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 contents 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]

Alai 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]
Antiprivacy 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]
Dole rule 14.08[A]
fairness and 14.08[B]
implications of 14.08[D] et seq.
INDEX

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
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]
theories of adjusting liability effect 14.02
common liability and 14.02[D]
contribution and sections 402A and 402B
14.02[A]
intentional tort, defined 14.02[E]
negligence and "products liability" 14.02[C]
successive tort-feasors 14.02[F]
warranty and strict liability and 14.02[B]

Aquarium supplies 3.06[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 foreseeable 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]
manuf acturation 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 workplace as benchmark of 12.03[D][5][b]
economic loss, *Santor* and 27.02[A][2]
emotional distress, intentional infliction of 5.10
exceptional hazard 9.02[A]
implied 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][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][1]
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], 20.06[C][2]
contributory negligence compared 20.01[D]
melding defenses 20.02[B]
defects and 8.11[A]

IN-2

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM via free access
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] et seq.
assessing safe conditions, effect 20.03[J][2]
complex mechanical products, and
20.03[J][3]
illustrative situations 20.03[J][1]
prior knowledge, effect of lack of 20.03[J][5]
toxic chemicals 20.03[J][4]
doctrinal
waiting audience, effect of 20.03[H][2][c]
doctrinal and functional elaborations 20.03[H]
burden of proof and 20.03[H][1]
functional classifications 20.03[H][2] et seq.
simple physics defense 20.03[H][2][b]
time, effect of familiarity over
20.03[H][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]
unlawful acts 20.01[M]
patent danger and 20.01[N]
unreasonable use, as cognomen for
20.03[I][1][b]
innocent acts 20.03[I][3]
repeated occurrence 20.03[I][L]
appropriateness of defense 20.03[L]
worker's assumption 20.03[F]
defense of assumption of risk, use of
20.03[F][1]
product danger 20.03[F][2]
Fireman's rule 20.03[F][2]
Assurances of knowledge and skill
implied warranty of fitness 6.03[E]

Athletic equipment
(Sports equipment)

Auctioneers, liability of 12.06[D][2]

Auctions
used products, strict liability 18.01[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]

consumer protection 23.12[D][2][a]
contract vs. implied warranty 28.06

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[I][3]
fuel tank design 19.13[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

lifemanship 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, privity 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
circumstantial 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]

prior 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]

criminality 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][1][b]

vs. negligence 25.04[B][d]
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]
INDEX

Aviation Act [federal] statutes as standard setters 11.03[G][11]

B
Balancing and weighing tests, design defect 8.09[C][1]
Barber 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 5.11
Beer keg case 16.01[C][5]
Bell v. Industrial Vangas, dual capacity and 12.03[D][2]
Bendectin birth defects caused by 23.04[A][1], 23.12[N], 29.06
failure to warn of "foreseeable dangers" 8.05[G][5]
"Benefits" of a product, issue of 9.06[G], 9.13[G]
Benzene exposure 30.07[B]
Besha 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], 23.12[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 strict liability providers of medical materials 12.16[A][2][b]
Boat (See Ships and boats)
Boat Safety Act [federal] statutes as standard setters 11.03[G][14]
Boiler Inspection Act [federal] statutes as standard setters 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]
mise of product 21.12
Burglar alarm 27.05[I] et seq.
Bystanders assumption of risk and 20.03[G]
consensus 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]
inability to bargain, effect 16.02[B][1]
liability theories as affecting 16.02[H]
protection entitled to 16.02[B][4]
ratones 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][1] 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]
ratones for 16.02[B] et seq.
rescuers 16.02[C]
users and consumers, similarity to 16.02[B][2]
tests to injuries 16.02[E][1]-16.02[E][3]
zone of danger 16.02[E][3]

C
Campo v. Seafield, 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]
basic elements of proof, fundamental standards, causation issue
class actions 23.03[A][1][f]
genelry 23.03[A][1][a]
multiple causes 23.03[A][1][b]
isk and 23.03[A][1][e]
whether compensable injury exists, question of 23.03[A][1][d]
basic elements of proof, requirements on
summa judgment 23.03[A][2]
basic elements of proof, whether defendant's product was involved 23.03[B]
benchmark for comparisons of doctrines of liability 22.08
INDEX

occurrences subsequent to plaintiff’s accident 23.06[B]

Cigarettes 3.09, 8.06[E][2], 9.13[E], 11.03[G][3], 22.16[B][2][a]
consentor 12.24[G]

Comparative fault doctrines 23.08[E][1]
defect concept, overlapping with 8.11
defects, generally 23.09
demonstrative evidence 23.13
duty to warn and 19.13, 23.09[E]
extert testimony basic elements of proof 23.03[A][1][a]
circumstantial evidence 23.12[G]
prima facie cases and 23.07[B]
qualifications 23.07[A]
sufficiency of evidence 23.04[A][1]
failure to warn 23.03[D]

Handguns and 8.09
lack of warning not causative 19.13[D][2]
manifestation, vs. 30.06[A][2][b]
materiality and 19.13[A][1], 23.07[A]
materiality and, in fraud law 2.02[E]
medical cases, expert testimony 23.12[G][5]
occurrence plus expert testimony 23.09[D]
particular unit not required 23.09[C]
presumptions, role of 23.05
previous and subsequent occurrences
demonstrative evidence 23.13
evidence of past events 23.06[A]
lack of prior claims and injury reports 23.06[C]

Comparative apportionment; Texas synthesis 22.08[B][2]
concurring proximate causes and; Texas synthesis 22.08[B][1]
culpability, and verses defect 23.03[C][1]
general applications 22.08[A]
ramifications of causation analysis 22.08[C]
rejection of causative measure 22.08[D]
Texas synthesis 22.08[B]
circumstantial evidence
accidents, situation immediately following 23.12[C]
alogues, malfunction 23.12[B]
defect, evidence of 23.12[J][1]
defendant’s accident avoidance 23.12[J][3]
event insufficient 23.12[J][2]
extert testimony in cases, generally 23.12[G][1]
extert testimony, inadequate 23.12[G][4]
extert testimony, opinions on causation 23.12[G][3]
extert testimony, pinpointing defect 23.12[G][2]
excessive failures 23.12[J]
identity of manufacturer 23.12[K]
inferences from malfunction 23.12[A]
inference not mandatory 23.12[D][3]
new products 23.12[D][1]
physical facts and 23.12[H]
rationalis, strength of materials 23.12[I][2]
“speculation and conjecture” 23.12[E]
strength of materials, overlap of defect and

proof issues 23.12[I][3]
Comparative fault doctrines
ramifications of causation analysis 22.08[C]
concurrent causes 23.03[E]
defect concept, overlapping with 8.11
defects, generally 23.09
demonstrative evidence 23.13
duty to warn and 19.13, 23.09[E]
extert testimony basic elements of proof 23.03[A][1][a]
circumstantial evidence 23.12[G]
prima facie cases and 23.07[B]
qualifications 23.07[A]
sufficiency of evidence 23.04[A][1]
failure to warn 23.03[D]
Handguns and 8.09
lack of warning not causative 19.13[D][2]
manifestation, vs. 30.06[A][2][b]
materiality and 19.13[A][1], 23.07[A]
materiality and, in fraud law 2.02[E]
medical cases, expert testimony 23.12[G][5]
occurrence plus expert testimony 23.09[D]
particular unit not required 23.09[C]
presumptions, role of 23.05
previous and subsequent occurrences
demonstrative evidence 23.13
evidence of past events 23.06[A]
lack of prior claims and injury reports 23.06[C]

compared to plaintiff’s accident 23.06[B]

prior complaints and litigation 23.06[A][3]

prior injuries to plaintiff 23.06[A][2]
proof, as to 23.03[A][1], 23.09 et seq.

Res ipsa loquitur and 24.08
“substantial factor” 23.03[C][2], 23.04[C]
sufficiency of evidence
variable minimal standards, technological complexity 23.04[A][1]
superseding cause 32.05[A][1]

used products
claimants, leeway for 23.12[D][2][b]

intervening events as obstacles to proof 23.12[D][2][a]
lack of and 18.05[A][5]

Certifiers of products
(See Testers and certifiers of products)

Chain of distribution, misuse of product and 21.11
Chemicals, dangers of 12.06[C], 19.12[A], 26.04[B][1]

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

Children and infants
baby bathinette 21.08[F][4][b]
bottle of soda, exploding 21.02[C][3]
clothing, flammable 7.04[C], 23.12[H]
drain product, exploding 16.02[I][2]
extension cord 25.02[B][1]
food supplements 19.08[A]
gasoline (used as floor cleaner) 25.02[E][2]
laundry detergent, death from 27.05[G]
lawn darts, injuries from 11.03[A][1]
liquid cleaner 25.02[B][1]
vaporizer, boiling water in 16.01[C][5]
water slide injury 20.03[E][3]

Cigarettes 3.09, 8.06[E][2], 9.13[E], 11.03[G][3], 22.16[B][2][a]
consure 12.24[G]
concealment 2.02[C]
consumer chain, suits by governments 16.01[F]
dangerous “good products” 8.06[E][2]
Express warranty holdings 3.04, 3.05[E]
express warranties, theory and language 3.01[A]

failure to warn 19.13[A][1]

fraud, nondisclosure 2.02[C]

implied preemption 11.03[G][3]
inherently dangerous products 8.06[E][2]

“lost chance” rule 23.03[A][1][c]
New Jersey, no longer applicable in 9.13[G]

reliance 2.02[E]

risk-utility theory 8.06[E][2], 9.13[G]
statutes as standard setters 11.03[G][3]

warnings, duty as to, common knowledge of danger 19.10[D][5]

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 08/18/2019 11:09:40PM
via free access
INDEX

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]
doctrinal 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]
injury causing factors and 22.16[B] et seq.
judicial rejections of comparative principles 22.10
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]
reliance on causation 22.16[B][1]
evidentiary implications of comparative rules 22.16[B][2]
litigation, 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]
thorny issues 22.17
warranty and 22.04
comparison applied 22.04[A][1]
damage to product 22.04[B]

personal injury and 22.04[A], 22.04[A][2]
workers’ compensation 15.03[E]
manufacturers and employers 15.03[E]
Comparative negligence, punitive damages and 29.07[A]
seatbelts, failure to use 20.01[Q],
22.16[B][2][a]
Comparative risks
negligence 5.08[F]
Comparison and contribution theory 14.08[D][5]
Compensatory damages
amount of award
relation to punitive damages 29.09[C]

Components
alternative design 9.14[C][2]
discovery and makers of 30.06[J]
European law concerning 3.02
factor of control 12.03[G][3]
finished product, rather than 26.04[B][4]
indemnity and failure of 14.04[I]
makers of, strict liability of 12.03[G][1]
control factor and 12.03[G][3]
negligence, effect 12.03[G][2]
no substantial-change element and 12.03[G][1][b]
opposition to 12.03[G][1][c]
rationale, difficulties in 12.03[G][1][a]
“stream of commerce” theory 12.03[G][1][e]
manufacturer-assembly liability 12.03[F]
manufacturers as makers of 12.03[G][1][d]
manufacturers’ duty to warn 19.07[A][1][c], 19.07[A][2]
specific features 9.14[C][1]

Comparative Environmental Response, Compensation and Liability Act
(CERCLA) 11.03[G][9]

Computers
malfunction 24.09[H], 27.04[A][2]
product damage 27.05[B][5]
programs, strict liability and 7.03[F]

Concealment
Fraud cases 2.02[C]

Concepts as warranties 6.03[F]
Concert of action theory 12.24[D][1]

Conflicts among legal doctrines
(See also Negligence, generally; Warranties) 26.01 et seq.
characterization, special problems of 26.08
contribution and 26.08[A]
damages, differentiations among 26.08[B]
federal enclaves and 26.08[C]
doctrinal richness, reillustration of 26.09
multiple doctrines, use of 26.02
cumulative effect of theories 26.02[C]
judicial stacking of theories 26.02[A]
submission of all theories 26.02[B]
representational vs. nonrepresentational theories 26.01
close distinction, illustration and criticism 26.01[C]
nonrepresentational theories 26.01[A]
representational theories 26.01[B]
strict liability and negligence 26.04

IN-6

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM
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 3.05
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 8.06
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 8.05[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]

negligence 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.
dothrinal elasticity, effect 21.08[F][4][b]
imise, 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]
melding 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[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][g]
  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]
    intentional conduct 20.01[O]
  intoxication 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]
  misuse of product and 21.08[B], 21.08[F][1]
  mitigate damages, duty to 20.03[H]
  multiple products 20.01[R]
  nature of plaintiff’s conduct 22.15[A]
  objective standards 20.01[D]
  ordinary 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][1][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] 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
  misuse 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 vs. warranty 26.03[C][2][c]
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]

Crane
9.09[A], 19.07[E], 20.03[J][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]

European law concerning E6.03[G]
“foreseeable misuse” compared 9.14[A][1]
foreseeability where misuse of product 21.02[A]
general question 9.14[A]
Larson doctrine 9.14[A][1], 9.14[B]
motor vehicle safety agency, system of 11.03[G][1]
plaintiff’s conduct 9.13[F]
predictability of 21.02[A]
specific design features 9.13[E]
utility and costs contrasted, 9.06[I]
unavoidably unsafe, 9.05[A]
unreasonably dangerous requirement, 8.05[A],
8.11

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

analogies 8.05[G][8]
cause concept, overlapping with 8.13
claims of, design and 9.01
cluster of design defects 9.02[E]
consumer expectations and 8.06 et seq.

Comment i, Restatement section 402A,
effect 8.06[A]

common dangers and ordinary products
8.06[B]

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]
expectations as function of particular events
8.06[L]
handguns 8.06[G], 8.09

normal use requirements 8.06[M][2]

obviousness 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
warnings and 8.06[M][3]

consumer perceptions as to products 8.06[J]
buyer-oriented approach 8.06[J][5][c]
deemed knowledge 8.06[J][5][d]
economic factors and 8.06[J][5][f]
expert testimony, role of 8.06[J][5][c]
functions of judge and jury 8.06[J][5][b]
general aspects of judicial assumptions
8.06[J][5][a]
intelligence as element 8.06[J][3] et seq.
judicial assumptions and 8.06[J][5] et seq.
legal conclusions and 8.06[J][2]
natural objects in food, as to 8.06[J][5][f]
objective tests and special knowledge and
8.06[J][3][a]
product complexity and 8.06[J][4]
protection of the credulous and 8.06[J][3][b]
social research and 8.06[J][1]
culpability and causation, versus 23.03[C][1]
defenses and, overlapping of 8.11

design and manufacturing distinguished 8.02
defects 9.01 et seq.
design vs. manufacturing 23.12[I][4]
duty to warn and 8.11[C], 19.11[D]
efficiency and 8.03[A]

European definition of E6.01
experiences as function of particular events
8.06[L]

fairness and 8.03[B]
jurisprudence as to, salient issues in 8.10 et seq.

absolute vs. relative standards 8.10[A]

aging products and 8.10[E]
alternative designs and 8.10[G]
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]  
maluse of product and 8.03[B], 21.08[A]  
overlapping concepts 21.08[A]  
proof 22.08[A]  
state-of-the-art implications 8.10[F][2]  
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]  
negligence, relation to 8.06[B] et seq.  
strict liability 8.05[A]  
tests for finding 8.05[C], 8.05[D]  
thoretical 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 precedent 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  
judicial objections to Sindell and related theories 12.24[D][6]  
maker, plaintiff’s ignorance of 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[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]  
alternative 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 9.01  
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]  
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]
INDEX

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]
INDEX

public policy and 17.06[C]
duty to warn 19.07[B]
retailers' disclaimers ineffective 17.06[A]
contract perspective 17.01
creation of exceptions, conflict with 17.02
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]

Dole rule 14.08[A], 14.08[F]
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]
deputations vs. tort duty 27.03[C][3]
direct 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]
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]
fractions of modern controversy 27.02
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]
lessor 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 7.03[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[I][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]
extert 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]

Evidence
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

Factual Representations 2.02[A]

Family law, privity and 16.01[C][2][b]

Farming

auctioneers, liability of 18.05[A][5]
cotton picker 23.03[C][2], 24.09[C][3]
diseased livestock 26.03[A][3][d]
European law E2.01[C]
fertilizer 6.04[F]
fertilizer spreader 24.09[G][1]
forage wagon conveyor belts 16.02[I][1]
grain elevator 20.03[J][5]

hay baler 25.02[B][3]

haystacking machine 26.03[C][2][c]

herbicides 3.04, 3.06[C], 3.08, 6.03[L][3],
14.04[G][2], 17.03[F], 19.05, 19.07[I],
26.03[C][2][b]
irrigation systems 1.02[B], 26.02[C]

liquid nitrogen tank, exploding 20.03[J][1]

loaned goods 12.10[D]
milking machine 23.12[A][1]
product damage 27.05[B][6]

property damage 27.05[A]
silo, contaminative coating on 30.06[I]

steel grain storage tank 27.02[B][4][a]
toxic chemicals 21.08[C]

tractors 3.08, 4.01[C], 9.13[A][2], 14.04[D][1],
23.12[D][1]

Fault

(See also Comparative fault doctrines)

representation liability without 2.04
strict liability, as underlying 22.03[B][1]
Federal Aviation Act 11.03[G][11]

Federal Boot Safety Act 11.03[G][14]

Federal Boiler Inspection Act 11.03[G][20]
Federal Cigarette and Advertising Labeling Act
11.03[G][3]

Federal common law, applicability in actions

involving military injuries 12.22

Federal Communication Act 11.03[G][22]

Federal Consumer Product Safety Act
11.03[G][19]

Federal Flammable Fabrics Act 11.03[G][2]

Federal Hazardous Substances Act 11.03[A][1],
11.03[G][10]

Federal Insecticide, Fungicide and Rodenticide
Act [FIFRA] 11.03[G][8]

Federal meat inspection legislation 11.03[G][13]
Federal Railway Safety Act 11.03[G][15]

Federal Tort Claims Act, recovery against
government barred for list of named torts
2.03, 14.04[E][2]

Feldman decision 19.09[C][2][b]

FIFRA [Federal Insecticide, Fungicide and
Rodenticide Act] 11.03[G][8]

Fire extinguisher, defective 20.03[L]

Fire hazards, duty to warn and 19.10[D][2]

Firearms

(See also Handguns)

air rifle 19.11[B][4]
military weaponry 12.12[B][1]

shot gun 9.18[B][3], 18.05[B][3][a]

Firefighters 19.06[D][1]

Baltimore City Fire Department 19.06[D][1]

Fireman's Rule 7.04[B][4][b], 20.03[F][2]

Fireworks, illegal 21.08[D]

Fitness center liability 12.10[E][2]

Fitness, used products and warranty of 18.02[B]

Flammability

assumption of risk and 20.03[J][1]
circumstantial evidence 23.12[H]
clothing 7.04[C], 11.03[F], 11.03[G][2],
14.04[E][1][b], 20.03[J][1], 23.12[H]
federal legislation 11.03[G][2]
negligence 26.04[C]

standards for 11.02[H][2]

strict liability 7.04[C], 14.04[E][1][2]

Flammable Fabrics Act, preemption provisions
11.03[G][2]

Flue dust 20.05[A]

“Fly in the bottle,” malfunction and, concept of
23.12[B]

Food

causation, circumstantial evidence expert
testimony 23.12[G][1]
malfunction analogues 23.12[B]

causation, sufficiency of evidence expert
testimony 23.04[A][1]
defects, consumer perceptions to products
8.06[J][5][g]

food additives and 11.03[G][7]

Food and Drug Administration (FDA)
5.08[G][2][b], 11.03[A][2], 11.03[E][2],
11.03[G][4], 23.09[F], 29.03[A]

Food products 11.03[G][27]

botulism 14.04[G][3]
cola drink contamination 8.05[F]

contamination by dangerous fumes 17.04[B]
defects and defensive evidence 23.12[F]

meat products, packaged 6.01[B]

natural objects in 8.06[J][5][g]
pork products 8.06[J][2], 9.19, 27.03[D][1][b]
salad dressing lids, plastisol lining of 6.03[C]

wheat 20.01[V][2]

Foreign defendant 31.01

IN-15

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM via free access
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
- limitations, on 32.05[A][2][b]
- misuse of product and, generally 21.02[C] et seq., 21.02[C][5]
- benchmark, normal use 21.02[C][1]
- crashworthiness, compared to 9.14[A][1]
- limits of foreseeability 21.02[C][3]
- use, manner and purpose distinguished 21.02[E]
- modifications, and 32.05[A][2][a]
- negligence and 5.04[D, 5.06]
- no duty defense 32.01

Fraud
- breach of duty by silence 2.02[C]
- culpaibility standards 2.02[F]
- issue of whether factual representation 2.02[A]
- nondisclosure 2.02[C]
- rationales for doctrine 2.02[F]

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]

Hazardous Substances Act [federal] 11.03[G][23]

Hair dyes 3.05[E], 21.03[C][1], 23.12[G][4]

Hammer 8.03[A]

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 as to, adequacy of warnings 19.12[A]

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

Hawaii law 19.09[C][3]

Hazardous Substances Act [federal] 11.03[G][10]

Hazards Materials Transportation Act 11.03[G][23]

Heating system 30.11

Haven 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

“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]
- failure to warn 12.12[B][1][d]
  - immunity standard for design defects, Supreme Court decision 12.12[B][1][a]
  - nonmilitary 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]

INDEX
INDEX

Henningen v. Bloomfield Motors Inc. 6.02[E],
7.01[C][2], 16.01[G], 17.06[C], 17.10[A],
28.01[A][2]
History of products liability common-law rule,
contribution among tort-feasors and
14.01[C]
economic loss 27.01, 27.02
implied warranty 6.01, 6.02[A]
origins 5.03
representational background 1.01[A]
representational vs. nonrepresentation theories
26.01
state statutes 26.06
strict liability 7.01, 7.06
tort vs. contract 26.03[D]
vertical privity 16.01[A]
Horizontal privity
(See Privity)
Household cleaning product, chemical burns from
25.04[A][1][a]
Houses
builders’ liability 12.17
fair market value, at more than 2.03
implied warranty and 6.03[L][2], 18.02[E]
Masonite siding 24.10[B]
modular 27.07[B][2]
seller’s liability 16.01[D][1][b]
termites, sale of house with 2.02[C], 2.04[b][3]
walls, constructional content of 2.02[B]
Huddell rule 9.14[A], 9.14[D]
Humidifiers 5.06[A]
Hydrochloric acid cleaning solution, misuse of
21.08[C]
I
Ideas or information, providers of, liability 12.18
cases denying liability 12.18[A]
books, actions involving 12.18[A][1]
drug information, publisher of 12.18[A][2]
magazine advertiser 12.18[A][4]
public relations firm, 12.18[A][3a]
recovery granted 12.18[B]
software providers, liability of 12.18[A]
Ignorance of hazard 5.02[A], 5.04[D]
Implants
causation basic elements of proof 23.03[A][2]
sufficiency of evidence, expert testimony
23.04[A][1]
component makers, strict liability
12.03[G][1][c]
standards, generally, preemption issues
11.03[G][6][g]
Implied warranty
comparisons and overlaps of doctrines 6.04[D]
compatibility between 6.04[E]
contract theory of liability and 28.06
contributory negligence and 20.01[V],
20.01[V][2]
doctrinal comparisons and overlaps 6.04 et seq.
background 6.04[A]
compatibility of implied warranties 6.04[E]
dual warranty, distinctions between implied
warranties and 6.04[G]
merchantability and 6.04[F]
particularity of implied warranties 6.04[D],
6.04[F]
triple warranties 6.04[C]
drafting specifications 6.03[L]
express warranty and 3.10
fitness and 6.03[A] et seq.
assigning information costs and particularity
of reliance 6.03[L][3]
communications that generate 6.03[E]
complex machinery, an illustration of
interplay among expertise, particular
purpose and reliance 6.03[L][1]
concepts as warranties 6.03[F]
expertise, particular purpose and reliance,
interplay among 6.03[L]
historically 6.03[A]
metaphysics of products and 6.03[K]
needs, description of 6.03[I]
numerical designations 6.03[G]
particular selection, reliance on 6.03[J]
particular uses of product and 6.03[C]
reliance element, relation to factors of
expertise and comparative access to
information 6.03[L][2]
specific representations as background
6.03[M]
U.C.C. notice provisions 6.02[N]
U.C.C. section 2–315 and 6.03[B]
unbargained performance level 6.03[H]
historically 6.01, 6.02[A]
merchantability and 6.02 et seq.
adhesion controls 6.02[M]
bargain and morality intertwined and
6.02[K]
commercial plaintiffs 27.03[B]
constant breakdowns and disappointments of
products and 6.02[H]
continuing implied promissory warranty
6.02[F]
evolution of the doctrine 6.02[B]
generous judicial construction as to 6.02[D]
historically 6.02[A]
intolerable degrees of failure and 6.02[J]
minimum standards of operation in terms of
6.02[I]
morality and bargain intertwined and
6.02[K]
notice, UCC principles 6.02[N]
ordinary purposes of the doctrine 6.02[G]
perfection, no requirement for 6.02[I]
requirement that seller be “merchant”
6.02[B], 6.02[I]
surrogate for actual bargaining 6.02[L]
U.C.C. definition 6.02[C]
ordinary purpose, concept of 6.04[D]
privity and 6.01[B], 6.02[E]
rationale for 6.02[K]
seventeenth through nineteenth centuries
6.01[A]
specifications, breach of 6.03[L]
strict liability and 6.04[H]
INDEX

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]
violators of 11.02[G]

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]
comparative apportionment generally 14.08[G][1]
state statutes abolishing the doctrine 14.08[G][3]
industry wide liability and related issues 12.24[C]

Joint liability
comparative apportionment generally 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
“Ashby” decision and its implications 31.01[B][2]
limited to 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]

Laundry extractor, exploding 9.13[A][5]
Laundry extractor, exploding 9.13[A][4], 9.14[B]
Lawmakers 10.02[B], 14.04[A][2], 16.04[C][2][b], 16.01[D][2][b], 21.08[E][1], 23.09[C], 25.01[B]

IN-19

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM via free access
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][2]
implying liability 12.10[E][1]
isolated transactions 12.10[B][1]
liability, rationales for opposing 12.10[B]
loaned goods 12.10[D]
negligence liability 12.10[G]
ratiosale for opposing liability 12.10[B]
coexisting legal relationships and 12.10[B][2]
commercial law doctrine and 12.10[B][4]
control element 12.10[B][3]
statutory exceptions 12.10[B][5]
strict liability imposed on lessor 12.10 control element 12.10[B][3]
defining the defect 12.10[A][2][b]
former lessors 12.10[A][2][e]
implications of 12.10[A][2]
tended seller and 12.10[D]
manded lease 12.10[A][2][d]
rationales 12.10[A][1]
reasoning 12.10[A][1]
reasoning opposing liability, isolated transactions 12.10[B][1]
service characterization 12.10[A][2][c]
single parts, on 12.10[A][2][a]
warnings, lessors’ duty as to 19.07[E]

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)
Ligation 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]

INDEX

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]
Manlift, instructions on use of 9.13[M]
Manufactured Home Construction and Safety Standards Act 11.03[G][29]
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[G][1][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]
suppliers of means of production liability, basic views 12.05[E][1]
warnings, duty as to 19.07[A], 19.07[A][1][c],
who repair 12.14[D]
workers' compensation and 15.03, 15.03[A]
Manufacturing defect syndrome 7.04[B][1]
Manufacturing defects liability, courts open to impose 12.12[B][1][b]
Market presence of product merchantability, as factor in 6.02[L]
Market share alternate liability theory 12.24[D][4]
Market share liability, punitive damages and 29.07[I]
Market share theory, how to define 12.24[D][1][b], 12.24[D][1][c]
Mass media, produced portrayal 1.01[B]
Materiality and causation fraud law and 2.02[E]
warnings, duty as to 19.12
Mazetti v. Armour & Co. 6.01[B], 6.02[E]
Mechanical failures, sudden, res ipsa loquitur and 24.06[B]
Medical malpractice statutes of limitations negligence/"products liability," statutory language 28.05[D]
Medical materials, furnishers of blood, provision of 12.16[A][2]
AIDS virus and 8.05[G][6]
“blood shield” law 12.16[A][2][b]
equal protection, rejected 12.16[A][2][b]
Perlmuter case 12.16[A][2][a]
screening of donors 5.04[D]
service, compared to sale of goods 12.16[A][2][a]
strict products liability applicable 12.16[A][2][c]
negligence 23.12[N]
sale, as 12.16[A][2][c]
service, as 12.16[A][2][a]
defect and duty to warn 19.11[D][2][h]
distributional factors, liability and 12.16[A][1]
machines in hospitals 12.16[A][3]
product users, related issues on strict liability of 12.16[E]
fine distinctions 12.16[E][3]
ownership alone, insufficiency of 12.16[E][1]
products central to activity 12.16[E][2]
providers as product users 12.16[A][4]
arguments for strict liability 12.16[A][4][b]
close relation to products central to activity 12.16[E][2]
fine distinctions 12.16[E][3]
ownership alone insufficient 12.16[E][1]
strict liability opposed 12.16[A][4][a]
radiation as product 12.16[B]
strict liability and 12.16[A][4][a], 12.16[A][4][b]
sales vs. services 12.16[C]
services, strict liability for 12.16[D]
arguments supporting 12.16[D][1]
general tort law, relation to 12.16[D][3]
judicial reluctance to impose 12.16[D][2]
Medical monitoring 32.10
Merchantability 6.02
(See also Implied warranty)
broad construction 6.02[D]
conspicuousness and, disclaimers and 17.12[B][4]
economic loss problem for commercial plaintiffs 27.03[B]
notice, UCC principles 6.02[N]
ordinary purposes 6.02[G]
perfection not required 6.02[I]
proof of defects and 24.10[B]
requirement for warranty liability 6.02[B]
seller must be a “merchant” 6.02[B]
used products and 18.02[C]
Metaphysics of products implied warranty of fitness 6.03[L]
Middlemen, liability of 8.05[G][2], 12.17
Military injuries, applicability of federal common law 12.22
Military products and weaponry 12.12[B][1], 12.12[B][1][c]
Mine Safety Health Act 11.03[G][26]
Mini-trail bikes 4.01[E], 9.06[C]
Misrepresentations (See also Negligent misrepresentation; Representations; Fraud)
innocent 2.04, 2.04[B]
negligence 2.03
non-fault 2.05
to purchasers relied on by others 2.02[D]
to third parties 2.02[D]
Mistake, liability for 2.05
innocent misrepresentation and 2.04, 2.05
nonfault misrepresentation and 2.05
Misuse of product 19.11[D][2][f]
assumption of risk and 21.08[B], 21.08[F][2], 21.08[F][2][a]
boundaries, conceptual and functional 21.02 et seq.
accidents, predictability of 21.02[A]
chaseworthiness, predictability of 21.02[A]
burden of proof and 21.12
evidentiary obligations as to 21.12
intimate inquiries, implications for 21.13
chain of distribution and 21.11
common practice, allegations of 21.03[D]
concept of 21.01
conceptual and doctrinal relationships 21.08 et seq.
conceptual and doctrinal relationships, misuse versus defect 21.08[A]
conceptual and functional boundaries foreseeability as benchmark 21.02[C][1]
use, manner and purpose distinguished 21.02[E]
consumer product use failure to protect oneself, effect 21.07
research, need for 21.06 et seq.
wanton acts, effect 21.07
consumer research, need for 21.06 et seq.

INDEX

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM
via free access
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]
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][3]
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]
intended 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]
particular 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]
contribution of plaintiff 21.08[F][3]
liability, 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.
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]
intended use focus, rejection of 21.05[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]
intervening, 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]
appearance 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][3][b]

IN-22

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM via free access
INDEX

lemon vehicles, proof requirements 23.11
mobile homes/campers 6.03[L][2], 22.04[B], 23.12[R][2], 26.04[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]
water wagon 20.03[N]
Movies, injuries because of influence of 19.15
Multiple causes, proof issue 23.03[A][1][b]
Multiple defendants 12.23
control, element of and 24.03[B]
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)
arbitrary 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.
avancing 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.
commercial 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]
emotional distress, intentional infliction of 5.10
factors affecting 5.02[B]
factors in judgment for liability 5.08 et seq.
failures to warn 19.09[B][3]
favored theory, as 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
favored theory, as 5.09
foreseeability 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
factors affecting 5.09
foreseeability and 5.06 et seq.
INDEX

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]
unreasonably dangerous element and 8.05[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 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
analyses 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 4.02B 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]
Nonrepresentational 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 E6.03[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
22.04[A][1]
rej ecting 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][3]
Preemption, standards of care and 11.03[G] et seq., 11.03[G][1]
Prescription drugs
(See also Bendictin; 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.
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]
only 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]
liability without 3.03
merchantability doctrine and 6.02[E]
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]
governmental 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.
ineffective public regulation, deterrence and
29.08[A][1]
insurability 29.08[B]
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]
theoretical 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]
extreme deviation from customary practices
29.03[D]
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]
unimproved lots 12.20[G]
"Reasonable person" 20.01[A]
Reasonably prudent person standard 5.02[A],
5.02[B]

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]
voluntariness 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 25.05[B]
duty imposed by law 25.40[A][a]
evidence of 25.01[A][a]
maneuverability, effect 25.05[B][b]

Reckless user conduct 9.13[J]

Reconditioned products 30.12[B][6]

Reliance
expertise, particular purpose and 6.03[L][1]
extent of the substantial rights 6.03[L][3]
express warranty and 3.09, 4.01[E]
implied warranty and 6.03[A], 6.03[J]
misrepresentations 4.01[E]
non-fault misrepresentation 4.01[E]

Remedial changes
change not remedial, effect of argument as to 25.05[B]
defect must be the same requirement 25.06[A][3]
diversity acts, applicability 25.03[A]
substantive-procedural considerations 25.03[A]
evidence of, inadmissibility 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]
extceptions 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]
impediment exception 25.02[C]
inadmissibility 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.
policy rationales, distinction between negligence and strict liability 25.04[B][4][a]
preaccident measures, admissibility of evidence of 25.02[G]
probative value and, Rule 403 and 25.02[B][5]
probative value, lack of, Rule 407 and 25.04[A][4]
proof of causation 25.02[F]
protection of manufacturer by 25.01[C]
rebuttal 25.02[D]
state rules as to 25.01[A][2]
strict liability, arguments for 25.04[B][5]
tactical considerations as to feasibility exception 25.02[B][4]
exceptions to exclusionary rule as to 25.01[B]
exclusionary rule as to 25.01 et seq.
arguments favoring 25.04[A] et seq., 25.04[A][1][a], 25.04[A][4]
research-related documents, exception as to 25.02[B][2]
explanations for 25.05 reasons, giving 25.05[A]
feasibility and negligence, distinctions between 25.02[B][3]
Federal Rule of Evidence 407 and 25.03[A]
alternative explanations for remedial actions 25.04[A][3]
arguments favoring exclusionary rule 25.04[A]
doctrinal distinctions and 25.04[A][1][a]
prejudicial effects of admissibility 25.04[A][2]
probability levels and 25.04[A][1][c]
proof of causation and 25.02[F]
purpose of 25.03[A]
remedial measures, deterrence to 25.04[A][1] et seq.
strict liability, extension to 25.04 et seq.
negligence and feasibility, distinctions between 25.02[B][3]
postmanufacture government standards 25.07
preaccident government standards 25.07
preaccident measures, admissibility of evidence of 25.02[G]
probativity, remedial evidence’s lack of 25.04[A][4]
procedural label 25.03[B]
reasons for 25.05[A]
size of firm affecting benefits of exclusionary rule 25.04[B][3]
substantive-procedural distinction 25.03[A] et seq.
warnings, admissibility of 25.04[B][2]

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

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]

Remedial measure definition 25.02[A]
occurrence of accident, insufficient evidence and
24.05
conjecture and 24.05[B]
expert testimony 24.05[C]
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]
thieves of liability and 24.11
distinctions 24.11[B]
similarities 24.11[A]
Rescuers 16.02[C]
Research
liability denied 12.18[A][3]
Reservoir, breaking of, damage and 7.01[A]
Restatement (Second) Section 402A 7.02[A]
Restatement (Second) Section 402B
generally 4.01[A]
relation 4.01[B], 4.07
Restatement (Third) Section 9 4.01[A]
Retailers 12.04
(See also Manufacturers; Providers; Sellers; Wholesalers)
disclaimers, effectiveness 17.06[A]
general examples of liability 12.04[B]
neGLIGENCE and 12.04[B][1]
intermediate distributors 12.05[D]
policy considerations 12.05[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]
nontransferrability 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]
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.
possessions and control 30.02[B][5]
purchase date, proof of 30.02[B][6]
Sanct or v. A & M Krongelb, 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]
Scien:er 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]
Seyl 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]
INDEX

Sensitivity of plaintiff extended consequences [duity 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-scaper 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]
Shoveling 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]
Spilling 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]
Standard 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[G6][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]
rebuttability 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 fabrics act, preemption issues 11.03[G][2]
insufficient specificity of regulation 11.03[E][4]
made consumer housing standards, preemption standards 11.03[G][17]
preemption issues, generally 11.03[G]
stake liability 11.01, 11.02[D]
violations, effect 11.03[A] et seq., 11.03[A][1]
virus-serum-toxin act, preemption issues 11.03[G][18]
warranty 11.01
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 8.06[B][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]
  evidence 7.04[B][4][a], 10.06 et seq.
  feasible features 10.06[C]
  negligence and warranty related 10.06[D][1], 10.06[D][2]
  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]
  disclaimers and 17.07[B]
  eliminating privity requirements 16.01[E]
  industry standards distinguished 11.02[A]
  intervening 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 statement, 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 28.01[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., 28.03[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 30.07[C] et seq.
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]
rejection of discovery rule 30.05[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]
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]
negligence, inclusion of 28.05[B]
negligence exception and 28.05[A]
patent deficiency, particularized statute in re 30.11
prior pleadings: notice standard 28.09
problems as to 30.01
relationship to 28.09
repetitive stress injuries, functional
battlegrounds of discovery principle 30.08[C]
significant factors in discovery fact questions 30.07[B]
significant factors in discovery fact questions, identity of specific manufacturer 30.07[D][1]
statutes extending limitations period 30.13[D]
statutory language, effect 28.05
substance or procedure 28.00
theories of liability, in relation to 28.01 et seq.
choice among limitations 28.02
symmetry, choice of limitations and 28.02[A]
time of accrual and 28.03
time of injurious occurrence 30.03
discovery rationale, implication of 30.03[B]
opposite result, unfairness of 30.03[A]
tort over contract theory 28.01 et seq.
U.C.C. provisions as to 28.02[B], 30.02
alternative choice 28.02[B]
delivery, time of 30.02[A]
sale, time of 30.02[B] et seq.
unrepresented foreign firms, suits against 30.13[A]
wrongful death statutes 30.05[E][1][b]
discovery rule applied 30.05[E][1][a]
Statutes of repose
(See also Statutes of limitations)
central issues 30.12[F]
constitutional issues as to 30.12
construction of 30.12[B]
consumption 30.12[B][3]
discovery rules 30.12[B][13]
improvements to real property 30.12[B][5] et seq.
interim periods 30.12[B][12]
ordinary meaning and technical interpretation 30.12[B][1]
procudural vs. substantive 30.12[B][14]
purchaser terminology and leases 30.12[B][8]
rationale for 30.12[A]
rigorous enforcement and fraudulent concealment exception 30.12[C]
specialized statutes 30.12[B][10]
statutes invalidated 30.12[E][1] et seq., 30.12[E][1][a]
statutes upheld 30.12[E][2] et seq., 30.12[E][2][c]
successors 30.12[B][11]
"useful safe life" 30.12[B][4]
wrongful death statutes, relation to 30.12[B][9]
core factors 30.12[F]
diseases 30.12[B][2]
rigorous enforcement and fraudulent concealment exception 30.12[C]
highly culpable conduct 30.12[D]
rigorous enforcement and fraudulent concealment exception 30.12[C]
open courts provisions 30.12[E][2][b]
Steam coils (for heating petroleum) 6.04[D]
Steel, defective, bridge closing and 27.03[C][1]
Stolen handguns defects, consumer expectations and 8.06[G]
Strict liability
(See also Disclaimers; Indemnity)
active/passive distinction, indemnity and 14.04[E][1][a]
adequate warning 19.11[D][2][c]
application challenged 22.03[B][3]
assessment and forecast 7.06
basic conceptual and policy arguments 22.03[A]
blood and blood products 12.16[A][2][a]
characterization under statutes 26.04[B][3]
common law claims 7.06
comparative negligence statutes and 22.03[C] et seq.
comparative principles favoring defendant negligence concepts and strict liability 22.05[A]
comparative rationales, elaboration of 22.03[D]
consumer protection and 22.03[D][1]
equity and 22.03[D][2]
fairness 22.03[D][2]
shifting losses and 22.03[D][1]
comparisons of doctrines in 22.06
advantages of 22.06[A]
constructive negligence, criticism of 22.06[B][2]
exclusive focus on plaintiff, criticism 22.06[B][1]
norm deviation and 22.06[B][3]
techniques of 22.06[B]
INDEX

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]
dothorical 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][c]
noncomparability as rebuttal 22.03[A][2]
no-substantial-change element 12.03[G][1][b]
opposition to 12.03[G][1][c]
orinary contributory negligence and 20.01[C]
policy arguments 22.03[A][1]
post accident changes 25.07
product issue 7.03[A]
parties without knowledge of defect 14.04[G]
principal 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]
restitution damages and, doctrinal controversy
over 29.02 et seq.
rationales for 7.05
access to information 7.05[D]
burden, overwhelming 7.05[G][2]
consumer expectations and 7.05[B]
criticism 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]
excusatory 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
Alad 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: Alad 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]
test: invention and development 13.07[A]
theorized damag[es 13.11[D]
recovery, focal element illustrated 13.08
strategies for loss avoidance 13.12
stripping subsidiaries and 13.04
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]
basic 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]
improbabilities to 2.02[C], 2.02[D]
miuse as proximate cause, third-party users and 21.08[E][1]

IN-35

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 08/18/2019 11:09:40PM
via free access
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.
possess 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]

Tires
implied warranties, merchantability 6.02[I]

T.J. Hooper, The, case, negligence and 5.08[A][2]

Toxics
exposure to, circumstantial evidence and 23.12[L]

Uniform Commercial Code
See also Statutes of limitations

Uniform Sales Act 17.06[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 Statutes 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
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]
rebidders 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]
frustrated course 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.
tended 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]
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]
lateral danger 19.11[B][2]
layers 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]
repairers 19.07[I]
retailers 19.07[C]
role of doctrine 19.09 et seq.
Beshada 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]
omissions 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]
INDEX

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[A]
especially risky uses of product 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
proof as to claims 23.10, 24.10[B]
quality vs. performance 30.02[B][3]
strict liability and 26.03[C]
disclaimers, effectiveness 17.09[B][3]
proof to as 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]
merchandising 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 comparative fault legislation and 15.03[E]

employee suits and 15.02
functional applications of comparative fault doctrines to employers in third-party actions 22.16[A][2]

immunity 15.03[B] et seq., agreements overridden by 15.03[D]
rationale to 15.03[A] et seq.
indemnity and dual capacity 14.07[D][2]
implications for successors 14.07[D][1]
insurer reimbursement 15.04
manufacturers and employers and 15.03
duty owed to manufacturer 15.03[B][2]
general rule 15.03[A]
immunity of, rationales for 15.03[B] et seq.
statutory exclusively 15.03[B][1]
negligence and 15.03[C]
specialized compensation statutes and 15.03[F]
third-party recovery, denial to manufacturers 15.03[A], 15.03[F]
equitability and 15.05[B][1]
insurer, contribution from 15.05[B][3]
intentional wrong exception 15.05[A]
Model Uniform Products Liability Act provisions 15.06
negligence, recovery in 15.05[B]
recovery by employer 15.04
reforms, proposals as to 15.06

standard if not common liabilities and 15.05[B][2]

safety devices 9.09[A]
contributory negligence 20.01[D], 20.01[I][1], 20.01[P], 20.04[A][2]
design defects and discovery 30.06[A][2][b]
dual capacity 12.03[D][d] et seq.
employer carelessness 32.11
express warranty 3.01[A]
indemnity 14.04[B][3], 14.04[D][2], 14.06[B]
interfering modification and 32.05[B]
joint liability 12.23
leases, strict liability and 12.10[A][2][b], 12.10[B]
mechanics’ injuries 21.08[C], 21.08[F][1][a], 23.06[C]

misuse 19.11[B][1], 21.08[A], 21.08[C]
duty to warn and 21.08[C]

Workplace hazards
assumption of risk 20.03[E][2], 20.03[F][3], 20.03[I][3], 20.03[L]
chemical suppliers 19.07[H][1]
comparative apportionment 14.08[E]
comparative fault doctrines 22.16[A] et seq.
conditions of use 9.13[K][2]
cost of avoidance 9.06[E]
duty to warn 9.20[A]
operating instructions 9.03
pleading 9.04[B]
safety devices 9.09[A]

contributory negligence 20.01[D], 20.01[I][1], 20.01[P], 20.04[A][2]
design defects and discovery 30.06[A][2][b]
dual capacity 12.03[D][d] et seq.
employer carelessness 32.11
express warranty 3.01[A]
indemnity 14.04[B][3], 14.04[D][2], 14.06[B]
interfering modification and 32.05[B]
joint liability 12.23
leases, strict liability and 12.10[A][2][b], 12.10[B]
mechanics’ injuries 21.08[C], 21.08[F][1][a], 23.06[C]

misuse 19.11[B][1], 21.08[A], 21.08[C]
duty to warn and 21.08[C]
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[C][3]
other employer conduct 32.05[A][5]
prior claims, lack of 23.06[C]
res ipsea 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]