and contexts of, express warranty
  and 3.04
Affirmation of fact test, express warranty and
  3.05[A]
Affirmative duty, 5.04[E]
  negligence, generally 5.04[E]
Agency reports
  causation and proof 23.14
Aging products, defect and 8.10[E]
Agricultural products and equipment
  (See Farming)
AIDS virus
  American Red Cross 5.04[D]
  contamination of blood products 5.08[G][2][b]
  Perlmutter case 12.16[A][2][a]
  sale of blood and 12.16[A][2][a]
  “services” classification 12.16[A][2][a]
  test to screen blood donors 5.04[D]
  transmission of 5.08[B]
Air conditioners
  23.12[D][3], 24.03[A], 30.11
Aircraft
  Boyle v. United Technologies Corp. 12.12[B][1][a]
  causation question 23.03[A][1]
  disclaimers
    conspicuousness 17.12[B][1]
    economic loss, property damage and 27.06
  government contract defense 12.12[B]
  helicopter, Texas case 10.05
  manufacturer’s obligation to indemnify
    14.04[C]
  misuse, disregard of instructions and
    21.04[A]
  offensive collateral estoppel 31.02[B]
  prior claims 23.06[A][1]
  prior pleading 28.08
  proof, elements of 23.03[A][2]
  representational vs. nonrepresentational
  theories 26.01[C]
  res ipsa loquitur, control requirement and
    24.03[B]
  risk, knowledge of 20.03[J][1]
  second collision 22.16[B][1]
  statutes of repose and 30.12[B][1]
  wording of 17.13
  general aviation aircraft 30.12[B][1]
  strict liability
    components and 12.03[G][1]
    design and 12.12[B][1][a]
    negligence and 26.04[B][2][b]
    tort vs. contract 26.03[B][4]
    warnings, duty as to 19.01[A]
  Air tank (portable), exploding 1.01[C]
  Alad decision 13.07 et seq. 13.07[A][1], 13.09[B]
  Alcoholic beverages 19.10[D][4]
  Allergic reaction 19.07[J][1][b]
  defect in product, not in 19.09[B][1]
  phenobarbital 19.07[J][1][b]
  Allergies
    defect in person, not product 8.06[F]
    defects, consumer expectations and 8.06[F]
    Representational background 1.02[C]
  Alteration, product 30.12[B][7]
  Alternative liability doctrine 12.24[D][1]
  American National Standards Institute (ANSI)
    11.02[H][2]
  American Society for Testing Materials
    11.02[H][1][1]
  Antiprivity rationale 16.01[G]
  Appearance of Products 1.02[D]
  negligence 5.08[G][1][1]
  Apportionment, applicability of principles of 22.07
    causation and 22.08 et seq.
    comparative 14.08, 22.08[B][2]
    California 14.08[C]
    contribution suits, insurance indemnity
      clauses and 14.08[F]
    Doke rule 14.08[A]
    fairness and 14.08[B]
    implications of 14.08[D] et seq.

IN-1

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
insurance indemnity clauses and contribution
suits 14.08[F]
joint and several liability 14.08[G],
14.08[G][1], 14.08[G][3]
percentage issues 14.08[E]
relative responsibility: *Dole* rule 14.08[S]
theoretical criticism 14.08[H]
comparative, implications of
abrogation of active/passive distinction
14.08[D][1]
comparison and contribution theory
14.08[D][5]
defendants not before the court 14.08[D][6]
European law regarding Ch. E10
joint and several liability
generally 14.08[G][1]
other parties', faults of 22.09
consideration of all parties' fault 22.09
rejection of aggregation of faults 22.09
percentage issues 14.08[E]
thieves of adjusting liability effect 14.02
common liability and 14.02[D]
contribution and sections 402A and 402B
14.02[A]
tort, defined 14.02[E]
negligence and "products liability" 14.02[C]
successive tort-feasors 14.02[F]
Gaurora supplies 3.06[A]
*Asahi* decision 31.01[A]
Asbestos
Amosite asbestos felt 6.03[L]
causation, basic elements of proof
23.03[A][1][a], 23.03[B]
concealment 2.02[C]
consumer chain, bystanders
foreseeability limitation 16.02[I][1]
foreseeability 5.06[A]
*Gold Bond Cement* 23.03[B]
government specifications 6.03[L]
installation, strict liability imposed 12.13[A]
Johns-Manville's participation in development
of specifications 6.03[L][1]
jurisdiction denied, "Asahi" decision and its
implications 31.01[B][1][c]
litigation 2.02[C]
manifestation 30.06[A]
negligence, reasonable prudent person standard
5.02[A]
proof requirements 23.03[A][2]
punitive damages 19.09[C][2][c]
significant relationship status 30.06[M]
*Sindell* application 12.24[D][2]
"Summer Simpson Papers" 19.09[B][3]
state-of-the-art defense, admissibility of
evidence feasibility 10.02[B]
statutes of limitations, discovery rule 30.08[F]
Asbestos, hazards of
blasting caps case 12.24[B]
broker's liability 12.17
circumstantial evidence 23.12[H]
comparative apportionment, *Dole* rule and
14.08[A]
consumer choice 19.13[A][1]
consumer expectation test 8.06[J][5][b]
discovery issues
diagnosis 30.07[A][2]
knowledge vs. manifestation 30.06[A][2][b]
dual capacity, safe workspace as benchmark of
12.03[D][5][b]
economic loss, *Santer* and 27.02[A][2]
emotional distress, intentional infliction of 5.10
exceptional hazard 9.02[A]
impriyed 14.06
indemnity 14.04[A][5], 14.06[B]
joint liability 14.08[G][1]
manufacturer's liability 12.03[B][1]
negligence 5.02[A]
personal injury risk 27.05[J]
punitive damages corporate behavior and
29.02[A][2]
criminality and 29.03[A]
settlement, apportionment rights and 14.03
*Sindell*,argument for liability 12.24[D],
12.24[D][1]
smoking combined with 22.16[B][1][a]
state-of-the-art defense 10.01[C], 10.06[A],
10.06[D][1], 10.06[D][2], 19.09[B][1][2][b]
statutes of limitations
continuing events rule 30.04[B][5]
discovery 30.05[B][1], 30.05[B][3][c],
30.06[A][2][a], 30.06[B], 30.06[D],
30.07[A][2], 30.07[D][2], 30.07[E]
extension of limitations 30.13[B]
successor liability
distributors 13.07[A][5]
product line exception 13.07[A][3]
third-party emotional distress 32.11
unavoidably unsafe instruction 8.05[G][7]
willful/wanton test 29.04[I][1]
Assumption of risk
(See also Contributory negligence; Industrial
machines)
as defense to warranty 20.03
bystanders and 20.03[G]
common pool of knowledge focus 20.05[C]
comparative doctrines of liability, application of
to plaintiff's conduct 22.15[A]
considered choice, degree of 20.03[I] et seq.
adiction 20.03[I][2]
expectable deviations and 20.03[I][1][b]
specific knowledge, effect on recovery
20.03[I][1][a]
unreasonable use, as cognomen for
20.03[I][1][b]
workplace and 20.03[I][1]
consumer's choice 20.03 et seq.
contributory negligence and 20.01 et seq.,
20.01[B], 20.02[C][2]
contributory negligence compared 20.01[D]
melding defenses 20.02[B]
defects and 8.11[A]
INDEX

defense of

molding of defense of contributory negligence and 20.02[B]

separation from defense of contributory negligence 20.03[A]

degree of knowledge, effect 20.03[J][1] et seq.

assessing safe conditions, effect 20.03[J][2]

complex mechanical products, and 20.03[J][3]

illustrative situations 20.03[J][1]

particularly and 20.03[J][5]

prior knowledge, effect of lack of 20.03[J][1]

toxic chemicals 20.03[J][4]

doctrinal

waiting audience, effect of 20.03[J][2][c]

doctrinal and functional elaborations 20.03[J]

burden of proof and 20.03[J][1]

functional classifications 20.03[J][2] et seq.

simple physics defense 20.03[J][2][b]

time, effect of familiarity over 20.03[J][2][a]

economic premises 20.03[E] et seq.

bargaining model 20.03[E][1]

children and 20.03[E][3]

free market, effect of choice of 20.03[E][2]

inadvertent actions 20.01[M]

patent danger and 20.01[I][2]

misuse of product and 21.08[B], 21.08[F][2]

obviously and 20.05

general understanding 20.05[A]

opposition to 20.05[E]

other factors affecting 20.05[D]

patent dangers 20.05[B]

moralistic tint 20.05[B][2]

no duty, concept of 20.05[B][1]

reasonable person defined 20.01[A]

relationship to written releases 20.05[K]

unreasonable use, as cognomen for 20.03[I][1][b]

inadvertence in recreation 20.03[I][3]

unusual risks and occurrences and 20.03[L]

appropriateness of defense 20.03[L]

worker's assumption 20.03[F]

defense of assumption of risk, use of 20.03[F][1]

failure of defense 20.03[F][3]

Fireman's rule 20.03[F][2]

Assurances of knowledge and skill

implied warranty of fitness 6.03[E]

Athletic equipment

(See also Sports equipment)

Auctioneers, liability of 12.06[D][2]

Auctions

used products, strict liability 18.05[A][1]

Automatic doors 8.10[F][1]

Automobiles

(See also Tire blowouts)

A-No. 1 condition terminology 3.10

airbags 11.03[G][1][b]

batteries 24.11[A]

car wash conveyor 12.03[B][1]

circumstantial evidence 23.12[D][2][a]

contract vs. implied warranty 28.06

contributory negligence

burden of repair 20.01[I][2]

negligent repair 23.12[D][2][a]

plaintiff conduct 20.06[C][4], 22.16[B][2]

defect in electrical system 23.12[D][2][a]

design defects 1.01, 11.03[G][1]

duty to warn vs. 9.20[A]

product utility and 9.06[G]

disclaimers

express warranty vs. 17.08

personal injury exclusion 17.03[F]

foreseeability 16.02[J][1]

fuel tank design 19.15[A][1]

gasoline tank cap 12.14[C]

governmental standards

postmanufacture and preaccident 25.07

indemnity 14.04[B][1]

leases, strict liability and 12.10[A]

lemons 23.11

lifetime guarantee 3.06[B]

manufacturer's liability 12.03[C][2],

12.03[E][1], 12.03[F], 12.03[G]

mechanics' injuries 21.08[C], 21.08[F][1][a],

23.06[C]

merchantability doctrine, privivity requirement

and 6.02[E]

misuse of 21.02 et seq.

negligence

vs. strict liability 25.04[B][4]

warranty and 26.05[B]

nonrepresentational theory 26.01[A]

preemption issues 11.03[G][1][b]

proof

circuitual evidence 23.12[A] et seq.,

23.12[H], 23.12[N], 23.12[Q]

expert testimony 23.07[B] et seq.,

23.08[B][1]

previous occurrence and 23.06[A]

warranty claims 23.10

punitive damages 29.03[B], 29.03[C] et seq.,

29.03[E], 29.04[B], 29.04[F], 29.04[I][1],

29.05[B], 29.07[C], 29.10[A]

advertising 29.04[E]

crime and 29.03[A]

pleading 29.06

willful/wanton test 29.04[I][1]

recalls 25.06[A][1], 25.06[A][4]

remedial evidence 25.04[A][4]

res ipsa loquitur 24.06[B], 24.09[B] et seq.,

24.09[E]

retailer's liability 12.04[B]

seat belts 20.01[Q], 23.09[B]

statutes of limitations

discovery and 30.09[A][1]

failure to warn 30.04[B][3]

strict liability 26.04[B][D][b]

vs. negligence 25.04[B][4]

sudden mechanical failures 24.06[B]

test drive of 3.01[B]

used

negligence and 18.03[B][1]

strict liability and 18.05[A][2]

warnings, duty as to 25.02[E][1]

IN-3
INDEX

Aviation Act [federal] 11.03[G][11]

B
Balancing and weighing tests, design defect and
8.09[C][1]
Barker test 8.09[C] et seq., 8.09[C][1], 9.06 et seq., 9.18[B][1], 19.09[C][4]
Basic continuity of enterprise test, successor corporation and 13.05[B]
Basis of sale 3.09
BB guns warnings, duty as to, defects 19.11[D][2][c]
Battery tort 8.09[C][1], 9.06 et seq., 9.18[B][1], 19.09[C][4]
Basic continuity of enterprise test, successor corporation and 13.05[B]

Bendectin birth defects caused by 23.04[A][1], 23.12[N], 29.06
failure to warn of "foreseeable dangers" 8.05[G][5]
Benzene exposure 30.07[B]
Bethesda decision 8.06[E][2], 19.09[C][2], 19.09[C][2][c]
Bicycles 23.13
Birth defects, prescription drugs and 2.02[B], 12.24[D], 23.04[A][1], 23.12[N], 29.06
Blasting caps case 5.06[A], 12.24[B]
Blood products 12.24[F], 12.24[H]
negligence 5.02[A], 5.04[D], 5.08[A][2]
Blood, provision of
(See Medical materials, furnishers of)
“Blood shield” statutes 12.16[A][2][b]
Boat
(See Ships and boats)
Boat Safety Act [federal] 11.03[G][14]
Boiler Inspection Act [federal] 11.03[G][20]
Books, strict liability and information contained in
12.18
Bottles
caps 5.09, 19.07[A][1][c],
carton defect 24.03[B]
defective 7.04[B][1]
exploding 5.09, 19.07[A][1][c], 21.02[C][3], 23.12[J][3], 24.09[A], 24.12
Boyle v. United Technologies, elaboration of
12.12[B][1][b]
Breach of express warranty, evidence of 3.08
Breakdowns of products unmerchantable 6.02[H]
Breathing device, artificial 29.04[H]
Breast implants
affirmative duty 5.04[E]
Brokers, liability of 12.17
Brown v. Western Farmers Ass’n, economic loss problem and 27.09[B][1]
Bulk medical products, duty to warn 19.07[H][2]
Burden of proof 8.05[G][4], 23.05[A][2]
assumption of risk and 20.03[H][1]
contributory negligence and 20.01[T][2]
indemnity actions 14.04[H]
miuse of product 21.12
Burglar alarm 27.05[I] et seq.
Bystanders
assumption of risk and 20.03[G]
commonsense approach to liability and
16.02[A][2]
consumer chain 16.02[E][1]-16.02[E][3], 16.02[I][1]
definitions in re 16.02[A] et seq.
direct observation 16.02[E][2]
“free ride” argument, rebuttal to 16.02[B][5]
general terms in re 16.02[A][1]
general tort issue and 16.02[A][3]
liability to bargain, effect 16.02[B][1]
liability theories as affecting 16.02[H]
protection entitled to 16.02[B][4]
rationales for recovery 16.02[B][4]
recovery by 16.02[F][1], 16.02[F][2]
“consumer contemplation” test 16.02[B][3]
foreseeability limitation 16.02[I] et seq.
general view of foreseeability, limitation
16.02[I][1]
liberal foreseeability 16.02[I][2]
viability of foreseeability questions 16.02[I][3]
rationales for 16.02[B] et seq.
rescuers 16.02[C]
users and consumers, similarity to 16.02[B][2]
witnesses to injuries 16.02[E][1]-16.02[E][3]
zone of danger 16.02[E][3]

C
Campo v. Scofield, obviousness defense and
20.05[B], 20.05[E]
Cancer, chemically induced 30.05[A], 30.07[A][1]
Carpet, defective 27.02[A][1]
Causation
(See also Proximate cause)
agency reports 23.14
basic elements of proof, defect vs culpability
and causation
both elements proved 23.03[C][1]
elements distinguished 23.03[C][2]
both elements of proof, fundamental standards, causation issue
class actions 23.03[A][1][f]
generally 23.03[A][1][a]
multiple causes 23.03[A][1][b]
and risk 23.03[A][1][e]
whether compensable injury exists, question
of 23.03[A][1][d]
both elements of proof, requirements on
summary judgment 23.03[A][2]
both elements of proof, whether defendant’s product was involved 23.03[B]
benchmark for comparisons of doctrines of liability 22.08

IN-4

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM via free access
INDEX

occurrences subsequent to plaintiff’s accident 23.06[B]
case of “substantial factor” 23.03[C][2], 23.04[C]
sufficiency of evidence 23.04[A][1]
superseding cause 32.05[A][1]
used products 22.12[D][2][b]

Circumstantial evidence 23.12
accidents, situation immediately following 23.12[C]
circumstantial evidence 23.12

chemicals, dangers of 12.06[C], 19.12[A],

26.04[B][1]

chemical suppliers’ duty to warn 19.07[H],
19.12[A]

Com unsurprising to warn 19.13[D]
civil actions 23.03[A][1][f]

Clean Air Act 11.03[G][24]

Clothing, flammable 7.04[C], 23.12[H]

Cigarettes 3.09, 8.06[E][2], 11.03[G][3],
22.16[B][2][a]

Circumstantial evidence 23.12
(See also Res ipsa loquitur)

Civil conspiracy 19.07[A][1][d]
Class actions 23.03[A][1][f]

Clean Air Act 11.03[G][24]

Clothes dryers 8.10[E], 23.07[B][10],
23.12[A][2], 30.06[E][1][b]

IN-5

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
Clothing, flammable 7.04[C], 11.03[G][2], 14.04[E][1][b], 20.03[J][1], 23.12[H], 26.04[C]
Coffee
dangerous “good products” 8.06[E][1]
Collateral estoppel 31.02 et seq.
Commercial law as seller’s defense 18.01
Commercial plaintiffs
(See Economic loss problem)
Common law
rule of no-contribution 14.01[C]
statutes of limitations 28.08
Commonality, class actions 12.25
Comparative analysis 14.08[D][1]
Comparative apportionment
(See Apportionment, comparative)
Comparative fault doctrines
(See also Assumption of risk; Contributory
negligence; Misuse of product)
accident-causing factors and 22.16[B] et seq.
alternative pleadings, exhortation against 22.11
apportionment and 14.08[H], 22.07
causation
ramifications of causation analysis 22.08[C]
common-law rule under negligence 22.01
defendant, when favored by 22.05
defining of problem, need for 22.01
definition 22.03[D][3]
degree, difference of 22.05[B]
dothrical arguments 22.10[A]
economic loss as factor 22.14
functional applications 22.16
workers’ compensation employers
22.16[A][2]
workplace 22.16[A]
инjury causing factors and 22.16[B] et seq.
judicial rejections of comparative principles
22.30
limitations of statutes to negligence, inequity of
22.03[B][2]
linguistic arguments 22.10[B]
plaintiff’s conduct and 22.15
plaintiff employs 22.12
practice and theory 22.17
principles favoring defendant
negligence concepts and strict liability
22.05[A]
second collision cases 22.16[B]
comparative rules, evidentiary implications of
22.16[B][2]
enhancement analysis: an integrated
approach 22.16[B][1]
evidentiary implications of comparative rules
22.16[B][2]
liatigation, effect on 22.16[B][2][b]
proof of enhancement 22.16[B][2][a]
specialized applications of principles 22.13
admiralty actions 22.13[B] et seq.
negligence per se and 22.13[A]
thetory and practice 22.17
warranty and 22.04
comparison applied 22.04[A][1]
damage to product 22.04[B]

IN-6
Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM via free access
strict liability and warranty 26.03 et seq.
tort vs. contract 26.03
distinctions blurred 26.03[B]
historical and policy distinctions 26.03[D]
U.C.C., effect of 26.03[B] et seq.
various species of theories 26.10
warranty and negligence 26.05
Consequential damages and unconscionability 17.03[C]
Constitutionality 29.10[D]
punitive damages, and 29.10[D]
statute of limitations 30.05[D]
Conspicuousness, disclaimer litigation and 17.12
Construction defects 12.20[A][2]
Consumer chain
bystanders 16.02, 16.02[A][1]
foreseeability limitation., general view 16.02[I][1]
Witnesses to injuries 16.02[E][1]-16.02[E][3]
cigarette-caused illness suits by governments 16.01[F]
consumer defined 17.07[B]
consumer's lack of expertise, duty to warn and 19.06[A], 19.06[D]
consumers, privity and 16.01
ordinary consumer 8.06[I], 10.01[D]
plaintiff's general knowledge of danger, effect in action for design negligence 16.02[D]
purchasers, privity and 16.01
remoteness in, effect 3.03
rescuers 16.02[C]
sophisticated users 8.06[C], 19.06[D]
tort analysis employees 16.01[D][1][c]
U.C.C section 2-318
alternative B 16.01[C][3]
alternative C 16.01[C][4]
text and comments 16.01[C][1]
users and consumers, similarity of 16.02[B][2]
privity and 16.01
Consumer conduct
(See Assumption of risk; Causation;
Contributory fault defenses; Contributory negligence; Fault; Misuse of product; Obviousness)
Consumer contemplation test 16.02[B][3]
handguns, denied in applying to 8.06[G]
Consumer expectations
(See also Defects, generally defects, as to) 8.06 et seq.
European È6.02
industry standards and 11.02[C][2]
Injuries involving children 8.06[B][2]
obviousness of danger 8.06[D]
product tampering 8.06[K]
purpose of product 8.06[K]
Risk-utility test and, blending of 9.06[C]
state-of-the-art defense and 10.01[D]
strict liability and 7.05[B]
Consumer experience 8.06[C]
Consumer information, duty to warn and 19.08[A]
Consumer needs
Implied warranty of fitness 6.03[I]
Consumer obligations, declarations and 17.05
Consumer Product Safety Act [federal]
economic loss problem and 27.04[F]
preservation of common-law remedies under 11.03[G][2]
statutes as standard setters 11.03[G][19]
Consumer Product Safety Commission 12.06[A],
23.14
Consumer users
impracticality of warning 19.07[H][3][b]
supplier's remedial efforts 19.07[H][3][a]
Construction defects 26.07
Contact lenses
standards, generally, preemption issues 11.03[G][6][e]
statutes of limitations, discovery rule
amplification and opposition 30.06[G][3]
Containers
(See Packages and containers)
Continuation exception, successor corporation and 13.05
Continuing events rule, statutes of limitations and 30.04 et seq.
linkage to discovery rules 30.04[B][2]
One Tortious Act 30.04[B][1]
Continuity of enterprise theory 13.07[C]
Contraceptives
condom 14.01[B]
IUDS 3.05[F], 8.06[G][1], 8.05[G][3],
8.05[G][5], 11.03[G][6][g], 19.07[J][2],
29.04[D], 29.04[E], 29.04[F],
30.05[B][2], 30.06[A][1], 30.06[G][2],
30.07[A][2], 30.07[B], 30.08[B],
30.09[A][2], 30.12[B]
egligence 5.02[A]
oral 5.02[A], 5.08[G][2][b], 6.02[G],
8.05[G][5], 19.02[D], 19.10[E], 29.04[F],
30.09[B]
Contract theory of liability
(See also Contracts; Industrial machines)
privity and 16.01[D]
statutes of limitations and preference for theory 28.04
vs. implied warranty 28.06
tort theory, statutes of limitations and 28.01 et seq.
Contract, breach of 3.01[A]
Contracts
(See also Contract theory for liability preference for) 28.04
distinctions blurred 26.03[B] et seq.
torts vs. 26.03
U.C.C. effect 26.03[A] et seq.
Contribution 14.01
among tortfeasors 14.08[G][1]
common-law rule 14.01[C]
defendants, common liability of 14.01[D]
distributors' liability 14.01[A], 14.01[B]
"downstream" actions 14.01[F]
users and 14.01[B]
vicarious liability and 14.01[E]
Contributory fault defenses
conceptual
commingling of concepts 20.06[C][4]
dangerous designs 20.06[C][3]
obviousness and 20.06[C][3]
plaintiff’s conduct and 20.06[C][3]
multiple defenses, practical implications of
21.08[F][4] et seq.
dothanical elasticity, effect 21.08[F][4][b]
imuise, implications of 9.13[I]
overlapping characterization 21.08[F][4][a]

Contributory negligence
advertising, images created by, effect 20.01[K]
assumption of risk and 20.02[A]
compared 20.01[D]
criminal conduct 20.03[N]
defense to warranty 20.03[M]
degree of considered choice 20.03[I]
degree of knowledge 20.03[J]
functional classifications 20.03[H][2][a]
melting defenses 20.02[B]
primary assumption of risk 20.03[B]
recreational safety statute 20.03[D]
separate defense 20.03[A]
statutory 20.03[D]
subsumed under 20.02[A]
workers; assumption of risk 20.03[F]
written documents, express in 20.03[C]
consumer’s lack of expertise, effect 20.01[J]
death actions 20.01[X]
defense of 20.01[C], 20.04[B]
duty of victim to avoidable consequences 20.01[G]
duty to mitigate damages 20.01[H]
duty to warn 19.11[D][2][a]
express warranty and 20.01[U]
fact and law 20.01[C]
generally 20.01 et seq.
implied warranty and 20.01[V] et seq.
care required, amount of 20.01[V][2]
causation technique and 20.01[V][5]
"concurring proximate causes" 20.01[V][5]
contract concept and 20.01[V][3]
derogation from warranty, effect 20.01[V][1]
products liability theory and 20.01[V][4]
tenure intention and 20.01[I]
tenure intention 20.01[E]
law as to 20.01[C]
linkages with other conceptual categories 20.06
assumption of risk and 20.06[C][2]
causation and proof, relationship to 20.06[B]
contributory negligence and 20.06[C][1]
defect linkages 20.06[C] et seq.
duty to warn and 20.06[A]
relationship to causation and proof 20.06[B]
miuse of product and 21.08[B], 21.08[F][1]
mitigation damages, duty to 20.03[H]
multiple products 20.01[R]
nature of plaintiff’s conduct 22.15[A]
ojective standards 20.01[D]
onordinary contributory negligence plaintiff’s conduct, application of comparative
principles of liability 22.15[A], 22.15[B]
obviousness
general understanding 20.05[A]
obviousness plus other factors 20.05[D]
patent danger 20.01[N]
plaintiff’s knowledge 20.01[B]
plaintiff’s negligence defined 20.01[B]
practice and tactics of 20.01[T] et seq.
burden of proof and 20.01[T][2]
joinder of theories and 20.01[T][1]
pressurized circumstances of product use 20.01[P]
price differentials, effects 20.01[L]
reasonable person defined 20.01[A]
recovery, bar to 20.01[S][2]
assumption of risk, permissibility of defense of 20.01[S][2]
repair, burden of 20.01[I] et seq.
denial of recovery and 20.01[I][1]
imposing liability, factors affecting 20.01[I][2]
seat belt defense, applicability 20.01[Q]
smoking 20.01[F]
statutory violations and 20.01[W]
defendant’s violation 20.01[W][1]
plaintiff’s violation 20.01[W][3]
strict liability and ordinary contributory negligence 20.01[S]
assumption of risk and 20.01[S][1][b] et seq.
causation characterization, rejection of 20.01[S][1][e]
conceptual inconsistency and 20.01[S][1][d]
consumer reliance and 20.01[S][1][b]
implied representation, permissibility 20.01[S][1][c]
impermissible defense of 20.01[S][1][e]
no defense 20.01[S][1]
Restatement (Second) of Torts section 402A
and 20.01[S][1][a] et seq.
recovery, bar to 20.01[S][2]
third party defense multiple products 20.01[R]
when plaintiff’s conduct is controversial 20.01[S]
willful conduct 20.03[O]

Control
miuse of product and 21.02[D]
limits on 21.02[D]
res ipsa loquitur and 24.03, 24.03[A]
multiple defendants and 24.03[B]

Cooking oil, exploding, misuse and 21.03[D]

Cooking utensils
causation, circumstantial evidence 23.12[C]
defects, overlap of consumer expectations and risk- benefit standards 8.08
representational and nonrepresentational theories, promotional language 1.02[C]
strict liability v. warranty 26.03[C][2][e]
Corporations, liability of (See Successor corporations)
Cosmetics 3.05[E], 23.07[B][1], 24.06[A]
Cost avoidance
design defects and 9.02[F], 9.06[E]
vs. product benefits 9.06[E], 9.13[G]

Cost-benefit
analysis of, accident probability and 9.02[F]
state-of-the-art defense and 10.04

Costs
injury prevention 5.08[E]
Cranes 9.09[A], 19.07[E], 20.03[I][3], 21.08[A],
25.01[C], 27.05[B][1], 27.05[B][3],
27.07[A][3], 30.12[B][4]

Crashworthiness 9.14
alternative design 9.14[C][2]

Criminal tampering 8.06[G]

Criminality
intervening criminal conduct, extended
consequences and 32.08[B]

Defects, generally
(See also Design and designers assumption of
risk and) 8.11[A]

Defects, generally
consumer experience 8.06[C]
consumer experience 8.06[C]
consumer perceptions to products 8.06[J]
contributory fault defense, use of 8.06[M][1]
“dangerous” good products 8.06[E], 8.06[F]
economic factors and 8.06[D], 8.09
“ordinary” consumers 8.06[I]
ordinary products and common dangers
8.06[B]
plaintiff’s conduct and 8.06[M] et seq.
proof of risk-utility standard 8.07
purpose of products 8.06[K]
risk-benefit standards, overlap with 8.08
warranties and 8.06[M][3]

INDEX
INDEX

cost of safety features 8.10[F][3]
custom and safety features 8.10[F][4]
foreseeability 8.10[D]
inducement to purchase and 8.10[I]
inferences from previous safety record 8.10[C]
modifications in product 8.10[H]
optional devices and 8.10[F][1]
safety features 8.10[F] et seq.
specificity of principles 8.10[B]
state-of-the-art implications 8.10[F][2]
leased product 8.05[A]
misuse of product and 8.03[B], 21.08[A]
overlapping concepts
causation and 8.13
defenses and 8.11
proof 23.12[I][3]
policy considerations and 8.03[A], 8.03[B]
product vs. conduct 8.04[B]
proof of and 24.10
general understanding 24.10[A]
merchantability and 24.10[B]
warranty and 24.10[B]
risk-utility standard 8.07
safety features,
overall safety 9.10[A]
significance of 8.01
specific manifestations of the concept 8.04 liability theories and 8.04[C]
packaging and 8.04[A]
product vs. conduct 8.04[B]
tampons, design and manufacturing of 11.03[G][6][a]
unavoidably unsafe, blood 8.05[G][6]
“unreasonably dangerous” element 8.05 et seq.
balancing tests and 8.05[E]
claims of defect and 9.01[A]
common connotations of terms and 8.05[F]
elements to consider, Dean Wade’s list 9.02[D]
judge and jury and 8.05[D]
negligence, relation to 8.06[B] et seq.
strict liability 8.05[A]
tests for finding 8.05[C], 8.05[D]
theoretical frameworks and 8.05[C]
unavoidably unsafe 8.05[G] et seq.
under strict liability 8.05[A]
use, instructions as to, design and 9.13[N]
verbal standard, variations in 8.09
Barker test 8.09[C] et seq.
Cronin decision 8.09[B][1]
definition, functionally oriented 8.09[F]
New Jersey standard 8.09[E][2]
Pennsylvania precedents 8.09[B][2]
refinements 8.09[E]
Soule decision 8.09[D]
technicalities ignored, effect 8.09[A]
Texas standard 8.09[E][1]
unreasonably dangerous requirement eschewed 8.09[B]

Wisconsin standard, not defective 8.05[A]
Defendants, comparative principles favoring 22.05 et seq.
Defined terms
merchant
implied merchantability 6.02[B]
Demonstration and testing of products 12.07
professional testers 12.07[B]
representations as express warranties 3.01[B]
strict liability imposed 12.07[A]
Demonstrative evidence, tests after accident and 23.13

DES, actions involving causation, proof of 25.02[F]
expert standard of care 19.09[C][5]
foreseeability 32.02
product-line theory, limitations to 13.07[A]
Sindell and parallel approaches 12.24[D]
concert of action and alternative liability 12.24[D][2]
controversy in commentary 12.24[D] et seq.
doctrinal variety in New Jersey 12.24[D][2]
judicial objections to Sindell and related theories 12.24[D][6]
maker, plaintiff’s ignorance of 12.24[D][5]
market share theory under Sindell 12.24[D][1][b], 12.24[D][1][c]
Michigan’s “DES-unique,” alternative 12.24[D][3]
rejection of tradition doctrine 12.24[D][1][a]
statutes of limitations and 30.06[G][2], 30.07[A][1], 30.07[A][3], 30.07[D][1]
successor liability and 13.05[G], 14.02[F]
warnings, manufacturers’ duty as to 19.09[C][4]

Design and designers
abstract definition of 9.02[A]
adversive design 9.18[B], 10.05
availability of technology and 9.19
benefits of a product 9.06[G], 9.13[G]
causation issue, overlap with 9.05
class of defect, problems as to 9.01
cluster of design defects 9.02[E]
complex economic relationships and information, requirements as to 9.03
compliance of a design, negligence defense and 5.08[A][1][1]
components
alternative design 9.14[C][2]
specific features 9.14[C][1]
conceptual approaches to design defect 9.02 et seq.
balancing approach: warnings perspective 9.02[D]
best comparator of costs 9.02[F]
consumer choices concerning safety 9.02[G]
exceptional hazard and 9.02[A]
how good a product has to be 9.02[B]
multifactor analysis 9.02[E]
unreasonable risk in fact 9.02[C]
“unreasonably dangerous per se” 9.02[A]
consumer choices concerning safety conceptual approaches to design defect 9.02[G]
crashworthiness design components 9.14[B][1]
danger vs. utility 9.02[A]
dangerousness of, defense of 20.06[C][3]
defects
  manufacturing distinguished from 8.02
  reciprocity and 9.20[A]
  separating the concepts 9.20[B]
  state of the art 9.07[B]
design problems manufacturing defects distinguished 9.01[B]
duty to warn and 9.20[B]
burdensome use 9.13[A][5]
  reciprocity and 9.20[A]
  separating the concepts and 9.20[B]
enhanced injury 9.15
  function as designed, liability for 9.08
  hazards, elimination vs. warning 9.20[B]
judge and jury in actions involving defects 9.18[B][3]
jury’s role 9.18[A]
  requirement of alternative design 9.18[B][1]
  knowledge, designer’s, product misuse and
  21.06[B]
manufacturer’s basic responsibility: safety devices 9.09
  judicial standards, specificity of 9.09[C]
  levels of safety required 9.09[D]
  nontransferability of burden 9.09[A]
  user’s obligation 9.09[B]
  mobility, responsibility definition of product
  perfect product 9.16
  manufacturing defects compared 9.01[B]
  military equipment, in 12.12[B][1][a]
  manufacturing defects distinguished 9.01[B]
  motor vehicles
  (See Crashworthiness)
negligence in
  plaintiff’s general knowledge of danger, effect
  16.02[D]
standard 12.11[A]
nuclear plants, strict liability and design of
  27.03[A][1]
  objective expectations and 9.16
  obviousness of risk 9.16, 9.17[A]
  overlapping concepts as to 9.20
  pleadings in re 9.04
  expert opinion 9.04[D]
  minimum requirements 9.04[B]
  risk-benefit test 9.04[C]
  specificity required 9.04[A]
  polycentricity argument 9.10
  basic concept 9.10[A]
  criticism of 9.10[B]
  product complexity, effects of 9.12
  liability not barred 9.12[A]
  persuasion against liability 9.12[B]
  product continuums 9.11
  risk, obviousness of 9.16
  state law, displaced 12.12[B][1][a]
  strict liability and 12.11[B]
  clash of policy arguments 12.11[B][2]
  opposition to 12.1[B][1]
  supply and construction, involvement in
  12.09[B][3]
  strictness of 9.07
  technological availability and 9.19
use, conditions of 9.13
  defect and instructions 9.13[M]
  especially burdensome uses 9.13[A][5]
  implications of misuse 9.13[I]
  inadvertence and novice users 9.13[L]
  intended use and 9.13[K][1]
  maintenance requirement 9.13[K][4]
  misuse, implications of 9.13[I]
  multiple-purpose products 9.13[B]
  novice users, inadvertence and 9.13[L]
  practicality of operation 9.13[K][1]
  proof questions as to ordinary use 9.13[A][6]
  reckless user conduct 9.13[J]
  risk-utility standard 9.13[E], 9.13[F]
  safety devices, maintenance of 9.13[K][4]
  shortcuts, intended use and 9.13[K][2],
  9.13[K][4]
  user’s choice 9.13[C]
  utility, defined 9.13[G]
  utility outweighs risk 9.13[E]
  violation of instructions and 9.13[N]
  visualization of product in use 9.13[N]
  verbal formulas, elements of 9.06
  Barker: reasonable expectations and 9.06[A]
  blending of elements 9.06[C]
  cost of avoidance and 9.06[E]
  danger-utility standard 9.06[D]
  degree of risk 9.06[F]
  elements used only singly 9.06[D]
  risk benefits: negligence overtones 9.06[B]
  utility of product 9.06[G], 9.13[G]
Deterrence
  punitive damages 29.08[A]
  “Developed risk” defense European law E6.04[B]
Devices
  The Buckman Decision, Inc. 11.03[G][6][c],
  11.03[G][6][f]
  Development of Law After Medtronic
  11.03[G][6][e]
  Medtronic, Inc v. Lohr 11.03[G][6][b]
  preemption law, initial development of
  11.03[G][6][a]
  Riegel v. Medtronic, Inc. 11.03[G][6][d]
  statutes as standard setters 11.03[G][6]
  useful pre-Medtronic decisions 11.03[G][6][g]
Disclaimers
  analytical patterns 17.12[B] et seq., 17.12[B][1]
  busy readers and 17.12[B][5][a]
  commercial law, association with 17.01
  complex and contradictory provisions
  17.12[B][5][b]
  conspicuousness of, requirements as to 17.12
  construction issues 17.06
  bargaining, lack of 17.06[B]
INDEX

Public policy and 17.06[C]

Retailers' disclaimers ineffective 17.06[A]

Construction of provisions, conflict with 17.02

Contract perspective 17.01

Disclaimers ineffective 17.06[A]

Drafting advice 17.04, 17.13

Clarity of 17.04[C]

Emphasis, provisions providing 17.04[B]

Reference to potential plaintiffs 17.04[A]

Express warranty and 17.08

Fact questions 17.12[B][2]

Language in context 17.12[B][5]

Merchantability 17.12[B][4]

Notice 17.12[B][1]

Typography 17.12[B][3]

U.C.C. language and 17.12[A]

General advice for drafters 17.13

Legislative prohibitions of 17.07

Magnuson-Moss Act and 17.07[A]

State provisions 17.07[B]

Limitation of remedies

Failure of essential purposes 17.03[B]

Unconscionability 17.03[D][1]

Negligence, disclaiming 17.09

Drafting 17.09[B]

Economic loss, drafting in re 17.09[B][4]

Explicit reference to theory of liability in draft 17.09[B][1]

General applications 17.09[A]

Judicial hostility and 17.09[A][1]

Judicial opposition to disclaimers 17.09[B][2]

Permitting disclaimers 17.09[A][2]

Warranty, negligence disclaimers ineffective on 17.09[B][3]

Public policy and 17.06[C]

Bargaining, lack of 17.06[B]

Retailers' disclaimers ineffective 17.06[A]

Strict liability and 17.10

Commercial plaintiffs 17.10[C] et seq.

Consumer plaintiffs 17.10[B]

Overall concepts 17.10[A]

Third parties and 17.11

U.C.C. section 2–316 and 17.02

Linkage with section 2–719 17.03[G]

U.C.C. section 2–719: limitation of remedies 17.03 et seq.

Consequential damages and unconscionability 17.03[C]

Essential purpose, failure of 17.03[B]

Exclusion of personal injury 17.03[F]

General provisions 17.03[A]

Limitations clauses 17.03[E]

Linkages of U.C.C. sections 2–316 and 2–719 17.03[G]

Discovery

(See Statutes of limitation)

Distributors

(See also Retailers) 12.06

Chemical suppliers 19.07[H]

Gas suppliers 12.06[C]

Generally 12.06[D] et seq., 12.06[D][1]

Importers 12.06[A]

Intermediate 12.05[D]

Duty to warn 19.07[B]

“Good faith vendor without knowledge” 12.05[D]

Liabilities adjusted among 14.01–14.08

One-time sales 12.06[D][1]

Punitive damages 14.08[D][7]

Statutory “sellers” 12.06[D][3]

User as purchaser’s employee 19.07[F]

Varieties of 12.06 et seq.

Warnings, duty as to 19.07

Doctrinal comparisons 7.04[B][2]

Express and implied warranties 6.04[B], 6.04[C], 6.04[G]

Negligence and strict liability 5.09

Warranty and strict liability 6.04[H]

Dale rule 14.08[A], 14.08[F]

Doors, misuse of 21.05[A][2]

Driveways, imperfections in 27.07[B][1]

Drugs

(See Bendectin; Contraceptives, oral; DES, actions involving; Nonprescription drugs; Prescription drugs; Vaccines)

Drunk driving

Misuse of product and 21.02[B][1]

Recovery available 21.02[B][2]

Dry cleaning solvent 8.05[G][2]

“Dual capacity” claim 13.04

Merger, with a 13.04

Dual capacity doctrine

(See Manufacturers)

Duty to act 5.04[E]

Duty to warn

(See also Warnings, duty as to) 19.01

“Actual or constructive knowledge” 13.06[B]

Duty/proximate cause 32.01 et seq.

E

Earthmover 29.04[D]

Economic loss problem

Admiralty and 27.04[E]

Application of comparative principles 22.14

Bias toward limiting liability 27.07[A]

Cost internalization and 27.07[A][2]

Future tort liability, avoidance of: rationale disputed 27.07[A][3]

Tort contract distinction 27.07[A][1]

Commercial plaintiffs and 27.03

Defects discovered after product on market 27.03[E]

Duty as contractual 27.03[A][3]

Expectations vs. tort duty 27.03[C][3]

Indirect commercial loss 27.03[D] et seq.

Merchantability and 27.03[B]

Property damage and 27.05[D]

Recovery denied 27.03[C] et seq., 27.03[D][1]

Strict liability and 27.03[A] et seq., 27.03[A][1]

Comparative fault and 22.14

Comparative principles and warranty 22.04

Conceptual and policy arguments 27.07 et seq.

Consumer Product Safety Act and 27.04[F]

East River case 27.05[G][1]
INDEX

European law regarding E4.02
expansive bias 27.07[B]
distinctions as logically unconvincing 27.07[B][1]
general conception of obligation 27.07[B][2]
flexibility, need for plasticity of characterization illustrated 27.09[B] et seq.
pleading, approaches to 27.09[A]
foundations of modern controversy 27.02
fraud and 27.04[H]
modern controversy, foundations of 27.02
agreement and dissent 27.02[B]
Illinois case 27.02[B][4][a]
majority rule: supporting decisions 27.02[B][4] et seq.
Minnesota case 27.02[B][4][c]
New York case 27.02[B][4][b]
product in the marketplace and 27.02[A][1]
Seely v. White Motor Company
The Peters opinion 27.02[B][2]
Traynor’s majority opinion and rebuttal 27.02[B][1], 27.02[B][3]
negligence if not strict liability 27.04[B]
negligence: recovery denied 27.03[C] et seq.
negligent misrepresentation 27.04[I]
no implied warranty, effect 27.04[A]
burdens on remote sellers 27.04[A][2]
undesirable litigation, fear of 27.04[A][1]
other doctrinal applications negligent misrepresentation 27.04[1]
outlining the problem 27.01
property damage 27.05
bargaining power 27.05[H]
close distinctions 27.05[F]
commercial plaintiffs 27.05[D]
defective burglar alarms, illustrative case 27.05[I]
East River case 27.05[G][2]
health risks and 27.05[J]
lesser liability 27.05[C]
policy issues, illustration of 27.05[E]
product itself and 27.05[B] et seq.
refined distinctions and other property 27.05[A]
sudden and calamitous damage 27.05[F]
unreasonable dangerousness 27.05[F]
section 402B (Restatement) comparison to 27.04[G]
statutes of limitations and 30.10
strict liability
commercial plaintiffs 27.03[A][2]
strict liability but not warranty 27.04[D]
suits by governmental entities 27.08
theoretical difficulties, paradigm of: Texas trilogy 27.06
warranty but not strict liability 27.04[C]
Elastic bandages, contaminated 29.03[E]
Electric fan, defective 8.05[A]
Electricity
air conditioner, electrocution by 24.03[A]
defect in wire insulation, not electric current 7.05[C]
distribution line electrocution 7.03[C]
European law E2.01[B]
power line electrocution 20.03[J][2], 20.05[C]
product, as a 7.03[C]
strict liability and 7.03[C]
utility meter box 16.02[J][2]
warnings, duty as to 19.10[D][1]
Electronic Product Radiation Control Act 11.03[G][21]
Federal Communications Act 11.03[G][22]
Elevators 20.01[O], 24.06[B]
Emotional distress
extended consequences [duty and proximate cause] 32.09, 32.11
intentional infliction of 5.10
third parties, extended consequences and 32.12
Employees
(See Workers’ compensation; Workplace hazards)
Employers
(See also Manufacturers)
carelessness of, extended consequences and 32.05[A][4]
workers’ compensation and 15.03, 15.03[A], 15.05[C]
Enamel products, lead poisoning and use of 21.02[E]
Enterprise liability 12.24[B]
marketing defective products 7.02[E]
Escalators 9.02[A]
Evidence
(See also Proof; Remedial changes; State-of-the-art defense)
circumstantial 23.12
common sense and product performance 23.12[O]
defensive evidence 23.12[P]
difficulties in 23.12[Q]
expert testimony in cases 23.12[G]
explosive failures and 23.12[J] et seq.
general proof vs. particular circumstances 23.12[N]
malfunction, analogues to 23.12[B]
malfunction, inferences from 23.12[A] et seq.
nonvisual sensory evidence and 23.12[M]
passage of time, effects 23.12[D] et seq., 23.12[D][2][a]
physical facts and 23.12[H]
plaintiff’s failure to provide 8.10[C]
policy issues and uncertainty 23.12[R] et seq.
product performance and common sense 23.12[O]
specific intervening events 23.12[D][2][a]
“speculation and conjecture” 23.12[E], 24.05[B]
strength of materials and 23.12[J] et seq., 23.12[I][3]
toxics, exposure to 23.12[L]
uncertainty and policy issues 23.12[R] et seq.
comparative rules, evidentiary implications 22.16[B][2]
compliance with statutes, as to 11.03[F]

IN-13

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
demonstrative, and tests after accident 23.13
direct and circumstantial 23.12[F]
federal agencies, reports of 23.14
nonvisual sensory 23.12[M]
social science evidence 19.07[H][4]
sufficiency 23.04
hypertechnical language, effect of use
23.04[B]
variable minimum standards and 23.04[A] et seq.
Exceptional hazard 9.02[A] Exclusive sales agents 12.06[B]
Expert testimony
circumstantial evidence, cases involving
23.12[G]
conflicting opinions 9.10[B] consumer expectations test, compatibility with
8.06[J][5][c]
design defects, pleadings in re 9.04[C]
experimental products and 8.06[J][5][c]
hearsay 23.07[B][9]
neGLIGENCE 5.08[B]
prima facie cases and 23.07[B]
conjecture and 23.07[B][16]
defendant’s experts and plaintiff’s case
23.07[B][2]
design defects and expert opinion
23.07[B][11] et seq.
elements of proof 23.07[B][14] et seq.
experts vs. official investigations 23.07[B][7]
expert opinion vs. test data 23.07[B][4]
experimental tests 23.07[B][6]
fact questions 23.07[B][1]
impeachment of experts 23.07[B][15]
imprecise testimony 23.07[B][8]
legal conclusions 23.07[B][13]
manufacturing defects, expert opinion and
23.07[B][12]
opinion and 23.07[B][3] et seq.
professional credentials 23.07[A][3]
relevance, standards of 23.07[B][10]
testimony based on reports not in evidence
23.07[B][5]
qualifications of the expert 23.07[A]
academic experts 23.07[A][1]
broad knowledge and 23.07[A][2]
practical experience and 23.07[A][4] et seq.
Expertise of buyer 6.03[L][1]
Express warranty
advertising techniques and contexts and 3.04
affirmation-of-fact test and 3.05[A]
amorphous nature of terms 3.05[A]
breach, evidence of 3.08
creation of 3.01[B]
description of goods 3.02[B], 3.05
dickered bargain concept 3.05[B][2]
disclaimers and 17.08
general concept of 3.01
generality and, effect of lack of precision 3.05
goods and, description of 3.02
“guarantee,” under U.C.C. section 2–313
3.06[B]
implied warranty and 3.10, 6.04[B]
informational positions, effects 3.05[D]
language creating 3.06[B]
limitation on the concept 3.01[A]
narrow meanings of specific terms, effect
3.06[C]
negligent misrepresentation and 3.05
noncompliance with instructions, effect 3.08
non-fault misrepresentation and 4.01[C]
noncompliance with instructions, effect 3.08
characterization of puff, opposition to
3.05[C]
contributory negligence and 20.01[U]
omissions not affirmative representations
3.01[A]
privity, liability without 3.03
privity not required 3.03
professionals, impact of liability on 3.07
puffing, defense of 3.05[B]
characterization of, opposition to 3.05[C]
puffs 3.05 et seq.
A-1 as express warranty language 3.05[A]
affirmation of fact or premise, statement
must be 3.05[A]
commonsense discount of sales talk and
3.05[B]
oppositions to characterization 3.05[C]
relatively amorphous terms as nature of
3.05[A]
quantitative statement about product
capabilities 3.01[A]
related theories 3.10
reliance on 3.09, 4.01[E]
remoteness in consumer chain, effect 3.03
representation as 3.01[A]
“safe,” effect of use of word 3.01[A]
sales talk, commonsense discount of 3.05[B]
seller’s informational superiority, effect on
defense of generality of language
3.05[D][1]
specialized meanings and 3.06
specific reliance on 3.09
specific terms, effect of narrow meanings
3.06[C]
suits against professionals 3.07
trade definitions/ordinary words, effects of use
3.06[A]
thories related 3.10
time of creation 3.01[B]
U.C.C. definitions 3.02
goods, description of 3.02[B]
section 2–313, use of terms under 3.06[B]
stories relating to goods 3.02[A]
“warranty” under U.C.C. section 2–313 3.06[B]
what constitutes 3.01[A], 3.04, 3.05[A]
Extended consequences [duty and proximate
cause]
(See also Warnings, duty as to)
events, activities under pressure of 32.03
independent response to defect 32.04
intervening conduct of plaintiff 32.06
medical monitoring 32.10

INDEX
modifications competing economic interests in the workplace 32.05[A][4] foreseeability, fact question 32.05[A][2][a] foreseeability, limitations on 32.05[A][2][b] intended purpose 32.05[A][3] statutes 32.05[B] verbal formulas of causation 32.05[A][1] sensitivity of plaintiff 32.10 superseding causes 32.06 third-party conduct criminal conduct 32.08[B] generally 32.08[A] unusual consequences 32.02 user's emotional distress 32.09

F


Fault

(See also Comparative fault doctrines)

INDEX

IN-15


INDEX

Foreign firms, suits against, statutes of limitations and 30.13[A]

Foreseeability
bystanders and 16.02[I]
conceptual elasticity, 5.06[A]
criminal conduct, and 32.08[B]
defect and 8.10[D]
due process clause, and 31.01[B][1][a]
intervening modifications and 32.05
intervening modifications, 32.05[A][2]
limitations, on 32.05[A][2][b]

misuse of product and, generally 21.02[C]

modifications, and 32.05[A][2][a]
negligence and 5.04[D, 5.06]
no duty defense 32.01
risk of harm 21.02[C][3]
seller's expectations, viewed from 9.15

specific types of injury 5.06[A]

Franchisors
apparent authority of 12.03[H][2][c]
image creation and 12.03[H][2][d]
liability denied 12.03[H][2][a]
strict liability, rationale for 12.03[H][2][b]

Fraud
breach of duty by silence 2.02[C]
culpability standards 2.02[F]
issue of whether factual representation 2.02[A]
nondisclosure 2.02[C]
rationales for doctrine 2.02[F]
representations and
(See also Representations)
"fundamental principle of corporation law" 13.07[C]

FTCA
"negligent misrepresentation" 2.03
Future performance exception, statutes of limitations and 30.02[B][2]
consumer oriented application 30.02[B][2][a]
stringent construction 30.02[B][2][b]

G

Games and toys 1.01[B], 4.01[D], 8.06[B], 11.03[A][1], 12.17, 12.18[A][5], 20.03[E][3], 25.02[C]

Gas industry
flammable gas, tank truck and 12.03[D][2]
liquid petroleum 11.03[F]
natural gas changes in form 6.03[F]
furnace fired by 30.12[B][5][a]
negligence and use of 5.08[G][1]
product, as a 7.03[E]
propane gas 18.05[B][3][b], 19.08[A], 23.08[B][1], 23.15[A], 26.03[B][1]
strict liability and 7.03[E]
suppliers, liability of 12.06[D]

Glue, exposure to 30.06[G][1]

Goldberg case 7.01[C][2]

“Good tobacco” concept 8.06[E][2]

Government contract defense
Boyle v. United Technologies Corp. 12.12[B][1]
design defects, limited to 12.12[B][1][d]
 immuniy standard for design defects, Supreme
Court decision 12.12[B][1][a]
nomenclature equipment 12.12[B][1][c]
“shared” immunity 12.12[B][4]
state agency specifications, adherence to
12.12[B][3]
state statutes 12.12[B][5]

Governmental contract defense in actions
involving product configuration 12.12[B]
opposition to liability 12.12[B][1][a]
support for liability 12.12[B][1][c]

Governmental defendants, contract doctrine, use of 12.21[B]
general rule 12.21[A][1]
non-fault tort liability, denial of 12.21[A]
other defendants, implications for 12.21[A][2]

Governmental hazard information 23.09[F]

Governmental standards
postmanufacture, preaccident 25.07
strict liability and 7.04[B][3]

Greenman case, strict liability and 7.01[C][1], 7.01[C][2]

Grinding mill, high speed 18.05[A][3][c]

Guarantee, express warranty and use of term under U.C.C. 3.06[B]

Gun Control Legislation 11.03[G][22]

Guns
(See Firearms; Handguns)

H

Hair dyes 3.05[E], 21.03[C][1], 23.12[G][4]
Hammers 8.03[A], 12.03[C][1]
Handguns 5.04[D], 7.01[A], 8.06[G], 8.06[M][3], 8.09, 9.13[J], 14.04[B][3], 20.05[B][2], 29.04[I][2], 29.09[D]

advertising 1.01[B]
defects generally 8.06[G]
design defect, ordinary use 9.13[A]

Colorado, product liability based on actual
defect only 8.06[G]
Missouri case 8.06[G]

risk/utility theory of liability inappropriate
8.06[G]

warnings, duty to, adequacy of warnings 19.12[A]

Hauer v. Zappet decision, non-fault
misrepresentation and 4.01[D]

Hawaii law 19.09[C][3]

Hazardous Substances Act [federal] 11.03[G][10]
Hazardous Materials Transportation Act 11.03[G][23]

Heating system 30.11

Heaven v. Pender, negligence and 5.04[A]

Helmets
football 23.13, 29.04[C]
hockey 20.06[C][3]
logger's 9.18[B][2]
motorcycle 4.03
INDEX

...twenty-first century development 6.01[B]
used products and 18.02[C], 18.02[D], 18.02[E]
warnings, duty as to 19.09[D]
when doctrine comes into play 6.03[C]

Importers
European law concerning E3.04
liability of 12.06[A]

Imprecise generalities
express warranties, puffing 3.05[E]

Industrywide liability and related issues
legislative solutions, 12.24[K]

In utero brain damage 6.02[N]

Indemnity 14.04
active/passive distinction, development of 14.04[B]
both parties actively negligent, effect 14.04[B][4]
general applications 14.04[B][1]
indemnitee’s awareness of defect and 14.04[B][2]

primary/secondary negligence and 14.04[A][5]

warnings ignored by users 14.04[B][4]

burden of proof and 14.04[H]
duty as to 14.04[D]

general aspects 14.04[D][1]
warnings, as to 14.04[D][2]

failed components, as to 14.04[I]

implied 14.06[A]
industrial machines, as to 14.06[A]
primary/secondary 14.06[B]
sales agreement alone, insufficient foundation 14.06[A]

indemnitee information and conduct 14.04[J]

awareness of danger 14.04[J][1]

faultlessness, insistence of 14.04[J][4]
judgment about a product, using 14.04[J][2]

new technologies 14.04[J][3]

legal and practical consequences of 14.07
attorney fees, as to 14.07[E]
dual capacity workers’ compensation 14.07[D][2]
implications for successors, workers’ compensation and 14.07[D][3]
refusal to defend 14.07[A]
settlement 14.07[B]
successors and 14.07[C], 14.07[D][1]
liability theories and 14.04[E]
strict liability and active/passive distinction 14.04[E][1] et seq.
manufacturer vs. product owner 14.04[A][4]
manufacturers 14.04[C]
primary/secondary negligence and 14.04[A]
active/passive distinction 14.04[A][5]
manufacturer vs. component maker 14.04[A][3]
retailer vs. manufacturer 14.04[A][3]
vicarious liability 14.04[A][1]
violation of independent duty 14.04[A][6]

separate indemnity claim, prohibition of 14.04[E][1][c]
statutes 14.04[F]
written agreements as to 14.05
allegations of first-party complaint 14.05[C]
broad constructions 14.05[A][2]
fact questions 14.05[B]
interpretation of 14.05[A]
negligence, precise language and 14.05[A][1][a]
precise language requirements 14.05[A][1]
strict construction and 14.05[A][1][c]
strict liability and 14.05[A][1][b]
Indiana Products Liability Act 28.05[B]

Industrial machines
assumption of risk, defense of 20.04[B]
issues elaboration 20.04[B][3]
negligence and 20.03[E][2], 20.04[B][2]
New Jersey case 20.04[B]
strict liability and 20.04[B][1]
unusual risk 20.03[L]
circumstantial evidence 23.12[C], 23.12[I][1]
component parts, strict liability and 12.03[G][1][b]
contributory negligence as defense in actions involving, 20.04 et seq.
defect linkage 20.06[C][1]
Michigan 20.04[A]
negligent provision of safety device 20.04[A]
safety devices, failure to provide 20.04[A]
design defects 9.03, 9.04[B], 9.06[E], 9.13[K][1], 9.13[K][2], 9.13[M]
dual capacity, opposition to 12.03[D][5], 12.03[D][5][a]
economic loss, pleading and 27.09[A]

implied indemnity decisions and 14.06[B]

legal alternatives in assessing liability 20.04[C]
multiple doctrines, use of 26.02[A], 26.02[B]
negligence 5.08[E], 26.04[B][2][a]
proof, expert 23.07[A][2], 23.07[B][11]


property damage 27.05[E]

seller’s liability 12.06[D][1]
specifications of others 12.12[A][1]
strict liability 7.03[A]
design and 12.11[B][1]
supplier’s liability 12.03[E][1]

warnings adequacy of 19.12[A]
risky use of product and 19.06[E][1]
workers’ compensation 15.02

Industry association 2.02[C]

Industry standards 11.02 et seq.

admissibility 11.02[C][1]
compliance, effect 11.02[B], 11.02[C] et seq.
consumer expectation, relating to 11.02[C][2]
defense of compliance 11.02[C][1]
general compliance with industry standards 11.02[C][1]
injury typical of the employment, effect on recovery 20.04[C]
negligence, in actions involving 5.08[A]
punitive damages, where compliance with
11.02[E]
state of the art distinguished 11.02[A]
strict liability and compliance 11.02[D]
strict liability, similarity 7.04[C]
testers and certifiers 11.02[H][3]
tort responsibility 11.02[D]
vendors of 11.02[G]
voluntary 11.02[H]
American National Standards Institute, promulgation by 11.02[H][1], 11.02[H][2]
general aspects 11.02[H][1]
Underwriters Laboratory Standards, judicial acceptance 11.02[H][3]
Industrywide liability and related issues 12.21
arguments for and against liability 12.24[D][1], 12.24[D][2]
asbestos, actions involving; applicability of Sindell 12.24[D], 12.24[D][1]
blasting caps case 12.24[B]
concerted action, DES 12.24[D][2]
conspiracy 12.24[G]
denial of liability, asbestos 12.24[D][2]
DES problem and 12.24[D] et seq., 12.24[D][1][c]
diverse focuses 12.24[A]
joint and several liability 12.24[C]
judicial objections, DES 12.24[D][6]
legislative solutions 12.24[I]
other products, liability for 12.24[G]
rejection of traditional doctrine, DES 12.24[D][1][a]
vaccines 12.24[D][1]
Inference, doctrines of
(See Res ipsa loquitur)
Information
access to 5.08[G][2][a]
cost of 5.08[G][2][c]
discovery process 5.02[A]
seller’s superiority, express warranty 3.05[D][1]
Information costs, duty to warn and 19.08 et seq.
Inherently dangerous products
handguns 8.06[G]
Injurious occurrence, time of, statutes of limitations and 30.03 et seq.
Insecticide, Fungicide and Rodenticide Act
(federal) 11.03[G][8]
Installers and installation 12.13
denial of liability 12.13[B]
imposition of liability 12.13[A]
nondefective product, effect 12.13[B][2]
separate process, effect 12.13[B][1]
strict liability denied installation as separate process 12.13[B][1]
strict liability imposed 12.13[A]
Instruction manual as a product 30.12[B][1]
Insulation, urea formaldehyde 27.05[I], 29.04[I][3]
Insurance
intentionality as concept 5.13
Intentional infliction of emotional distress 5.10

Intentional torts
(See Battery, intentional infliction of emotional distress)
Intended use of product
(See Misuse of product)
Intermediate distributors, duty to warn 19.07[C]
Inventors, liability of 12.02
IUD’s
warnings, duty to as to, defects 19.11[D][2][c]

J
Joint and several liability
apportionment generally 14.08[G][1]
statutes abolishing the doctrine 14.08[G][3]
industry wide liability and related issues 12.24[C]
Joint liability
comparative apportionment 14.08[G]
state statutes abolishing 14.08[G][3]
states adopting 14.08[G][2]
traditional applications 12.23
Judge and jury
negligence 5.07

Jurisdiction
“Ashi” decision and its implications jurisdiction denied eventual destination insufficient 31.01[B][1][c]
limitations on stream of commerce concept 31.01[B][1][b]
small amount of business 31.01[B][1][a]
jurisdiction sustained factual distinctions 31.01[B][2][b]
general frameworks 31.01[B][2][a]
reasonable anticipation of litigation 31.01[B][2][d]
“stream of commerce” test 31.01[B][2][f]
worldwide market concept 31.01[B][2][c]

Jurisdiction mail advertising, and 31.01[B][2][e]

K
Ketterer v. Armour & Co. 6.01[B], 6.02[E]
Kitchen appliances 8.06[M][2], 9.02[E], 12.06[A], 23.04[B], 23.06[B][1], 23.12[G][3], 24.05[B], 24.09[G][2], 25.02[B][5]
(See also Clothes dryers)
Knowledge
(See also Information)
of risk 5.02[A]

L
Label intended user 21.03[C][1]
Ladders 21.08[B], 23.07[B][14][a], 23.12[F], 23.12[I][3], 23.12[O][2], 24.10[A], 28.02[A], 29.04[I][2]
European law regarding E.3.05
Language other than English, duty to warn in 19.12[F]
Larsen doctrine 9.14[A][4], 9.14[B]
Laundry extractor, exploding 9.13[A][5]

Lawnmowers 10.02[B], 14.04[A][2], 16.01[C][2][b], 16.01[D][2][b], 21.08[E][1], 23.09[C], 25.01[B]

INDEX

IN-19  Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
INDEX

statutes as standard setters, evidence of negligence 11.03[A][1]
warnings, duty as to, obviousness 19.11[A][2]

Learned Hand test 5.04[B], 9.02[F]
“Learned intermediary” defense 19.07[H][1][b]

Leases and leasing 12.10

basic negligence liability 12.10[G]
finance lessors 12.10[C]
incidental products 12.10[E]
denying liability 12.10[E][1]
imposing liability 12.10[E][1] liability, rationales for opposing 12.10[B]
loaned goods 12.10[D]
negligence liability 12.10[G]
rationale for opposing liability 12.10[B]
coexisting legal relationships and 12.10[B][2]

Legal doctrines

(See Conflicts among legal doctrines)

Legislation Ch.34

Lenses

contact lenses standards, generally, preemption issues 11.03[G][6][e]
statutes of limitations, discovery rule 30.06[G][3]
standards, generally, preemption issues 11.03[G][6]

Letter, not basis of sale 3.09

Light pole 9.09[B]

Lighters
defects, consumer expectations 8.06[A]
design defects, judge and jury showing of alternative design 9.18[B][1]
warnings, duty as to, obviousness 19.11[A][2]

Limitation of actions

(See statutes of limitations)

Litigation and procedure, generally collateral estoppel 31.02 et seq.
foreign defendant 31.01
jurisdiction 31.01
offensive 31.02[B]
res judicata 31.02[C]

Long-term hazards, duty to warn and 19.13, 19.14[B]

Lonon rule 4.01[C], 4.01[D], 4.05[A]

Loss distribution

strict liability spreading rationale 7.05[G][1], 7.05[G][3]

“Lost chance” rule 23.03[A][1][c]

M

Mace 4.06
Machinery, general purpose 9.13[B]
Machines in hospitals, liability of furnishers of 12.16[A][3]

MacPherson v. Buick, liability origins and 5.03
Magnuson-Moss Act, effect on disclaimers 17.07[A]

Mandlift, instructions on use of 9.13[M]
Manufactured housing standards 11.03[G][17]
Manufacturer-assembler liability 12.03[F]

Manufacturers

(See also Components; Franchisors; Recalls; Trademarks and trade names)
acting as, effect 12.03[B]
general aspects 12.03[B][1]
used products 12.03[B][3]
as consumers 12.09
assembler liability 12.03[F]
civil conspiracy 19.07[A][1][d]

component makers 12.03[G][1][d]

consumers, as 12.09
control 12.08
defined under state statutes 12.03[B][1], 12.03[G][1][b]

dual capacity doctrine 12.03[D] et seq.
basic theory 12.03[D][1]

Bell v. Industrial Vangas 12.03[D][2]
individual liability 12.03[D][4]
opposition to 12.03[D][5]
safe workplace as benchmark 12.03[D][5][b]
synthesizing precedents 12.03[D][2]
guarantor of product’s safety 32.05[A][2][a]
holding out as general aspects 12.03[B][1]

state statutes 12.03[B][2]

indemnity obligation 14.04[C]

liability of, generally 12.03[A] et seq.
distributional context, unavoidably unsafe products and 8.05[G][2]
rejected 12.03[H][2][d]
modifications 32.05[b][i]
pleadings and proof in actions, specifically required 12.03[C]
defendants 12.03[C][1]
plaintiffs 12.03[C][2]
postaccident conduct, punitive damages and 29.09[E]

postmanufacture, preaccident modifications 25.07

remedial changes, evidence of, admissibility 25.01[C]
safety devices, obligation to maintain 9.13[K][4]
responsibility to provide 9.09[A]
successor liability 12.03[D][3]
INDEX

contributory negligence 21.08[F][1][a], 21.08[F][1][b]
contributory negligence and 21.08[B], 21.08[F][1], 21.08[F][3][a]
control and 21.02[D]
limits on 21.02[D]
defect vs. 21.08[A]
overlapping 21.08[A]
defects and 8.11[B], 9.14[G], 21.08[A]
designer’s knowledge, need for 21.06[B]
doctrine of 21.01
drunk driving and 21.02[B][1]
recovery available 21.02[B][2]
duty issues generated by third-party acts 21.08[D]
duty to warn 19.11[B], 19.11[D][2][f], 21.08[C]
foreseeability
benchmark, normal use 21.02[C][1]
crashworthiness, compared to 9.13[A][1]
limits of use 21.02[C][3]
use, manner and purpose distinguished 21.02[E]
foreseeability as benchmark 21.02[C] et seq.
assumption of risk and 21.08[F][2][a]
limits of 21.02[C][2]
normal misuse 21.02[C][2]
normal use of product 21.02[C][1]
functional classifications and 21.05
functional classifications, screwdriver/lever cases
general concept 21.05[A][1]
use of product for support, rejection of intended use focused 21.05[A][2][b]
general concepts: superficially feasible use 21.05[A][1]
screwdriver/lever cases 21.05[A] et seq.
unintended use of product 21.05[A][2][a]
instructions as to use, disregard of 21.04
language used 21.04[B] et seq.
precision required 21.04[B][1]
prima facie misuse defense 21.04[A]
intended use of product and 21.03 et seq.
causation and 21.03[B]
manufacturer’s determination not conclusive 21.03[A]
tended user and relevant markets 21.03[C] et seq.
limited distribution, effect 21.03[C][1]
market research, need for 21.06[A]
market, seller’s ability to identify 21.03[C][2]
personal markets, need to identify 21.03[C][2]
proximate cause, manner of use of product and 21.03[C][1]
doctrinal elasticity, effect 21.08[F][4][b]
overlapping characterizations 21.08[F][4][a]
other concepts, overlapping of 21.08
overuse defined 21.09
permissible use, boundaries of 21.07
plaintiff’s conduct, analysis of defenses based on 21.08[F] et seq.
assumption of risk and 21.08[F][2] et seq.
contributory negligence and 21.08[F][1]
distinguishing misuse and assumption of risk 21.08[F][1][a]
plaintiff’s conduct, application of comparative principles of liability 22.15[C]
misconduct of plaintiff 21.08[F][3]
use, core of 21.08[F][2][a]
misuse, inclusion of 21.08[F][2][a]
negligence, misuse distinguished 21.08[F][1][b]
plaintiff’s misconduct 21.08[F][3]
contributory negligence and 21.08[F][3][a]
critique of misuse 21.08[F][3]
misuse as matter of degree 21.08[F][3][b]
proof of 21.08[G]
proximate cause and 21.08[E]
general aspects 21.08[E][1]
judge, role as to 21.08[E][2]
jury, role as to 21.08[E][2]
third-party user 21.08[E][1]
screwdriver/lever cases 21.05[A] et seq.
semantics of use 21.02[E]
should-have-known cases 21.05[A][2][a]
intended use focus, rejection of 21.05[A][2][b]
jury instructions as to 21.10
unforeseeable manner, intended use in 21.05[A][2][c]
specialized vehicles, joyriding in 21.05[B]
speeding as 21.02[B][1]
recovery available 21.02[B][2]
terminology as to 21.01
third parties 21.10
third-party acts, duty issues generated by 21.08
warnings as to use, disregard of 21.04 et seq.
communication, quality of 21.04[B]
explicit and vivid warnings, effect 21.04[B][2]
precise language requirements 21.04[B][1]
Model Uniform Products Liability Act 9.02[D], 10.01[A], 15.06
Modifications to product
implied warranty of fitness 6.03[D]
terminating, extended consequences and 32.05
Morality
merchantability, factor in 6.02[K]
Motorcycles 9.20[B], 21.08[E][2], 23.06[C], 23.07[B][11][b], 25.05[B], 25.06[A][5], 26.04[A][4], 29.04[J]
product portrayals, mass media 1.01[B]
Motor vehicles
(See also Automobiles; Crashworthiness; Tire blowouts)
all-terrain vehicle, demonstration of 3.01[B]
assembly 4.01[C]
brake failure 12.10[A]
buses 9.15[A], 23.09[A]
chassis misalignment 12.03[G][1]
dump truck bed, faulty 16.01[D][2][a]
gear-box, broken 25.04[B][1]
legislation, preemption issues 11.03[G][1]
restraints 11.03[G][1][b]

IN-22

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM via free access
lemon vehicles, proof requirements 23.11
mobile homes/campers 6.03[1][2], 22.04[1][B],
23.12[R][2], 26.04[1][A][4], 27.04[A][1],
27.04[C], 27.05[B] et seq., 27.05[C],
27.06, 29.04[I][3]
power lines attached to 19.13[A][1]
refrigerated trailers 4.05[A], 12.04[E], 26.01[A]
retailers, liability of 12.04[C][2]
specialized vehicles, joyriding in 21.05[B]
tractor trailers 23.12[G][2]
trash disposal truck 19.11[B][1]
trucks 4.01[C], 9.13[A], 12.03[G][1],
12.10[A], 20.03[H][2], 20.03[J][3],
22.08[B][1], 23.04[A][1], 23.07[A][4][a],
23.11, 23.12[G], 24.09[D], 24.09[E],
27.02[B] et seq., 29.04[A], 29.09[A]
vehicle failures, res ipsa loquitur and
24.09[G][4]
weather wagon 20.01[N]
Movies, injuries because of influence of 19.15
Multiple causes, proof issue 23.03[A][1][b]
Multiple defendants 12.23
collection, element of and 24.03[B]
Multiple purpose products 9.13[B]
Musical instruments 2.05

INDEX

N
National Childhood Vaccine Injury Act of 1986
11.03[G][5], 11.03[G][28]
National Traffic and Motor Vehicle Safety Act
11.03[A][2], 11.03[G][1]
Natural gas
(See Gas industry)
Negligence, generally
(See also Contributory negligence; Disclaimers;
Used products)
affirmative duty 5.04[E]
applicability of concept 5.01
"as is" clauses and 18.03
assessment of the doctrine 5.09
bargaining model of negligence 5.08[G]
access to information and 5.08[G][2] et seq.
advancing technology, impact of 5.08[G][2][b]
comparative advantage in acquisition and
5.08[G][2][a]
economic models and cost of information
5.08[G][2][c]
product appearance, effect 5.08[G][1]
warnings, need for 5.08[G][1]
care in design/hazard, relative degrees of
5.04[D]
classic formulas of 5.04 et seq.
criminal plaintiffs, recovery denied 27.03[C]
common law rule for defining the problem of
liability 22.01
comparative fault principles, application of
22.02
comparative risks 5.08[E]
compliance of design as a defense 5.08[A][1]
component makers and 12.03[G][2]
cost of prevention, effects 5.08[E]
defect, relation to 8.05[B] et seq.
defined 5.01, 5.04[C]
designers, standards for 12.11[A]
disclaimers and 17.09
distinctions from 7.04[B][2]
economic distress, intentional infliction of 5.10
factors affecting 5.02[B]
factors in judgment for liability 5.08 et seq.
failure to warn 19.09[B][3]
favored theory, as 5.09
foreseeability and 5.06 et seq.
elasticity of the concept 5.06[A]
test of reasonableness and 5.06[B]
general standard for negligence liability 5.02
harm, severity of 5.08[C][3]
indusry standards and 5.08[A]
complexity of cases involving 5.08[D]
compliance as defense 5.08[A][1]
court's role in saying what is required
5.08[A][2]
state-of-the defense 5.08[A][1]
judge and jury, division of authority in actions
involving 5.07
Learned Hand test 5.04[B]
lessors, liability of 12.10[G]
liability, irrelevance in determining
14.04[E][1][a]
litigation 5.08[B]
using single expert's testimony 5.08[B]
nonuse of product distinguished 21.08[F][1][b]
negligence implied by statutory language
28.05[C]
negligence per se, comparative principles,
application of 22.13[A]
other factors 5.02[B]
other doctrines, comparisons with 5.09
outrageous conduct requirement 5.10
parties consideration of all parties fault
22.05[A]
primary-secondary, rule of indemnity and
14.04[A], 14.04[B][4]
privity, elimination of 5.03, 16.01[A][2]
product standards and 11.03[A]
punitive damages and comparative 29.07[A]
relational concept 5.04[A]
reasonable care, standard of 5.08[D]
reasonable prevention measures, need for
5.08[E]
reasonably prudent person standard 5.02[A]
factors affecting 5.02[B]
reasonable prudence 5.02[B]
relational aspects of negligence 5.04[A]
repairers' standard 12.14[A]
Restatement definition 5.04[C]
specificity 5.05
state-of-the-art defense 10.06[D][1]
statutes of limitations and statutory language,
effect 28.05[A], 28.05[B], 28.05[C]
strict liability and 25.04[B][4], 26.04 et seq.
comparative principles favoring defendant
22.05[A]
critical overview of theoretical distinction
26.04[D]
distinctions emphasized 26.04[B] et seq.
INDEX

functional similarities 26.04[A] et seq.,
multiple defendants, distinguishing theories
for 26.04[C]
strict liability, comparisons and distinctions
7.04, 10.06[D][1]
fault element and 7.04[B][2]
fireman’s rule and 7.04[B][3][b]
foreseeability and 7.04[B][3][a]
practical consequences of distinction
7.04[B][3]
similarities 7.04[C]
strictness of strict liability 7.04[B][1]
Sumner Simpson Papers 19.09[B][3]
technology and definition of 9.18[B][1]
T.J. Hooper, The 5.08[A][2]
unreasonably dangerous element and 8.05[B]
variations at different levels of generality
5.04[D]
various types of 5.02[B]
warnings, duty as to 19.09[A], 19.09[B],
19.09[D][2]
warranty and 26.05
distinctions blurred 26.05[C]
judicial differences 26.05[A]
warranty without negligence, but no
negligence without warranty 26.05[B]
workers’ compensation and 15.03[C], 15.05[B]
Negligent misrepresentation 2.03
basis for theory of recovery 2.03
express warranty and 3.05
Federal Tort Claims Act, recovery against
government barred for list of named torts
2.03
NEISS News (of U.S. Consumer Product Safety
Commission) 19.06[E][1]
No duty concept, obviousness and 20.05[B][1],
20.06[A]
Noise hazards 19.10[D][6]
Nondefective products 8.12
Nondisclosure in fraud law 2.02[C]
Non-fault misrepresentation
analogies between other doctrines and 4.05[A]
behavioral effects of representations 4.01[D][1]
broadness of concept of representation 4.03
definitions 4.01
advertising for product that is not warranted
4.01[C]
express warranty and 4.01[C]
section 402A and 4.01[B], 4.07
section 402B and 4.01[A]
distinctions between other doctrines and
4.05[A]
expectations created by advertising, effect of
section 402B 4.03
liberal construction and 4.03
other doctrines, relationship to 4.05[A],
4.05[B], 4.05[C]
overpromotion and 4.05[D]
chloramphenicol and 4.05[D]
defined 4.05[D]
proximate cause and 4.06
mace case 4.06
section 402B and 4.06
puffing and 4.01[D], 4.02[A]
reliance 4.01[E]
section 402B, non-fault aspects of 4.04
broadness of 4.04
similar liability to that under section 402B and
4.05[C]
similar liability under different labels 4.05[C]
specific words, effect of use of 4.01[E][2]
puffing, as element of 4.01[E]
specificity, requirements of 4.02 et seq.
puffing exception 4.02[A]
section 402B, claim under 4.02[B]
specific product, reference to 4.02[B]
U.C.C., relation to 4.05[B]
Nonmanufacturing sellers, liability of 12.03[F]
Nonprescription drugs 19.10[B], 19.12[A]
Nonrepresentation theory 1.02
Notice
merchantability UCC principles 6.02[N]
Nuclear plants, design of, strict liability and
27.03[A][1]
O
Obviousness
affirmative defense 9.17[C]
airplane pilot’s seat 19.11[A][1]
assumption of risk and 20.05[A]
consumer, to 9.17
defect and 8.11[A], 8.11[C]
design, risks and 9.13
European law concerning 6.03[C]
general understanding 20.05[A]
handguns 8.09
“known hazard” 9.17[A]
non-obvious dangers 19.11[A][1]
patent (open and obvious) danger 20.01[N]
risk 9.17
warnings, duty as to 19.11[A], 19.11[B][1]
Occupational Safety and Health Administration
(OSHA) 11.02[H][3], 11.03[G][12]
Occurrences, previous and subsequent 23.06
One time sales 12.06[D][1]
Oral assurance
insufficient to create express warranty 3.05[E]
Oral contraceptives
(See Contraceptives)
Ordinariness of a danger, as a defense 8.06[B]
Ordinary consumer 8.06[I]
Ordinary products, duty to warn and 19.03
Ordinary purpose
concept of, implied warranty and 6.04[D]
IMPLIED WARRANTIES, MERCHANTABILITY 6.02[G]
Ordinary use, burden of showing 6.02[G]
Overpromotion theory 4.05[D]
Over-the-counter drugs
(See Nonprescription drugs)
Overuse and misuse defined 21.09
Oxygen tank, exploding 24.12
P
Packages and containers
defect in 8.04[A]
manufacturer identity on 12.03[B][1]
INDEX

strict liability and 7.03[B]
Particularity of implied warranties 6.04[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Patent (open and obvious) danger 20.01[N]
Paving materials, road defects and 7.03[A]
Pennsylvania Glass Sand case 27.05[E]
Perfection
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
warranties and applying comparative doctrines
rejecting comparative doctrines 22.04[A][2]
Pharmaceuticals
(See also Contraceptives; DES, actions involving; Nonprescription drugs; Prescription drugs; Pharmacists)
liabilities of 12.04[C][1]
warnings, duty as to 19.07[C]
Physicians as plaintiffs 30.08[C]
Piercing press 21.08[F][2][b]
Pierringer release 14.03
Pins, dressmaking 19.08[A]
Plaintiffs
awareness of hazard as defense 19.13[C]
bystanders as 16.02
conduct of, nature of 22.15 et seq.
contributory negligence 20.01[B]
defect cases and conduct of 8.06[M] et seq.
diligence of, statutes of limitations and
30.06[G] et seq.
disclaimers 17.10[B], 17.10[C]
extended consequences [duty and proximate cause] intervening conduct of plaintiff
32.06
sensitivity of plaintiff 32.10
lack of warning not causative 19.13[D][2]
physicians as 30.08[C]
state-of-the-art defense and 10.02, 10.03
third parties as, used products and 18.04
Platforms
design defect, ordinary use 9.13[A][2]
Pleading
design defects and 9.04
exhortation against alternative 22.11
specificity in 12.03[C]
Plumbing cap, misuse of 21.08[C]
Poison, rat 19.06[A]
Policy bases for recovery 17.03[D][2]
Pollution case 30.04[A]
Polycentricity argument, product standards and 9.10 et seq.
Portrayal of products 1.01[A]
Postmanufacture, preaccident modifications 25.07
Power lines
(See Electricity)
Power saws 29.03[E], 32.05[A][2][b]
Preaccident, postmanufacture modifications 25.07
Preemption
express 11.03[G][1][b]
Generally, 11.03[G]
implied 11.03[G][1][b]
cigarettes 11.03[G][1]
Preemption, standards of care and 11.03[G] et seq., 11.03[G][1]
Prescription drugs
(See also Bendectin; Contraceptives; DES, actions involving; Nonprescription drugs)
addictive quality of 4.04
adequacy of warnings 19.12[E]
birth defects and 2.02[B], 12.24[D],
23.04[A][1], 23.12[N], 29.06
circumstantial evidence and 23.12[N]
collateral estoppel and 31.02[A]
consumer's lack of expertise and 20.01[J]
contraceptive device, factors to decide if "unavoidably unsafe" 8.05[G][5]
discovery principle and 30.08[A] et seq.
30.08[C]
DPT vaccine, posed unavoidable risk of severe injury 8.05[G][5]
labeling, preemptive issue and 11.03[G][4]
long-term effects 30.05[C][1]
multiple diseases 30.06[C] et seq.
negligence and, access to information and
5.08[G][2][c]
not defective under Wisconsin law 8.05[A]
ordinary purpose, concept of 6.04[D]
overpromotion of 4.05[D]
publisher of drug information 12.18[A][2]
punitive damages and criminality 29.03[A]
retailers, liability of 12.04[C][1]
scienter and effects of 2.02[B]
side effects and premarket testing 11.03[G][4],
25.02[B][2]
sufficiency of evidence 23.04[A][1]
third-party physical injury 27.03[D][2]
unavoidably unsafe products 8.05[G][1],
8.05[G][5]
warnings, adequacy of 19.07[J][1][b], 19.12[A]
warnings, duty as to 19.07[C], 19.07[J][1][1],
19.07[J][1][b], 19.07[J][3][c],
19.09[B][1], 19.09[c][1], 19.09[C][2][b],
19.09[D][2], 19.10[C], 19.14[C],
25.02[B][4]
Previous and subsequent occurrences 23.06
Prima facie case
hearsay 23.07[B][9]
Privy
antiprivity rationale 16.01[G]
cigarette-caused illness 16.01[F]
contract theory of liability and 16.01[D]
economic relationships, effect 16.01 et seq.
eliminated, under negligence 5.03
home buyers, recovery available 16.01[D][1][a]
horizontal 16.01[B], 16.01[C][5]
commercial law doctrine under 16.01[B] et seq.
U.C.C. section 2–318 and 16.01[C] et seq.
liability without 3.03
merchantability doctrine and 6.02[E]
INDEX

products liability statutes eliminating privity requirement 16.01[E]
statutes eliminating 16.01[G]
suits by governments 16.01[F]
tort theory of liability and 16.01[D] et seq.
U.C.C. provisions and 16.01[D]
section 2-318 and 16.01[C] et seq.
upholding privity 16.01[D],[2][b]
vertical 16.01[A]

basic requirement for, remaining vestiges 16.01[A][1]
negligent sellers, liability of 16.01[A][2]
strict liability in tort and 16.01[A][3]

Processing 12.15
Producers, European law regarding E3.01
Product alteration 30.12[B][7]
Product appearance 1.02[D], 5.08[G][1], 8.06[J][2]
Product complexity, design defects and 9.12 et seq.
persuasiveness against liability 9.12[B]
Product (condition of) vs. manufacturer’s conduct, strict liability and 8.04[B]
Product components
product damage 27.05[B][4]
Product configuration, adherence to following specifications of others 12.12
arguments against liability 12.12[A][1]
arguments for liability 12.12[A][2]
government contract defense and 12.12[B]
Product continuums 9.11
Product, court definitions of 7.03[A]
Product design
(See Industry standards; Standards, generally)
Product line exception, successor liability and 13.07, 13.07[A]
limitations to 13.07[B]
Product modifications, intervening, extended consequences and 32.05
Product performance
(See Industry standards; Standards, generally)
Product, policy goals and 7.03[G]
Product portrayals 1.01[B]
Product, policy goals and 7.03[G]
Product portrayals, mass media 1.01[B]
Product tampering 8.06[H]
Products, damage to, warranty and 22.04[B]
Products liability, public policy assumptions and 25.04[B][1]

Professional, express warranties and 3.07
Promotional language
representational and nonrepresentational theories 1.02[C]

Proof 23.01, 23.03
(See also Evidence; Expert testimony basic elements of)
burdens, of 23.15
genral considerations 23.15[A]
multiple defendants 23.15[B]
causation, as to 23.09 et seq.
Daubert rules 23.04[A][1]
defects, as to 23.09 et seq., 23.12[I][3]
doctrines of 23.01

federal agencies, reports of 23.14
governmental hazard information and 23.09[F]
“lemon” vehicles, as to 23.11
materiality, as to 23.09 et seq.
previous occurrences, as to 23.06
lack of prior claims and injury reports 23.06[C]
prior claims, existence of 23.06[A][1]
proper inferences from 23.08
basic aspects 23.08[A]

experts, requirement of 23.08[B] et seq.
risk, rather than loss already caused 23.03[A][1]
semantic problems 23.01
terminology as to 23.01
theories of liability and 23.02
warranty claims and 23.10

Property damage 27.05 et seq., 27.05[A], 27.05[E], 29.07[G]
comparisons and contrasts 27.05[G][2]
Prosthesis devices 24.09[F], 29.04[B], 30.03[A]
Protective products 19.11[A][1]

Providers 12.26
(See also Manufacturers; Retailers; Sellers; Wholesalers)
roles of 12.01 et seq.
Proximate cause 1.01[C]
(See also Causation advertising and)
duty and, extended consequences and 32.01 et seq.

misuse of product and 21.08[E] et seq.
non-fault misrepresentation and 4.06
Public Health Service Act 11.03[G][4]

Publishers’ liability, duty to warn and 19.15
Puerto Rico, warranty for hidden defects 28.01[A][3]

Puffing
A-No. 1 condition as puff terminology 3.05[A]
characterization rejected 3.05[C]
express warranty and 3.05, 3.05[A], 3.05[E], 4.01[E], 4.02[A]

imprecise generalities 3.05[E]
motorcycle ad 1.01[B]
product portrayals, mass media 1.01[B]

qualified language 3.05[F]
warranty and 6.01[A]
Punch press 11.02[D], 21.08[B], 32.05[A][1]

Punitive damages
acquiring firms and 29.07[D]
arguments favoring awards 29.07[D][2]
awards denied 29.07[D][1]
amount of awards 29.09
compensatory damages, relation to 29.09[C]
culpability, degree of 29.09[A]
deterrence, high enough to be 29.08[A]
plurality of awards 29.09[D]
relation to compensatory damages 29.09[C]
appropriateness of 29.01[A][1]
arguments against awards 29.02[B] et seq.
assessing 29.10
constitutional considerations 29.10[D]
justice: general policy criticisms 29.10[A]
multiple awards and overkill 29.10[B]
INDEX

overkill, multiple awards and 29.10[B]  
practical morals and practical advice 29.10[E]  
proposals for change 29.10[C]  
comparative negligence and 29.07[A]  
compensatory damages requirement 29.07[F]  
conscious or knowing disregard definitional disputes 29.03[C][2]  
constitutionality, and 29.10[D]  
contract actions 29.07[H]  
death, consequences of 29.07[E]  
deterrence: survival statutes 29.07[E][2], 29.08[A]  
wrongful death statutes 29.07[E][1]  
dispute, appropriateness in 29.01[A][1]  
flexibility of tort theories, effect 29.02[C]  
gross negligence 29.03[F]  
manufacturer’s postaccident conduct and 29.09[E]  
net worth, ratio to 29.09[B]  
rationales, plurality of 29.09[D]  
identifying the issues 29.01  
arguments about propriety, appropriateness in dispute 29.01[A][1]  
basic rationales 29.01[B]  
minimal requirements 29.01[C]  
propriety, arguments about 29.01[A] et seq.  
issues impinging on other legal categories 29.07 et seq.  
judicial concern as to, significant elements 29.04  
advertising and packaging and 29.04[E]  
conscious business decisions and 29.04[C]  
design defects, manufacturing vs. 29.04[G]  
factual analysis 29.04[A]  
statutory specifications followed 29.04[L]  
knowledge as affirmative factor 29.04[I][1] et seq.  
lack of knowledge as defense 29.04[J]  
manufacturing vs. design defects 29.04[G]  
packaging, advertising and 29.04[E]  
profiles of developing danger 29.04[F]  
protecting profits as basis for liability 29.04[B]  
reckless indifference test 29.04[I][2]  
third-party conduct 29.04[H]  
willful/wanton test 29.04[I][1]  
withholding knowledge and 29.04[D]  
market-share liability and 29.07  
multiple awards 29.10[B]  
pleading 29.06  
restrictive approach 29.06  
property damage and 29.07[G]  
proposed refinements to issues 29.05  
flagrancy, effects 29.05[B]  
utter indifference and 29.05[A]  
rationales, rehearsal of 29.08  
denial of award and deterrence 29.08[A][2]  
deterrence and 29.08[A] et seq.  
insufficiency and 29.08[A][1]  
net worth, ratio to 29.09[E]  
rational, plurality of 29.09[D]  
identifying the issues 29.01  
arguments about propriety, appropriateness in dispute 29.01[A][1]  
minimal requirements 29.01[C]  
propriety, arguments about 29.01[A] et seq.  
issues impinging on other legal categories 29.07 et seq.  
judicial concern as to, significant elements 29.04  
advertising and packaging and 29.04[E]  
conscious business decisions and 29.04[C]  
design defects, manufacturing vs. 29.04[G]  
factual analysis 29.04[A]  
statutory specifications followed 29.04[L]  
knowledge as affirmative factor 29.04[I][1] et seq.  
lack of knowledge as defense 29.04[J]  
manufacturing vs. design defects 29.04[G]  
packaging, advertising and 29.04[E]  
profiles of developing danger 29.04[F]  
protecting profits as basis for liability 29.04[B]  
reckless indifference test 29.04[I][2]  
third-party conduct 29.04[H]  
willful/wanton test 29.04[I][1]  
withholding knowledge and 29.04[D]  
market-share liability and 29.07  
multiple awards 29.10[B]  
pleading 29.06  
restrictive approach 29.06  
property damage and 29.07[G]  
proposed refinements to issues 29.05  
flagrancy, effects 29.05[B]  
utter indifference and 29.05[A]  
rationales, rehearsal of 29.08  
denial of award and deterrence 29.08[A][2]  
deterrence and 29.08[A] et seq.  
insufficiency and 29.08[A][1]  
vengeance, deterrence and 29.08[A][3]  
separate corporate entities and 29.07[C]  
strict liability, doctrinal controversy over 29.02 et seq.  
arguments against awards 29.02[B]  
flexibility of tort theories, effect 29.02[C]  
subsequent remedial measures 29.04[K]  
support for awards 29.02[A]  
successor corporations 13.11[D]  
support for awards, effects of strict liability 29.02[A] et seq.  
corporate behavior, implications for 29.02[A][2]  
thoretical inconsistency rejected, arguments of 29.02[A][1]  
propriety of awards 29.01[A][2]  
unforeseeable uses and 29.07[B]  
verbal threshold 29.03  
conscious or knowing disregard and 29.03[C] et seq.  
criminality 29.03[A]  
culpabilities, collections of 29.03[H]  
defendant’s minimum 29.03[I]  
fault requiring punishment 29.03[G]  
negligence insufficient 29.03[E]  
outrageous and related language 29.03[B]  

Purchasers  
(See also Consumer chain)  
terminology and leases 30.12[B][8]  

R  
Radiation as product 7.03[D], 12.16[B]  
Railroads, derailed cars and 20.06[C][2]  
Railway Safety Act  
statutes as standard setters 11.03[G][15]  
Raw materials  
European law concerning E3.02  
Real estate, liability in activities in re 12.17  
condominium and cooperative marketing 12.20[F]  
cooperatives, effect of complexity of marketing 12.20[F]  
financiers 12.20[H]  
home sales  
judicial development and legislative response 12.20[D]  
later purchasers 12.20[B], 12.20[D]  
mass-produced houses 12.20[A][1]  
new homes 12.20[A] et seq.  
non-fault doctrines 12.20[C]  
personal use, builder’s intention of 12.20[A][5]  
plaintiff’s land, homes built on 12.20[A][4]  
small builder-vendor 12.20[A][2]  
substantial performance and 12.20[A][3]  
realty leases 12.20[E]  
inimproved lots 12.20[G]  
"Reasonable person” 20.01[A]  
Reasonably prudent person standard 5.02[A], 5.02[B]  

IN-27
Recalls
admissibility of recall letter 25.06[A]
arguments for exclusion 25.06[B]
proof of defect while in manufacturer's control 25.06[A][2]
liability theory and 25.06[A][5]
manufacturer's use of recall letter 25.06[
probabilities, proof of 25.06[A][4]
voltariness of action, effect 25.06[A][2]
withdrawal from market, admissibility 25.06[A][2]

Reciprocity
design defects
duty to warn 9.20[A]
duty to warn, test for, punitive damages and 29.04[I][2]
Reckless user conduct 9.13[J]
Reconditioned products 30.12[B][6]
Reliance
expertise, particular purpose and 6.03[L][1]
express warranty and 3.09, 4.01[E]
implied warranty and 6.03[A], 6.03[J]
materiality and causation in fraud 2.02[E]
non-fault misrepresentation 4.01[E]

Remedial changes
(See also Recalls)
procedural label 25.03[B]
change not remedial, effect of argument as to 25.05[B]
defect must be the same requirement 25.06[A][3]
diversity actions, applicability 25.03[A]
substantive-procedural considerations 25.03[A]
evidence of, admissibility of 25.01
admissibility of duty to warn, factors affecting 25.02[E][1]
arguments favoring admissibility 25.04[B]
attacking credibility by use of impeachment exception 25.02
causation, requirement as to proof of 25.02[F]
codification of 25.01[A] et seq.
common-law overview of Rule 407 25.01[B]
design and warnings, exception as to 25.02[B][1]
distinction, tactical importance of 25.04[B][4][b]
duty to warn, relevance to 25.02[E] et seq.
empirical dubiety 25.01[E]
exceptions 25.02 et seq.
feasiability and negligence, distinction between 25.02[B][3]
feasibility exception 25.02[B] et seq.
Federal Rule of Evidence, 407 codifying 25.01[A][1]
impeachment exception 25.02[C]
insiness of duty to warn, factors affecting 25.02[E][2]
lack of relevancy, effect 25.01
manufacturer, applicability to 25.01[C]
negligence, distinguishing from strict liability 25.04[B][4] et seq.

Remedial and procedures
(See also Litigation and procedure, generally; Punitive damages; Statutes of limitations; Statutes of repose)
Remedial measure definition 25.02[A]

INDEX

Recalls
admissibility of recall letter 25.06[A]
arguments for exclusion 25.06[B]
proof of defect while in manufacturer's control 25.06[A][2]
liability theory and 25.06[A][5]
manufacturer's use of recall letter 25.06[
probabilities, proof of 25.06[A][4]
voltariness of action, effect 25.06[A][2]
withdrawal from market, admissibility 25.06[A][2]

Reciprocity
design defects
duty to warn 9.20[A]
duty to warn, test for, punitive damages and 29.04[I][2]
Reckless user conduct 9.13[J]
Reconditioned products 30.12[B][6]
Reliance
expertise, particular purpose and 6.03[L][1]
express warranty and 3.09, 4.01[E]
implied warranty and 6.03[A], 6.03[J]
materiality and causation in fraud 2.02[E]
non-fault misrepresentation 4.01[E]

Remedial changes
(See also Recalls)
procedural label 25.03[B]
change not remedial, effect of argument as to 25.05[B]
defect must be the same requirement 25.06[A][3]
diversity actions, applicability 25.03[A]
substantive-procedural considerations 25.03[A]
evidence of, admissibility of 25.01
admissibility of duty to warn, factors affecting 25.02[E][1]
arguments favoring admissibility 25.04[B]
attacking credibility by use of impeachment exception 25.02
causation, requirement as to proof of 25.02[F]
codification of 25.01[A] et seq.
common-law overview of Rule 407 25.01[B]
design and warnings, exception as to 25.02[B][1]
distinction, tactical importance of 25.04[B][4][b]
duty to warn, relevance to 25.02[E] et seq.
empirical dubiety 25.01[E]
exceptions 25.02 et seq.
feasiability and negligence, distinction between 25.02[B][3]
feasibility exception 25.02[B] et seq.
Federal Rule of Evidence, 407 codifying 25.01[A][1]
impeachment exception 25.02[C]
insiness of duty to warn, factors affecting 25.02[E][2]
lack of relevancy, effect 25.01
manufacturer, applicability to 25.01[C]
negligence, distinguishing from strict liability 25.04[B][4] et seq.

Remedial and procedures
(See also Litigation and procedure, generally; Punitive damages; Statutes of limitations; Statutes of repose)
Remedial measure definition 25.02[A]

IN-28

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
deterrence-to-repair, hypothesis, strict liability and 25.04[B][1]
hybrid of sales and service, as 12.14[C]
manufacturers who repair 12.14[D]
negligence standard and 12.14[A]
strict liability and applying 12.14[C]
opposition to 12.14[B]
warnings, duty as to, design defects and 19.07[I]

R cozy stress injuries
statutes of limitations, discovery rule 30.08[C]
Replacement parts
warnings, distributors and manufacturers 19.07[A][3]
Replacement products, extended consequences and 32.07
Reports
Representational background of products 1.01[A], 1.02[C]
Representations
(See also Negligent misrepresentation)
basic
factual representation 2.02[A]
ignore or deceit 2.02[B]
IMPLIED warranty of fitness 6.03[M]
“knowledge” of falsity 2.02[B]
overview of theories 2.01
scienter test 2.02[B]
behavorial effects of 4.01[E][1]
culpability standard and 2.02[B]
express warranties 3.01[A], 3.04
fraud
causation, element of 2.02[E]
materiality as element 2.02[E]
nondisclosure of material facts and 2.02[A]
ratiocines of fraud law 2.02[F]
scienter 2.02[B]
implicit, in products liability 1.01[A]
impence generality 3.05[E]
mixed theories 1.02[B]
none presentational theories 1.02
public, effect of portrayal of products to 1.01[A]
publishers’ liability, duty to warn and 19.15
representational and
doctrines 1.02[A]
nonrepresentational theories, linkages 1.02
representational liability without fault
functional development and
historical tracings, innocent
misrepresentation and 2.04[B][2]
innocent misrepresentation 2.04[B] et seq.
Michigan cases 2.04[B][3]
MISTAKE 2.04, 2.05
misrepresentation and 2.04[B][1]
overview 2.04[A]
Restatement (Second) section 402B 4.01[A]
Restatement (Third) section 9 4.01[A]
strict accountability, innocent 2.04[B][1]
representational products 1.01[A], 1.02
theories of liability and 1.01[A]

INDEX

Res ipsa loquitur
(See also Circumstantial evidence)
alternative causes 24.09[C] et seq.
alternatives ruled out 24.09[C][1]
analysis under the doctrine, significant matters in 24.09
alternatives, ruling out 24.09[C][1]
automatc cutoff time, lack of 24.09[G][2]
defensive proofs, clusters of 24.09[D]
denial of liability and 24.09[G][1]
difficulty of harmonizing decisions and 24.09[G][2]
event “ordinarily does not occur” and fitness 24.09[E]
history of safety 24.09[B]
intermediate meddling, opportunity for 24.09[A]
Michigan vehicle cases 24.09[G][4][b]
New Jersey vehicle cases 24.09[G][4][a]
opportunity for intermediate meddling 24.09[A]
other alternatives degrading defect 24.09[C][3]
period of use 24.09[G][4][b]
plausible remaining alternative and user conduct 24.09[C][2]
possible defects in manufacturing process 24.09[F]
range of users 24.09[H]
safety history 24.09[B]
tire blowouts 24.09[C][1], 24.09[G][5], 24.09[G][5][b]
use: time and character 24.09[G], 24.09[G][5][b]
vehicle cases 24.09[G][4]
causation and 24.08
clusters of uncertain facts
control, element of 24.03[A]
multiple defendants 24.03[B]
defects and proof of defects 24.10
general understanding 24.10[A]
merchantability and 24.10[B]
warranty and 24.10[B]
definitions 24.02
doctrinal elements 24.01
flexibility of 24.07
plaintiff’s conduct and 24.07[A]
technical requirements, absence of 24.07[B]
doctrine and function of 24.01
event “ordinarily does not occur” and experience 24.06
basic understanding 24.06[A]
sudden mechanical failures and 24.06[B]
flexibility of doctrinal elements
plaintiff’s conduct 24.07[B]
Michigan vehicle cases 24.09[d][i][i]
New Jersey vehicle cases 24.09[G][4][a]

IN-29

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
INDEX

occurrence of accident, insufficient evidence and 24.05
conjecture and 24.05[B]
expert testimony 24.05[C]
inadequate specific proofs and 24.05[A]
speculation and 24.05[B]
procedural conceptualization of 24.04
other proofs, contrasted with 24.04[B]
rule of evidence vs. presumption 24.04[A]
significant matters
alternative causes 24.09[C][3]
theories of liability and 24.11
distinctions 24.11[B]
similarities 24.11[A]
Rescuers 16.02[C]
Research
disclaimers, effectiveness 17.06[A]
general examples of liability 12.04[B]
negligence and 12.04[B][1]
non-fault theories applicable 12.04[B][2]
intermediate distributors 12.05[D]
policy considerations 12.04[E]
sellers, defining the class of 12.04[A]
occasional 12.04[A]
specific activities 12.04[D]
motor vehicle dealers 12.04[C][2]
pharmacists and 12.04[C][1]
strict liability
statutes exempting retailers from liability 12.04[C]
warnings, duty as to 19.07[A], 19.07[C]
wholesalers vs. 12.05[C]
Retail sale date 30.02[B][4]
Revolvers
(See also Handguns)
Risk 19.12[N]
(See also Assumption of risk allocation of:
Disclaimers incidence of, duty to warn and
layered 19.05
Risk-benefit analysis 8.05[G][3]
as affirmative defense 9.04[C]
utility outweighing 9.13[E]
Risk-benefit standards
defects, overlap with consumer expectations 8.08
Risk-utility standard 8.07
design defects conditions of use 9.13[E]
elements of verbal formulas 9.06[H]
Risk-utility test, consumer expectations and 9.06[C]

Rogers v. Toni Home Permanent Co., express
warranties and 3.03, 3.04
Roofing 7.03[B], 12.03[H][1][a], 12.11[B][1],
27.03[D][1][a], 27.07[A][2], 28.01[B][3]
Rope, defective 24.09[G][3]
Rylands doctrine 7.01[A], 7.02[C], 12.21[A][1]
S
“Safe,” use of term 3.01[A], 4.01[E][2],
7.05[B][2]
express warranty language 3.01[A], 3.04
for limited use 9.13[A][3]
Safety devices
anticipated removal of 9.13[K][3]
design, manufacturer’s duty as to 9.09
judicial standards, specificity of 9.09[B]
nontransferability of burden 9.09[A]
failure to provide 9.06[B]
glass, defective 9.20[A]
heat-protective suit, defective 12.03[G][3]
lack of 8.10[E], 8.10[F] et seq., 20.04[A]
later addition of 19.14[B]
manufacturer’s responsibility 9.09
Safety features
state-of-the-art implications 8.10[F][2]
Sale, time of, statutes of limitation and 30.02[B] et seq.
possession and control 30.02[B][S]
purchase date, proof of 30.02[B][6]
Santor v. A & M Konogeasian, Inc., economic loss
problem and 27.02[A], 27.04[D],
27.05[B][1], 28.01[B][2]
Saws, circular 16.02[B][2], 23.06[A][1]
Scaffolding 7.04[C], 12.03[D][1]
Scienter 2.02[B]
Screwdriver/level cases, misuse and 21.05[A] et seq.
Seat belt defense 20.01[Q], 23.09[B]
Second collision cases
(See Comparative fault doctrines)
Seed legislation 11.03[G][16]
Seely v White Motor Co., economic loss problem and
27.02[B], 27.04[E], 27.05[B][1]
Sellers 12.26
(See also Manufacturers; Providers; Retailers; Wholesalers)
commercial law, line of defense and 18.02
defining class 12.04[A]
informational superiority of effect on defense
generality of language of express warranty
3.05[D][1]
insurance, similarity of coverage for new and
used product dealers 18.05[B][3][e]
intended, liability of 12.10[D]
roles of 12.01 et seq.
overview 12.01
special responsibility of 7.05
section 402A and 7.02 et seq.
strict liability and 7.05
vertical privity and 16.01[A][2]
warnings, duty as to 19.02, 19.07[D]

IN-30
Sensitivity of plaintiff extended consequences [duty and proximate cause] 32.10
Separate disease rule 30.06[C][1]
Services furnishers of (See Medical materials, furnishers of) liability 12.16
Settlements 14.03
Severity of harm negligence 5.08[C]
Ship and boats blowout preventer on barge, warnings and 19.06[D][2]
economic loss and 27.03[C][3], 27.03[E], 27.04[E]
sudden and calamitous damage 27.05[F] negligence and 5.05, 5.08[A][2]
res ipsa loquitur and 24.07[A] tractor-scraper for carriage by sea 9.09 used 12.03[B][3]
Shoes 2.03, 8.06[B], 9.04[C], 9.13[A][3], 9.18[B][2]
Shotguns defects, aging products 8.10[E]
Showing of alternative design 9.18[B] et seq.
Sindell v. Abbott Laboratories 12.24[D] et seq., 12.24[D][1][c], 12.24[D], 29.07[I]
Slingshots 5.07
Smith v. Richards ("gold or snowballs" case) 2.04[B][2], 2.04[B][3]
Snowthrower 20.01[M]
Social justice basis for decision in warranty cases 6.01[B]
Solidarity doctrine 30.09[D]
"Sophisticated user" 19.06[D], 19.11[A][2]
Space heater 21.08[C]
Specific obligation 19.02[E]
Specifications for product configuration adherence to 12.12
government contract defense Boyle v United Technologies Corp. 12.12[B][1]
specialized issues 12.12[B][2]
Speeding as misuse of product 21.02[B][1]
recovery available 21.02[B][2]
Sports equipment (See also Helmets)
bowling ball 12.16[E][3]
fencing mask 9.13[I]
golf cart 21.08[F][1][b]
lawn darts represented as 11.03[A][1]
tennis court surface 20.03[H][2][c]
Spring Motors decision, economic loss problem and 27.03[A][4]
Standards statutes as standard setters Mutual Pharmaceutical Co. v. Bartlett, 11.03[G][4][c]
Standard of care 5.08[B]
breadth of anticipated use 19.02[F]
Carroll Towing decision 5.08[C]
conformity 5.08[C]
Learned Hand tests 5.08[C]
supplant for prima facie case of negligence 5.08[B]
The T.J. Hooper test 5.08[C]
Standards, generally (See also Design and designers; Industry standards)
compliance, effect of 11.03[E]
Consumer Product Safety Act, preservation of common-law remedies under 11.03[G][2]
defect independently disproved 11.03[E][3]
discretionary reporting, permissibility 11.03[C]
evidence, compliance as to 11.03[F]
Flammable Fabrics Act, preemption provisions 11.03[G][2]
government specifications, compliance with 11.03[E][1]
motor vehicle legislation, issue of preemption 11.03[G][1], 11.03[G][6][1][b]
negligence as evidence of violation 11.03[A][1], 11.03[A][2]
perfect product 9.17[A]
preemption, issues of 11.03[G] et seq., 11.03[G][1][b] et seq.
premarket notification for changes or modifications of devices in the market 11.03[C]
prescription drugs, issue of preemption 11.03[G][4]
promulgation after manufacture, standard of care and 11.03[F]
rebuttality by defendant 11.02[F]
regulatory findings on specific matters 11.03[D]
retroactive use of standards fashioned after manufacture and sale of product, permissibility 11.03[B]
role of 11.01 seller's standard of care 19.02 statutes as standard setters 11.03
broad-scale regulatory process, compliance with 11.03[E][2]
causation independently disproved 11.03[E][3]
cigarettes, issue of preemption 11.03[G][3]
compliance as evidence 11.03[F]
consumer product safety act, preemption issues 11.03[G][19]
devices, preemption issues 11.03[G][6][1]
effect of compliance 11.03[E]
effect of violations 11.03[A]
federal 11.03[G]
flammable fabrcs act, preemption issues 11.03[G][2]
insufficient specificity of regulation 11.03[E][4]
made in us states, preemption standards 11.03[G][17]
preemption issues, generally 11.03[G]
strict liability 11.01, 11.02[D]
vioations, effect 11.03[A] et seq., 11.03[A][1]
vi-rus-serum-toxin act, preemption issues 11.03[G][18]
warranty 11.01

IN-31

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM via free access
INDEX

State-of-the-art defense
admissibility of evidence
  compliance with evidence 10.02[A]
  feasibility 10.02[B]
  strict liability 7.04[B][4][a]
  alternative meanings 10.01[B]
ambiguities 10.01[A]
consumer expectations as to, effect 10.01[D]
cost-benefit test 10.04
defined 10.01 et seq.
design defects 9.07[B]
European law regarding E6.04[A]
evidence of 10.01[A]
admissibility 10.02 et seq.
compliance with 10.02[A]
defendants' 10.06, 10.06[A]
exclusions 10.03
feasibility, concept of 10.02[B]
plaintiff's 10.02[A], 10.06[B]
prior standard on 10.03
strict liability theory and 10.06 et seq.
subsequent technologies or safety improvements admissibility 10.03,
10.05
hazards outweigh benefits 10.04
industry standards and 5.08[A][1]
later alternative design 10.03, 10.05
policy arguments 10.01[C]
safety devices and design 8.10[F][2]
strict liability
  admissibility of evidence 7.04[B][4][a]
  defendant's offer 10.06[A]
  exclusions 10.03
  feasibility, concept of 10.02[B]
  plaintiff's 10.02[A], 10.06[B]
  prior standard on 10.03
  strict liability theory and 10.06 et seq.
  subsequent technologies or safety improvements admissibility 10.03,
  10.05
use 10.01[C]
  warranty and strict liability, relationship of 10.06[D][2]
State statutes and rules 30.06[M]
  conflict, discovery standard 30.06[M]
  exceptions and 17.07[B]
  eliminating privity requirements 16.01[E]
  industry standards distinguished 11.02[A]
  interventional product modification 32.05[B]
  joint and several liability, abolishing of 14.08[G][3]
  manufacturer defined under 12.03[B][1]
  preemption issues 11.03[G] et seq.
product liability statutes 26.06
  form of action, doctrinal history as guides 26.06[B]
  Michigan 26.05[B]
  negligence and warranty: Michigan 26.06[A]
  remedial changes, as, to 25.01[A][2]
  significant relationship 30.06[M]
  strict liability and negligence, similarities between 7.04[C]
  wrongful death and survival statutes 20.01[X]
Statutes of limitations
  (See also Statutes of repose)
  accrual, time of 28.03
  admiralty 28.04[A][6]
  asbestos cases 30.13[B]
  asbestos contamination, functional backgrounds of discovery principle 30.08[F]
  characterization of cause of action 28.01 et seq., 28.01[A][1]
  common law 28.08
  continuing events rule 30.04
  application 30.04[A]
  rejection 30.04[B] et seq.
  contract theory and preference for 28.04
  tort over 28.01 et seq.
discovery and amplification of principle 30.06 et seq.
  acceptance of discovery rule 30.05[B] et seq.
  affirmative defense 30.05[B][7]
  basic dispute 30.05
  claim "inchoate" 30.05[B][3][b]
  component makers, effects on 30.06[J]
  concealment test 30.09[A][1]
  constitutional questions 30.09[E]
  cross-jurisdictional tolling 30.06[N]
  death and the discovery rule 30.06[E], 30.06[E][1][b]
  diagnosis of factors in issue 30.06[G][4], 30.07[A] et seq., 30.07[A][2]
  disability 30.07[E]
  drug cases 30.08[A]
  exposure rule 30.06[B]
  fact question 30.05[B][7]
  failure to warn as distinct 30.06[F]
  filing complaint, effect 30.06[K]
  fraudulent concealment and 30.09[A]
  functional battlegrounds of discovery principle 30.08, 30.08[F]
  Hobson's choice 30.05[B][2]
  identifying the problem 30.05[A]
  incompetence, notice requirements and 30.09[B]
  issues related to principles of discovery 30.09
  laches and 30.06[D]
  manifestation 30.05[C][3], 30.06[A][2][a]
  medical cases distinguished on relationship grounds 30.08[E]
  multiple defendants and solidarity theories 30.09[D]
  multiple diseases and 30.06[C]
  notice requirements and incompetence 30.09[B]
  physician plaintiffs 30.08[D]
  physical vs. legal injury 30.05[B][3] et seq.
  plaintiff's diligence, requirement for 30.06[G], 30.06[G][4]
  plaintiff's expertise: continued reliance and 30.06[H]
  policy arguments favoring cutoff 30.07[C] et seq.
  policy considerations summarized 30.06[G][5]
  principle of discovery, functional battlegrounds 30.08
  prohibitory regulation, effect of 30.06[I]
property damage 30.05[C][4] rejection of discovery rule 30.05[C],
  30.05[C][2], 30.05[C][3], 30.05[C][5],
  30.09[A][1]
retroactivity 30.09[F] significant factors in discovery issues 30.07 et seq.
specific manufacturer, identity of 30.07[D] et seq.
stale and fraudulent claims 30.05[B][4]
statutes extending limitations period 30.13[D] statutory discovery rule mandatory 30.05[B][6]
statutory trigger, disability as 30.07[E] sudden traumatic event 30.05[C][2]
survival statutes compared 30.06[E][2] traumatic injury cases 30.05[B][5]
U.C.C. theories 30.06[L] economic loss and 30.10
extension of periods, statutory 30.13 medical malpractice negligence/"products liability" 28.05[D]
Statutes of repose (See also Statutes of limitations)
central issues 30.12[F] constitutional issues as to 30.12 construction of 30.12[B]

IN-33

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 12/23/2018 01:22:18PM via free access
completed product, not a 11.02[D]
component manufacturers 12.03[G][1] et seq.,
12.03[G][1][b], 12.03[G][1][d],
12.03[G][3]
defects
“unavoidably unsafe” limitation 8.05[G][1]
“unreasonably dangerous” element 8.05[A]
demonstration of product 12.07[A]
design defect, strictness as to 9.07, 9.07[A],
12.11[B][1]
deterrence to remedial measures 25.04[A][1]
empirical basis controversial 25.04[A][1][b]
disclaimers and 17.10
discovery
plaintiff’s expertise 30.06[H]
distinction between doctrines in 7.01[A]
dothrical comparison 7.04
implied warranty and 6.04[H]
industry standards, similarity 7.04[C]
insurer liability, rejection of 7.04[A]
negligence and 7.04[B], 7.04[B][1], 7.04[C],
10.06[D][1], 25.04[A][4]
warranty and 7.04[B][1], 10.06[D][2]
early development of 7.01[A]
Rylands doctrine 7.01[A]
economic loss problem
commercial plaintiffs 27.03[A]
diverse rationales 27.03[A][5]
fairness as primary rationale 22.03[A][1]
fault, not based on 14.04[E][1]
fault underlying 22.03[B][1]
forecast and assessment 7.06
general state products liability legislation
22.03[B]
governmental standards 7.04[B][3]
historical development 7.01 et seq.
implied warranty and 6.04[H]
industry standards and 11.02[D]
installers 12.13[B]
judge-made law and 22.03[B][4]
lessors, control element 12.10[B][3]
limitation to negligence, inequity of limitation
of comparative negligence statutes to
22.03[B][2]
loaned goods 12.10[D]
loss distribution
spreading rationale 7.05[G][1], 7.05[G][3]
medical materials, furnishers of providers as
product users 12.16[E]
negligence 25.04[B][4], 26.04 et seq.
concepts in, effect of favoring defendant
22.05[A]
distinctions emphasized 26.04[B]
equivalence between 19.02[A]
functional similarities 26.04[A]
thories distinguished 19.02[B]
negotiation 27.03[A][e]
noncomparability as rebuttal 22.03[A][2]
no-substantial-change element 12.03[G][1][b]
object to 12.03[G][1][c]
ordinary contributory negligence and 20.01[C]
policy arguments 22.03[A][1]
pot accident changes 25.07
product issue 7.03[A]
parties without knowledge of defect 14.04[G]
primary rationale 22.03[A][1]
privity and 16.01[A][3], 27.05[B][2]
product issue and 7.03 et seq.
electricity 7.03[C]
gas 7.03[E]
general considerations 7.03[A]
manufacturer’s conduct 8.04[B]
oil well 7.03[A]
packages and containers and 7.03[B]
speculative applications: computer programs
7.03[F]
X-rays 7.03[D]
public nuisance 7.01[B]
punitive damages and, doctrinal controversy
over 29.02 et seq.
rational for 7.05
access to information 7.05[D]
burden, overwhelming 7.05[G][2]
consumer expectations and 7.05[B]
icriticism of spreading rationale 7.05[G][3] et
seq.
deterrence and safety incentives 7.05[E]
general applications to consumer
expectations 7.05[B][1]
participation in profits and assignments of
risk 7.05[F]
representational rationale 7.05[C]
sellers’ special responsibility 7.05[A]
spreading and loss distribution 7.05[G] et
seq.
remedial changes and focus on 25.04 et seq.,
25.04[A][1][a], 25.04[A][4]
repairers 12.14[B], 12.14[C]
Restatement (Second) section 402A 7.02[A]
retailers
statutes exempting retailers from liability
12.04[C]
Rylands doctrine and 7.01[A]
section 402A, seller’s special liability and 7.02
adoption, process of 7.02[B]
Alabama’s extended manufacturer’s liability
doctrine (AEMLD) 7.02[B]
Rylands, distinction from 7.02[D]
text 7.02[A]
state-of-the-art defense 9.07[B], 10.06 et seq.
strictness of, design defects and 9.07, 9.07[A]
synthesizing strict products liability 7.01[C]
Goldberg case 7.01[C][2]
Greenman case 7.01[C][1]
tort vs. contract
attorney fees 26.03[B][5]
distinctions blurred 26.03[B][2]
legislative equation of theories 26.03[B][3]
remedies 26.03[B][7]
strict liability vs. warranty 26.03[C][3]
twilight zone 26.03[B][6]
Unreasonably dangerous requirement 8.05[A]
used products 18.05 et seq.
changes in product 18.05[A][5]
economic arguments against 18.05[A][3][c]
warnings, duty as to 19.09[A], 19.09[B]
INDEX

warranty and 26.03 et seq.
fitness vs. unreasonable dangerousness 26.03[C][2][d]
Subcontractors liability of 12.03[E][1]
Subsequent remedial measures
punitive damages
significant elements of judicial concern 29.04[K]
Successor corporations, liability of assumption of liabilities 13.02
business contracts, relation to 13.02[B]
general applications 13.02[E][1]
continuation exception 13.05
cessation of business by seller 13.05[F]
elements: Turner case 13.05[A]
factual disputes 13.05[B]
illustrative judicial disagreements 13.05[E]
quantitative elements 13.05[D]
sole proprietorships 13.05[G]
continuity theories, conceptual distinctions 13.05[H]
de facto mergers and 13.03
duty to warn 13.06[A], 13.06[E]
exceptions
continuation exception 13.05
principal exceptions 13.01
product-line exception 13.07
general rule of 13.01
principal exceptions 13.01
indemnity and 14.07[C]
liability extensions, particularized issues 13.11
dissolution statutes, rights under 13.11[C]
exculpatory clauses 13.11[A]
transfer liability 13.11[B]
loss-avoidance strategies 13.12
policy arguments 13.09
economic analysis, support for liability and 13.09[A][1]
general view of support for liability 13.09[A][2]
policies undercutting liability 13.09[B]
principal exceptions to 13.01
product-line exception 13.07
Adal case 13.07[A], 13.07[A][5]
applications 13.07[A][3]
distinguishing product-line theory 13.07[D]
liability and the purchasing corporation: Adal case 13.07[A][1]
limitations to 13.07[B]
New Jersey cases 13.07[A][2]
preacquisition injury 13.07[A][4]
rejection of product line 13.07[C]
theory: invention and development 13.07[A]
punitive damages 13.11[D]
recovery, focal element illustrated 13.08
strategies for loss avoidance 13.12
theoretical development, evolution of 13.10
warnings, duty as to 13.06, 19.07[G]
conservation application 13.06[C]
independent ground of liability 13.06[A]
knowledge, requirement of 13.06[B]

passage of time and 13.06[D]
Summer Simpson Papers 19.09[B][3]
suppository 19.02[E]
Superseding causes
extended consequences [duty and proximate cause] 32.06
Suppliers
European law regarding E3.06
means of production, of 12.03[E]
basics views 12.03[E][1]
subcontractors and 12.03[E][2]
Surgical instruments 14.04[H], 23.08[B][2]
Swimming pools 9.17[B], 9.20[B], 12.03[G][1][d], 19.10[D], 19.11[A], 20.03[I][3]
T
Tampons 8.06[J][5][c], 11.03[G][6][a], 20.06[A], 25.06[A][2], 29.09[E]
Technology
advancing, negligence and 5.08[G][2][b], 5.09
availability of, design defects and 9.19
computer programs, strict liability and 7.03[F]
indemnity actions and new 14.04[J][3]
products oriented by 19.06
statutes of limitations, special problems for 30.01
Technological advances
negligence 5.08[G][2][b]
Testers and certifiers of products 12.19
inspection, requirements 12.19[A]
third parties’ products, certification of 12.19[B]
distinctions among testing agencies 12.19[B][3]
negligent misrepresentation and 12.19[B][2]
undertaking theory and 12.19[B][1]
Testing and demonstration of products 12.07
professional testers 12.07[B]
strict liability imposed 12.07[A]
tests after accident, demonstrative evidence and 23.13
Texas Deceptive Trade Practices Act 3.05[D][1]
Theories of liability
express warranty parallels 3.10
Theoretical microeconomics 8.03[A]
Third parties, actions involving (See also Workers’ compensation, role of certification of products of, 12.19[B]
distinctions among testing agencies, 12.19[B][3]
negligent misrepresentation and, 12.19[B][2] and undertaking theory and, 12.19[B][1])
contributing to plaintiff’s injuries 16.02[G]
defense
contributory negligence, multiple products 20.01[R]
disclaimers 17.11
duty issues generated by misuse by 21.08[D]
emotional distress, extended consequences and 32.11
employers, tort liability, rationale for 15.05[C]
repudiation and misrepresentations to 2.02[C], 2.02[D]
misuse as proximate cause, third-party users and 21.08[E][1]
INDEX

misuse of product  
jury instructions as to 21.10  
warnings and 19.11[B][4]  

punitive damages and 29.04[H]  
used products and 18.04

Time-of-sale rule, statutes of limitations and  
30.02[B] et seq.  
possession and control 30.02[B][5]  
purchase date, proof of 30.02[B][6]

Tire blowouts  
assumption of risk and misuse 21.08[F][2][a]  
causation and duty to warn 23.09[E]  
causation, sufficiency of evidence expert testimony 23.04[A][1]  
contributory negligence 20.06[B]  
demonstration accident 12.07[B]  
foreseeability and misuse 21.02[C][1]  
liabilities adjustment 14.08[E]  
misuse and foreseeability and 21.02[C][3]  
negligence and 5.03, 12.03[H][1][b]  
pressurized circumstances 20.01[P]  
reciprocity with user's knowledge 19.11[E]  
res ipsa loquitur and 24.09[G][5]  
alternatives ruled out 24.09[C][1]  
rejection of liability 24.09[G][5][a]  
strict liability and 12.05[A]  
tort vs. contract 28.01[A][1], 28.01[A][2]  
waiver vs. strict liability 26.03[B][1]

Tires  
IMPLIED WARRANTIES, MERCHANTABILITY 6.02[I]  
T.J. Hooper, The, case, negligence and 5.08[A][2]  
Tobacco products 19.11[A][1]  
Tolling statutes of limitations  
discovery rule, tolling where defendant not identifiable 30.09[C]

Tort over contract, theory of liability, statutes of limitations and 28.01  
bar to action 28.01[A]  
contracting policy bases 28.01[A][3]  
Louisiana and redhibition 28.01[A][4]  
plaintiff's success and 28.01[B][5]  
tort and contract, contrasting 28.01[B][1]  
U.C.C. as contrary to tort policies 28.01[B][2]  
products liability label and 28.01[A][1]  
redhibition; Louisiana 28.01[A][4]  
U.C.C., rejection and classifications of 28.01[A][2]

Tort theories of liability, privity and 16.01[D] et seq.  
Tort theory of non-fault misrepresentation (See Non-fault misrepresentation)  

Torts, generally  
contracts, vs. 26.03  
distinctions blurred 26.03[B] et seq., 26.03[B][1], 27.07[B][1]  
distinguished 27.07[A][1]  
U.C.C., effect 26.03[A] et seq.  
flexibility of theories 29.02[C]  
Toxic chemicals 20.03[J][4]

Toxic shock syndrome 8.06[J][5][c], 20.03[A], 20.06[A], 25.06[A][2], 19.1[a], 29.09[E]  
Toxics, exposure to, circumstantial evidence and 23.12[L]  
Toxic Substances Control Act 11.03[G][25]

Toys  
(See Games and toys)

Trade definitions  
express warranty 3.06[A]

Trademarks and trade names  
European law concerning E3.03  
liability, rejection of 12.03[H][2][a]  
mark owners, liability of 12.03[H][1]  
franchisors and 12.03[H][2] et seq.  
liability, rejection of 12.03[H][1][c]  
rationales for liability 12.03[H][1][b]  
Restatement sections 402A and 400 and 12.03[H][1][a]

Trenching machines 14.01[C], 29.04[A]

Trucks  
(See Motor vehicles)

Turner case 13.05[A], 13.05[F], 13.05[G], 13.07[A][2], 13.09[B]

U  
Unavoidably unsafe, concept of necessary part of device 8.05[G][8], E6.03[E]  
Unavoidably unsafe element, defect and 8.05[G]

Unconscionability  
defined  
constraints on liability 17.03[D][1]  
policy basis for recovery 17.03[D][2]  
disclaimers  
limitation of remedies 17.03[D][1]

Uniform Commercial Code  
(See also Statutes of limitations)  
disclaimers 17.02, 17.03, 17.12[A]  
express warranty, definitions of 3.01[A], 3.05, 3.06[B], 3.09  
horizontal privity, as affecting; section 2–318 and 16.01[C] et seq.

limitation of remedies 17.03  
merchantability and implied warranty 6.02[B], 6.03[B]  
non-fault misrepresentation and 4.05[B]  
notice principles 6.02[N]  
tort vs. contract 26.03[A] et seq.  
used products 18.02[A], 18.02[C]

Uniform Contribution Among Tortfeasors Act 14.01[A], 14.02[B], 14.08[D][5]  
“comparative contribution” spin, with 14.08[G][5]

Uniform Sales Act 17.06[C]

Unreasonably dangerous requirement strict liability 8.05[A]  
avoidably unsafe 8.05[A]  
Unreasonable risk in fact 9.02[C]  
Unreasonably dangerous element (See also Defects, generally) 8.05 et seq.  
bystanders, requirement and 16.02[F][2]  
defect and 8.05 et seq., 8.05[A], 8.05[C], 8.05[G], 8.09 et seq., 9.01

IN-36

Marshall S. Shapo - 9781786433725

Downloaded from Elgar Online at 12/23/2018 01:22:18PM
via free access
INDEX

Unreasonably dangerous products 8.06[G][1],
19.09[B][1][a]
manufacturer’s duty to refrain from selling
17.10[C][4]
Unusual dangers 9.13[A][3]
Used products, liability for
arguments favoring liability 18.05[B],
18.05[B][1] et seq.
consumer expectations and 18.05[B][3][a]
defective work by sellers/dealers, effect
18.05[B][2][c]
failure to remedy and 18.05[B][2][d]
functional position and 18.05[B][2] et seq.
issue of business of selling 18.05[B][2]
rebuilders and reconditioners and
18.05[B][2][b]
“as is” clauses 18.02[A]
negligence and 18.03 et seq.
third-party plaintiffs 18.04[A]
California appellate cases against liability
18.05[A][4]
causation, effect of lack of 18.05[A][5]
compensation rationale and 18.05[A][3][a]
 fraudulant conduct as to 18.03[B][3]
 implied warranty fitness and 18.02[B]
homes, as to 18.02[E]
 merchantability and 18.02[C]
safety devices and 18.02[D]
manufacturer’s role 12.03[B][3]
negligence and 18.03 et seq.
 active negligence, effect 18.03[B][2]
 “as is” clauses and 18.03
 exculpatory power 18.03[A]
 public policy and 18.03[B][1]
 recovery and 18.03[B]
 product liability rules, applicability 18.02 et seq.
policy conflicts 18.02
 representational rationale and 18.05[A][3][b]
 risk reduction, duty as to 18.05[A][3][c]
 risk-distribution argument 18.05[A][4]
 strict liability 18.05 et seq.
arbitrary distinctions between new and used
18.05[B][3][d]
arguments opposing 18.05[A] et seq.
changes in product 18.05[A][5]
close policy analysis 18.05[C]
defendants outside distribution chain, effect
18.05[A][2]
economic arguments against applicability of
18.05[A][3] et seq., 18.05[A][3][c]
 explanation of, elements to consider
18.05[C]
 latent defects and 18.05[C]
 marketing systems, effects 18.05[B][3][b]
 modifications, foreseeability and
18.05[B][3][c]
one-time sellers and 18.05[A][1]
 rationales for 18.05 et seq.
seller’s insurance protection, similarity
between new and used dealers
18.05[B][3][c]
third parties as plaintiffs 18.04 et seq.
duty of sellers 18.04[C], 18.04[D]
enhancing safety, duty as to 18.04[D]
 imposing liability 18.04[B]
obligations to 18.04[C]
 recovery, denial of 18.04[A]
Use of product
 common sense, manufacturer cannot rely on
9.13[A][2]
dangerous under foreseeable conditions
9.13[A][2]
design defects and conditions of 9.13 et seq.
 intended 9.13[K]
 ordinary 9.13 et seq.
 utility outweighs risk 9.13[E]
especially risky use 19.06[E]
ordinary use environment 9.13[A]
semantics of 21.02[E]
wanton act by consumers 21.07
“Useful safe life” language, statutes of repose and
30.12[B][4]
Users
 (See Consumer chain)
Utility of product 9.06[G]
V
 Vaccine Compensation Amendments of 1987
11.03[G][5]
 Vaccines 8.06[G][1], 9.19, 11.03[G][5],
19.13[A][1], 19.13[D][3], 12.24[E]
 alternative, failure to develop 26.04[B][2][c]
DPT 11.03[G][5], 19.12[C]
National Childhood Vaccine Injury Act
11.03[G][5]
 Vertical privity
 (See Privity)
 Vicarious liability 14.04[A][1]
 Violin, value of 2.05
 Virus-Serum-Toxin Act
 statutes as standard setters 11.03[G][18]
W
 Warnings, duty as to
adequacy of warnings 19.12, 19.12[A]
generally 19.12[A]
hazard, severity of 19.12[D]
multiple risks 19.12[B]
 risk and, incidence of 19.12[C]
 alternatives 19.04
 anticipated use, breadth of 19.02[F]
 Beshada decision 8.06[E]
causation and 19.13[D][1], 23.09[E]
 conjecture on behavior 19.13[B]
certainty in event 19.07[C]
general applications 19.13[A] et seq.
materiality 19.13
chemical suppliers 19.07[H]
 consumer users 19.07[H][3] et seq.
 workplace injuries 19.07[H][1] et seq.
 conceptual overlaps 19.11 et seq.
 consumer actual knowledge 19.10[B]
 consumer information and 19.10
 common apprehension of hazard 19.10[A]
 common knowledge of danger 19.10[D]
electricity and 19.10[D][1]
INDEX

fact questions and summary judgment
19.10[E]
fire hazards and volatile substances
19.10[D][2]
generally 19.10[D][3]
over-the-counter drugs 19.10[C]
volatile substances and fire hazard
19.10[D][2]
contributory negligence 20.06[A]
credibility of information in 25.03
defects and 8.11[C], 19.09[E], 19.11[D]
mixing the issues 19.11[D][2] et seq.
separating the issues 19.11[D][1]
definitional boundaries 19.01
danger generally known and recognized
19.10[D][3]
dangerousness per se 19.01[B][5]
instructions, role of 19.01[B][4]
relation to representations 19.01[B][3]
seller's own product 19.01[B][6]
design problems and 9.20
reciprocity and 9.20[A]
separating the concepts 9.20[B]
dischargeability of duty and duty to warn about ordinary products, as to 19.03, 19.04
distributors, distinctions among 19.07 et seq.
extended consequences and 32.01 et seq.
employer carelessness 32.05[A][4]
generally 32.01
intervening criminal conduct 32.08[B]
intervening modifications 32.05
intervening plaintiff's conduct 32.06
passage of time 32.05[A][6]
replacement products 32.07
third party emotional distress 32.11
general vs. specific types of harm 19.02[G]
harm, type of 19.01[B][7]
implied warranty and 19.09[D]
general aspects 19.09[D][1]
negligence, relation to 19.09[D][2]
indemnity and 14.04[D][2]
information costs and 19.08 et seq.
allergies 19.08[B]
general aspects 19.08[A]
inherent danger 8.11[C]
obvious to all parties 8.11[C]
intermediate distributors 19.07[B]
“knew or should have known” strict liability 19.09[C][4]
language other than English, duty as to 19.12[F]
latent danger 19.11[B][2]
layered risks 19.05
lessors 19.07[E]
long-term hazards 19.14
general aspects 19.14[A]
hazard patterns and procedural implications 19.14[C]
safety devices introduced since sale 19.14[B]
manufacturers 19.07[A]
component manufacturers 19.07[A][1][c]
distributors as active sellers 19.07[A][1][b]
distributors as conduits 19.07[A][1][a]
warning labels required for another firm 25.01[D]
warning required 19.07[A][1]
materiality and causation 19.13
conjecture on behavior 19.13[B]
general applications 19.13[A] et seq., 19.13[A][1]
misuse and 19.11[B], 21.08[C]
danger greater than expected 19.11[B][3]
negligence in testing 19.11[C]
obviousness as bar to recovery 19.11[B][1]
need for, in negligence actions 5.08[G][1]
negligence and strict liability
distinction between 19.09[B] et seq., 19.09[B][3]
equivalence between 19.09[A]
obviousness and 19.11[A]
oral vs. written instructions 19.01[B][2]
ordinary products and dischargeability of duty, as to 19.03
overview 19.01[A]
prescription products and 19.07[J]
devices: policy considerations 19.07[J][2]
drugs: manufacturer v. physician 19.07,
19.07[J][1]
private sellers 19.07[D]
proximate cause and, extended consequences and 32.01 et seq.
publisher's liability 19.15
reciprocity of concepts with user's knowledge 19.11[E]
relation to general law of negligence 19.01[B][1]
repairs 19.07[I]
retailers 19.07[C]
role of doctrine 19.09 et seq.
Bevolo decision 19.09[C][2][a], 19.09[C][2][c]
California decisions 19.03[C][3]
Florida decisions 19.09[C][5]
harmonization efforts and disagreements 19.09[C][1] et seq., 19.09[C][2][c], 19.09[C][4]
industry custom, admissibility of 19.09[B][5]
strict liability and negligence 19.09[A]
unknown dangers 19.09[B][1]
Section 402A vs. Section 388 19.09[B][4]
sophisticated users
defense rationalized 19.06[D][1]
defense, limitations on 19.06[D][2]
standard of care and 19.02
areas of risk, developing 19.02[A]
industry standards 19.02[C]
ominations as assurances 19.02[D]
products as dangerous, combination of 19.02[H]
statutes and regulations 19.02[B]
warnings about byproducts 19.02[I]
strict liability and negligence
distinction between 19.09[B] et seq., 19.09[B][2][b]
equivalence between 19.09[A]
subsequent remedial changes, relevance to 25.02[E] et seq.
successor corporation’s duty as to 13.06
conservative application 13.06[C]
knowledge, requirement of 13.06[A]
successors 19.07[G]
technological products 19.06
consumer’s lack of expertise and 19.06[E] et seq., 19.06[E][1]
explanation of danger, need for 19.06[B]
sophisticated users and 19.06[D]
subtle mechanical dangers 19.06[C]
third-party misuse 19.11[B][4]
user as purchaser’s employee 19.07[F]
user’s emotional distress 32.09
unusual use of products 19.06[F]

Warranties
(See also Express warranty; Implied warranty)
advertisements 1.02[C]
comparative principles and 22.04
comparison applied 22.04[A][1]
personal injury and 22.04[A], 22.04[A][2]
product, damage to 22.04[B]
fitness, used products and 18.02[B]
negligence and 26.05
disclaimers, effectiveness 17.09[B][3]
proof as to claims 23.10, 24.10[B]
quality vs. performance 30.02[B][3]
strict liability and 26.03[C]

Jury instructions 26.03[C][2][a]
merchandability vs. unreasonable danger 26.03[C][2][c]
novelty of strict liability 26.03[C][1]
practical effects of contest between 26.03[C][2][b]
proof burdens 26.03[C][2][b]
state-of-the-art defense 10.06[D][2]
triple warranties 6.04[C]

Water heaters 19.06[E][1], 19.09[B][3]

Wholesalers
strict liability of 12.05
applying the doctrine 12.05[A]
completing rationales 12.05[B]
retailers vs. 12.05[C]

Willful and wanton misconduct 9.17[B]
Willful/wanton test, punitive damages and 29.04[I][1]

Windows, defect in 8.13

Witness to injuries 16.02[E]
emotional injuries resulting, recovery for 16.02[E]
direct observation as factor in recovery 16.02[E][2]
general applicability 16.02[E][1]
relationship to injured effect 16.02[E][1]
zone of danger, witness must have been in 16.02[E][3]

Workers’ Compensation Act 12.03[D][2]
Workers’ compensation, role of 15.03[E]
INDEX

plaintiff's conduct 21.08[F] et seq.
multiple doctrines, use of 26.02[A], 26.02[B]
negligence, cost of prevention 5.08[E]
obviousness 20.05[A], 20.06[C3][3]
other employer conduct 32.05[A][5]
prior claims, lack of 23.06[C]
res ipsa loquitur 24.12
sudden danger, property damage and 27.05[E]
sudden traumatic event, discovery and 30.05[C][2]

warnings
   adequacy of 19.12[A]
duty as to 19.07[E], 19.07[F]
risky product and 19.06[E][2]

warranty and privity 16.01[C][2][c]
workers’ compensation, suits under 15.02
Wrongful death and survival statutes 20.01[Y], 28.09

X
X rays
   as a product 7.03[D], 12.16[B]
strict liability and 7.03[D]
   warranty and 27.04[C]

Z
Zone of danger, bystanders 16.02[W][4]