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[I][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]
    media 1.01[B]
    part of basis 3.09
    proximate cause 1.01[C]
    punitive damages and 29.04[E]
    techniques and contexts of, express warranty and 3.04
  Affirmation of fact test, express warranty and 3.05[A]
  Affirmative duty, 5.04[E]
    negligence, generally 5.04[E]
  Agency reports
    causation and proof 23.14
  Aging products, defect and 8.10[E]
  Agricultural products and equipment
    (See Farming)
  AIDS virus
    American Red Cross 5.04[D]
    contamination of blood products 5.08[G][2][b]
    Perlmutter case 12.16[A][2][a]
    sale of blood and 12.16[A][2][a]
    “services” classification 12.16[A][2][a]
    test to screen blood donors 5.04[D]
    transmission of 5.08[B]
  Air conditioners 23.12[D][3], 24.03[A], 30.11
  Aircraft
    Boyle v. United Technologies Corp. 12.12[B][1][a]
    causation question 23.03[A][1]
    disclaimers
      conspicuousness 17.12[B][1]
      economic loss, property damage and 27.06
      government contract defense 12.12[B]
      helicopter, Texas case 10.05
      manufacturer’s obligation to indemnify 14.04[C]
      misuse, disregard of instructions and 21.04[A]
      offensive collateral estoppel 31.02[B]
      prior claims 23.06[A][1]
      prior pleading 28.08
      proof, elements of 23.03[A][2]
      representational vs. nonrepresentational theories 26.01[C]
      res ipsa loquitur, control requirement and 24.03[B]
      risk, knowledge of 20.03[J][1]
      second collision 22.16[B][1]
      statutes of repose and 30.12[B][1]
      wording of 17.13
      general aviation aircraft 30.12[B][1]
      strict liability components and 12.03[G][1]
      design and 12.12[B][1][a]
      negligence and 26.04[B][2][b]
      tort vs. contract 26.03[B][4]
      warnings, duty as to 19.01[A]
      Air tank (portable), exploding 1.01[C]
      Ailad 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]
        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]
        Doe 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]
comparision and contribution theory 14.08[D][5]
defendants not before the court 14.08[D][6]
European law regarding Ch. E10 joint and several liability generally 14.08[G][1]
other parties’ faults of 22.09
consideration of all parties’ fault 22.09
rejection of aggregation of faults 22.09
percentage issues 14.08[E]
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]
Ashbee decision 3.01[A]
Asbestos Amosite asbestos felt 6.03[L]
causation, basic elements of proof 23.03[A][1][a], 23.03[B]
concealment 2.02[C]
consumer chain, bystanders
foreseeability limitation 16.02[I][1]
foreseeability 5.06[A]
Gold Bond Cement 23.03[B]
government specifications 6.03[L]
installation, strict liability imposed 12.13[A]
Johns-Manville’s participation in development of specifications 6.03[L][1]
jurisdiction denied, “Asahi” decision and its implications 31.01[B][1][c]
litigation 2.02[C]
manifestation 30.06[A]
negligence, reasonable prudent person standard 5.02[A]
proof requirements 23.03[A][2]
punitive damages 19.09[C][2][c]
significant relationship status 30.06[M]
Sindell application 12.24[D][2]
“Summer Simpson Papers” 19.09[B][3]
state-of-the-art defense, admissibility of evidence feasibility 10.02[B]
statutes of limitations, discovery rule 30.08[F]
Asbestos, hazards of blasting caps case 12.24[B]
broker’s liability 12.17
circumstantial evidence 23.12[H]
comparative apportionment, Dole rule and 14.08[A]
consumer choice 19.13[A][1]
consumer expectation test 8.06[J][5][b]
discovery issues
diagnosis 30.07[A][2]
knowledge vs. manifestation 30.06[A][2][b]
dual capacity, safe workspace as benchmark of 12.03[D][5][b]
economic loss, 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]
successor liability
statutes of limitations
continuing events rule 30.04[B][5]
discovery 30.05[B][1], 30.05[B][3][c], 30.06[A][2][a], 30.06[B], 30.06[D], 30.07[A][2], 30.07[D][2], 30.07[E]
extension of limitations 30.13[B]
successor liability distributors 13.07[A][5]
product line exception 13.07[A][3]
third-party emotional distress 32.11
unavoidably unsafe instruction 8.05[G][7]
willful/wanton test 29.04[I][1]
Assumption of risk
(See also Contributory negligence; Industrial machines)
as defense to warranty 20.03
bystanders and 20.03[G]
common pool of knowledge focus 20.05[C]
comparative doctrines of liability, application of to plaintiff’s conduct 22.15[A]
considered choice, degree of 20.03[I] et seq.
addiction 20.03[I][2]
expectable deviations and 20.03[I][1][b]
specific knowledge, effect on recovery 20.03[I][1][a]
unreasonable use, as cognomen for 20.03[I][1][b]
workplace and 20.03[I][1]
consumer’s choice 20.03 et seq.
contributory negligence and 20.01 et seq., 20.01[B], 20.06[C][2]
contributory negligence compared 20.01[D]
melting defenses 20.02[B]
defects and 8.11[A]
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]
ilustrative situations 20.03[J][1]
particularly and 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]
inaudent actions 20.01[M]
patent danger and 20.01[N]
misuse of product and 21.08[B], 21.08[F][2]
obviousness and 20.05
general understanding 20.05[A]
opposition to 20.05[E]
other factors affecting 20.05[D]
patent dangers 20.05[B]
moralistic tint 20.05[B][2]
no duty, concept of 20.05[B][1]
reasonable person defined 20.01[A]
relationship to written releases 20.05[K]
unreasonable use, as cognomen for
20.03[I][1][b]
inadvertence in recreation 20.03[I][3]
unusual risks and occurrences and 20.03[L]
appropriateness of defense 20.03[L]
worker's assumption 20.03[F]
defense of assumption of risk, use of
20.03[F][1]
failure of defense 20.03[F][3]
Fireman's rule 20.03[F][2]
Assurances of knowledge and skill
implied warranty of fitness 6.03[E]
Athletic equipment
(See also Sports equipment)
Auctioneers, liability of 12.06[D][2]
Auctions
used products, strict liability 18.05[A][2]
Automatic doors 8.10[F][1]
Automobiles
(See also Tire blowouts)
A-No. 1 condition terminology 3.10
airbags 11.03[G][1][b]
batteries 24.11[A]
car wash conveyor 12.03[B][1]
circumstantial evidence 23.12[D][2][a]
contract vs. implied warranty 28.06
contributory negligence
burden of repair 20.01[I][2]
negligent repair 23.12[D][2][a]
plaintiff conduct 20.06[C][4], 22.16[B][2]
defect in electrical system 23.12[D][2][a]
design defects 1.01, 11.03[G][1]
duty to warn vs. 9.20[A]
product utility and 9.06[G]
disclaimers
express warranty vs. 17.08
personal injury exclusion 17.03[F]
foreseeability 16.02[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
lifet ime 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]
previous occurrence and 23.06[A]
warranty claims 23.10
punitive damages 29.03[B], 29.03[C] et seq.,
29.03[E], 29.04[B], 29.04[F], 29.04[I][1],
29.05[B], 29.07[C], 29.10[A]
advertising 29.04[E]
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][2]
failure to warn 30.04[B][3]
strict liability 26.04[B][D][b]
vs. negligence 25.04[B][d4]
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 and 
8.09[C][1]
Barker test 8.09[C] et seq., 8.09[C][1], 9.06 et 
seq., 9.18[B][1], 19.09[C][4]
Basic continuity of enterprise test, successor 
corporation and 13.05[B]
Basis of sale 3.09
BB guns 
warnings, duty as to, defects 19.11[D][2][c]
Battery tort 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]
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], 23.04[A][1], 23.12[N], 29.06
Blasting caps case 5.06[A], 12.24[B]
Blood products 12.24[F], 12.24[H]
negligence 5.02[A], 5.04[D], 5.08[A][2]
Blood, provision of 
(See Medical materials, furnishers of) 
“Blood shield” statutes 
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]
misuse of product 21.12
Burglar alarm 27.05[I] et seq.
Bystanders 
assumption of risk and 20.03[G]
courthouse 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][1] et seq. 
direct observation 16.02[E][2]
“free ride” argument, rebuttal to 16.02[B][5]
general terms in re 16.02[A][1]
general tort issue and 16.02[A][3]
liability to bargain, effect 16.02[B][1]
liability theories 
as affecting 16.02[H]
protection entitled to 16.02[B][4]
rationales for recovery 16.02[B][4]
recovery by 16.02[F][1], 16.02[F][2]
“consumer contemplation” test 16.02[B][3]
foreseeability limitation 16.02[I] et seq. 
general view of foreseeability, limitation 
16.02[I][1]
liberal foreseeability 16.02[I][2]
viability of foreseeability questions 
16.02[I][3]
rationales for 16.02[B] et seq. 
rescuers 16.02[C]
users and consumers, similarity to 16.02[B][2]
witnesses to injuries 16.02[E][1]-16.02[E][3]
zone of danger 16.02[E][3]
C
Campos v. Scofield, obviousness defense and 
20.05[B], 20.05[E]
Cancer, chemically induced 30.05[A], 30.07[A][1]
Carpet, defective 27.02[A][1]
Causation 
(See also Proximate cause) 
agency reports 23.14
basic elements of proof, defect vs culpability 
and causation 
both elements proved 23.03[C][1]
elements distinguished 23.03[C][2]
breakdowns of products, standard for, fundamental standards, 
issue of 23.03[A][1][d]
standard for, whether compensable injury exists, question 
of 23.03[A][1][d]
breakdowns of products, whether defendant’s 
product was involved 23.03[B]
benchmarks for or standards for, liability 22.08
IN-4

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM
via free access
INDEX

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
occurrences subsequent 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]
interfering 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]

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]
extended cord 25.02[B][1]
food supplements 19.08[A]
gasoline (used as floor cleaner) 25.02[E][2]
laundry table, 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]
conspiracy 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]
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]

enhancement analysis: an integrated approach 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]

theory and practice 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]

rationalizing, 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]

Comprehensive 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

damages, differentiations among 26.08[A]

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]

substitution 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
INDEX

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]
documental elasticity, effect 21.08[F][4][b]
implication 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]
dead actions 20.01[X]
defense of 20.01[C], 20.04[B]
duty of victim to avoidable consequences 20.01[G]
duty to mitigate damages 20.01[H]
duty to warn 19.11[D][2][g]
express warranty and 20.01[U]
  fact and law 20.01 et seq.
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][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
court, application of comparative principles of liability 22.15[A]
assumption of risk 20.01[N]
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[F] et seq.
burden of proof and 20.01[T][1]
joiner 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][c]
no defense 20.01[S][1]
Restatement (Second) of Torts section 402A and 20.01[S][1][a] et seq.
recovery, bar to 20.01[S][2]
third party defense multiple products 20.01[R]
when plaintiff's conduct is controversial 20.01[S]
willful conduct 20.03[O]

Control
  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
represenational and nonrepresenational theories, promotional language 1.02[C]
strict liability vs. warranty 26.03[C][2][e]
Corporations, liability of
  (See Successor corporations)
Cosmetics 3.05[E], 23.07[B][1], 24.06[A]
INDEX
INDEX

cost of safety features 8.10[F][3]
custom and safety features 8.10[F][4]
foreseeability 8.10[D]
inducement to purchase and 8.10[I]
inferences from previous safety record 8.10[C]
modifications in product 8.10[H]
optional devices and 8.10[F][1]
safety features 8.10[F] et seq.
specificity of principles 8.10[B]
state-of-the-art implications 8.10[F][2]
leased product 8.05[A]
product vs. conduct and 8.03[B], 21.08[A]
overlapping concepts
causation and 8.13
defenses and 8.11
proof 23.12[I][3]

unavoidably unsafe, blood 8.05[G][6]
“unreasonably dangerous” element 8.05 et seq.
balancing tests and 8.05[E]
claims of defect and 9.01[A]
common connotations of terms and 8.05[F]
elements to consider, Dean Wade’s list
9.02[D]
judge and jury and 8.05[D]
negligence, relation to 8.06[B] et seq.
strict liability 8.05[A]
tests for finding 8.05[C], 8.05[D]
theoretical frameworks and 8.05[C]
unavoidably unsafe 8.05[G] et seq.
under strict liability 8.05[A]

use, instructions as to, design and 9.13[N]
verbatim standard, variations in 8.09
Barker test 8.09[C] et seq.
Cronin decision 8.09[B][1]
definition, functionally oriented 8.09[F]
New Jersey standard 8.09[E][2]
Pennsylvania precedents 8.09[B][2]
refinements 8.09[E]
Soule decision 8.09[D]
technicalities ignored, effect 8.09[A]
Texas standard 8.09[E][1]
unreasonably dangerous requirement eschewed 8.09[B]

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

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

Design and designers
abstract definition of 9.02[A]
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]
compliance of a design, negligence defense and 9.01
complex economic relationships and information, requirements as to 9.03

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 comparer 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]
multiplier analysis 9.02[E]
unreasonable risk in fact 9.02[C]
“unreasonably dangerous per se” 9.02[A]
consumer choices concerning safety conceptual approaches to design defect 9.02[G]
crashworthiness design components 9.14[B][1]
danger vs. utility 9.02[A]
dangerousness of, defense of 20.06(C)[3]
defects
manufacturing distinguished from 8.02
reciprocity and 9.20[A]
separating the concepts 9.20[B]
state of the art 9.07[B]
design problems manufacturing defects distinguished 9.01[B]
duty to warn and 9.20
burdensome use 9.13[A][5]
reciprocity and 9.20[A]
separating the concepts and 9.20[B]
dangerousness of, defense of 20.06[C]
defects
manufacturing distinguished from 8.02
reciprocity and 9.20[A]
separating the concepts 9.20[B]
state of the art 9.07[B]
design problems manufacturing defects distinguished 9.01[B]
duty to warn and 9.20
burdensome use 9.13[A][5]
reciprocity and 9.20[A]
separating the concepts and 9.20[B]
dangerousness of, defense of 20.06[C]
defects
manufacturing distinguished from 8.02
reciprocity and 9.20[A]
separating the concepts 9.20[B]
state of the art 9.07[B]
design problems manufacturing defects distinguished 9.01[B]
duty to warn and 9.20
burdensome use 9.13[A][5]
reciprocity and 9.20[A]
separating the concepts and 9.20[B]
dangerousness of, defense of 20.06[C]
defects
manufacturing distinguished from 8.02
reciprocity and 9.20[A]
separating the concepts 9.20[B]
state of the art 9.07[B]
design problems manufacturing defects distinguished 9.01[B]
duty to warn and 9.20
burdensome use 9.13[A][5]
reciprocity and 9.20[A]
separating the concepts and 9.20[B]
dangerousness of, defense of 20.06[C]
defects
manufacturing distinguished from 8.02
reciprocity and 9.20[A]
separating the concepts 9.20[B]
state of the art 9.07[B]
design problems manufacturing defects distinguished 9.01[B]
duty to warn and 9.20
burdensome use 9.13[A][5]
reciprocity and 9.20[A]
separating the concepts and 9.20[B]
dangerousness of, defense of 20.06[C]
INDEX

public policy and 17.06[C]
retailers’ disclaimers ineffective 17.06[A]
construction of provisions, conflict with 17.02
contract perspective 17.01
disclaimer law; U.C.C. section 2–316 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]
limited 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]
esential purpose, failure of 17.03[B]
exclusion of personal injury 17.03[F]
general provisions 17.03[A]
limitations clauses 17.03[E]
linkages of U.C.C. sections 2–316 and 2–719 17.03[G]

Discovery
(See Statutes of limitation)

Distributors
(See also Retailers) 12.06
chemical suppliers 19.07[H]
gas suppliers 12.06[C]
generally 12.06[D] et seq., 12.06[D][1]
importers 12.06[A]
intermediate 12.05[D]

duty to warn 19.07[B]
“good faith vendor without knowledge” 12.05[D]
liabilities adjusted among 14.01–14.08
one-time sales 12.06[D][1]
punitive damages 14.08[D][7]
statutory “sellers” 12.06[D][3]
user as purchaser’s employee 19.07[F]
varieties of 12.06 et seq.
warnings, duty as to 19.07

Doctrinal comparisons 7.04[B][2]
express and implied warranties 6.04[B], 6.04[C], 6.04[G]
negligence and strict liability 5.09
warranty and strict liability 6.04[H]

Dole rule 14.08[A], 14.08[F]

Doors, misuse of 21.05[A][2]

Driveways, imperfections in 27.07[B][1]

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

Drunk driving
misuse of product and 21.02[B][1]
recovery available 21.02[B][2]
Dry cleaning solvent 8.05[G][2]
“Dual capacity” claim 13.04
merger, with a 13.04

Dual capacity doctrine
(See Manufacturers)
Duty to act 5.04[E]

Duty to warn
(See also Warnings, duty as to) 19.01
“actual or constructive knowledge” 13.06[B]

Duty/proximate cause 32.01 et seq.

E
Earthmover 29.04[D]

Economic loss problem
admiralty and 27.04[E]
application of comparative principles 22.14
bias toward limiting liability 27.07[A]
cost internalization and 27.07[A][2]
future tort liability, avoidance of rationale disputed 27.07[A][3]
tort contract distinction 27.07[A][1]
commercial plaintiffs and 27.03
defects discovered after product on market 27.03[E]
duty as contractual 27.03[A][3]
duties vs. tort duty 27.03[C][3]
indirect commercial loss 27.03[D] et seq.
merchantability and 27.03[B]
property damage and 27.05[D]
recovery denied 27.03[C] et seq., 27.03[D][1]
strict liability and 27.03[A] et seq., 27.03[A][1]
comparative fault and 22.14

comparative principles and warranty 22.04

conceptual and policy arguments 27.07 et seq.
Consumer Product Safety Act and 27.04[F]

East River case 27.05[G][1]
European law regarding E4.02

expansive bias 27.07[B]

distinctions as logically unconvincing 27.07[B][1]

general conception of obligation 27.07[B][2]

flexibility, need for

plasticity of characterization illustrated 27.09[B] et seq.

pleading, approaches to 27.09[A]

foundations of modern controversy 27.02

fraud and 27.04[H]

modern controversy, foundations of 27.02

agreement and dissent 27.02[B]

Illinois case 27.02[B][4][a]

majority rule: supporting decisions 27.02[B][4] et seq.

Minnesota case 27.02[B][4][c]

New York case 27.02[B][4][b]

product in the marketplace and 27.02[A][1]

Seely v. White Motor Company

The Peters opinion 27.02[B][2]

Traynor’s majority opinion and rebuttal 27.02[B][1], 27.02[B][3]

negligence if not strict liability 27.04[B]

negligence: recovery denied 27.03[C] et seq.

negligent misrepresentation 27.04[I]

no implied warranty, effect 27.04[A]

burdens on remote sellers 27.04[A][2]

undesirable litigation, fear of 27.04[A][1]

other doctrinal applications negligent misrepresentation 27.04[I]

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

thematic difficulties, paradigm of: Texas trilogy 27.06

warranty but not strict liability 27.04[C]

Elastic bandages, contaminated 29.03[E]

Electric fan, defective 8.05[A]

Electricity

air conditioner, electrocution by 24.03[A]

defect in wire insulation, not electric current 7.05[C]

distribution line electrocution 7.03[C]

European law E2.01[B]

power line electrocution 20.03[J][2], 20.05[C]

product, as a 7.03[C]

strict liability and 7.03[C]

utility meter box 16.02[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]

expert testimony in cases 23.12[G]

explosive failures and 23.12[J] et seq.

general proof vs. particular circumstances 23.12[N]

malfunction, analogues to 23.12[B]

malfunction, inferences from 23.12[A] et seq.

nonvisual sensory evidence and 23.12[M]

passage of time, effects 23.12[D] et seq., 23.12[D][2][a]

physical facts and 23.12[H]

plaintiff’s failure to provide 8.10[C]

policy issues and uncertainty 23.12[R] et seq.

product performance and common sense 23.12[O]

specific intervening events 23.12[D][2][a]

“speculation and conjecture” 23.12[E], 24.05[B]

strength of materials and 23.12[J] et seq., 23.12[I][3]

toxics, exposure to 23.12[L]

uncertainty and policy issues 23.12[R] et seq.

comparative rules, evidentiary implications 22.16[B][2]

remedies with statutes, as to 11.03[F]
demonstrative, and tests after accident 23.13
direct and circumstantial 23.12[F]
federal agencies, reports of 23.14
nonvisual sensory 23.12[M]
social science evidence 19.07[H][4]
sufficiency 23.04
hypertechnical language, effect of use 23.04[B]
variable minimum standards and 23.04[A] et seq., 23.04[A][1]

Exceptional hazard 9.02[A]

Exclusive sales agents 12.06[B]

Expert testimony

circumstantial evidence, cases involving 23.12[G]
conflicting opinions 9.10[B]
consumer expectations test, compatibility with 8.06[J][5][c]
design defects, pleadings in re 9.04[C]
experimental products and 8.06[J][5][c] hearsay 23.07[B][9]
negligence 5.08[B]
prima facie cases and 23.07[B]

opinion and 23.07[B][3] et seq.,

professional credentials 23.07[A][3]
relevance, standards of 23.07[B][10]
testimony based on reports not in evidence 23.07[B][5]
qualifications of the expert 23.07[A]
academic experts 23.07[A][1]
broad knowledge and 23.07[A][2]
practical experience and 23.07[A][4] et seq.

Expertise of buyer 6.03[L][1]
Express warranty
advertising techniques and contexts and 3.04
affirmation-of-fact test and 3.05[A]
amorphous nature of terms 3.05[A]
breach, evidence of 3.08
creation of 3.01[B]
description of goods 3.02[B], 3.05
dickered bargain concept 3.05[B][2]
disclaimers and 17.08
general concept of 3.01
generaliites and; effect of lack of precision 3.05
goods and, description of 3.02
"guarantee," under U.C.C. section 2–313 3.06[B]

implied warranty and 3.10, 6.04[B]

informational positions, effects 3.05[D]
language creating 3.06[B]
limitation on the concept 3.01[A]
narrow meanings of specific terms, effect 3.06[C]
negligent misrepresentation and 3.05
noncompliance with instructions, effect 3.08
non-fault misrepresentation and 4.01[C]
noncompliance with instructions, effect 3.08
categorization of puff, opposition to 3.05[C]
contributory negligence and 20.01[U]

omissions not affirmative representations 3.01[A]

privity, liability without 3.03
privity not required 3.03

professionals, impact of liability on 3.07
puffing, defense of 3.05[B]

categorization of, opposition to 3.05[C]
puffs 3.05 et seq.

A-1 as express warranty language 3.05[A]
affirmation of fact or premise, statement must be 3.05[A]
commonsense discount of sales talk and 3.05[B]
oppositions to characterization 3.05[C]
relatively amorphous terms as nature of 3.05[A]
quantitative statement about product capabilities 3.01[A]
related theories 3.10

reliance on 3.09, 4.01[E]
remoteness in consumer chain, effect 3.03
representation as 3.01[A]

"safe," effect of use of word 3.01[A]
sales talk, commonsense discount of 3.05[B]
seller's informational superiority, effect on defense of generality of language 3.05[D][1]
specialized meanings and 3.06

specific reliance on 3.09

specific terms, effect of narrow meanings of 3.06[C]
suits against professionals 3.07

trade definitions/ordinary words, effects of use 3.06[A]

theories related 3.10
time of creation 3.01[B]

U.C.C. definitions 3.02

goods, description of 3.02[B]
section 2–313, use of terms under 3.06[B]

statements relating to goods 3.02[A]

“warranty” under U.C.C. section 2–313 3.06[B]

what constitutes 3.01[A], 3.04, 3.05[A]

Extended consequences [duty and proximate cause]
(See also Warnings, duty as to)
events, activities under pressure of 32.03

independent response to defect 32.04
intervening conduct of plaintiff 32.06
medical monitoring 32.10
modifications

- competing economic interests in the workplace 32.05[A][4]
- foreseeable, fact question 32.05[A][2][a]
- foreseeable, 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

INDEX

IN-15

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM 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
   interventions, 32.05[A][2]
   limitations, on 32.05[A][2][b]
   misuse of product and, generally 21.02[C] et seq., 21.02[C][3]
   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
   risk of harm 21.02[C][3]
   seller's expectations, viewed from 9.15
   specific types of injury 5.06[A]

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

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

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

G
   Games and toys 1.01[B], 4.01[D], 8.06[B],
   11.03[A][1], 12.17, 12.18[A][5],
   20.03[E][3], 25.02[C]
   Gas industry
      flammable gas, tank truck and 12.03[D][2]
      liquid petroleum 11.03[F]
      natural gas changes in form 6.03[F]
      furnace fired by 30.12[B][5][a]
      negligence and use of 5.08[G][1]
      product, as a 7.03[E]
      propane gas 18.05[B][3][b], 19.08[A],
      23.08[B][1], 23.15[A], 26.03[B][1]
      strict liability and 7.03[E]
      suppliers, liability of 12.06[D]
   Glue, exposure to 30.06[G][1]
   Goldberg case 7.01[C][2]
   "Good tobacco" concept 8.06[E][2]

Government contract defense
   Boyle v. United Technologies Corp. 12.12[B][1]
   design defects, limited to 12.12[B][1][d]
   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]

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

Governmental hazard information
   23.09[F]
   Governmental standards
   postmanufacture, preaccident 25.07
   strict liability and 7.04[B][3]
   Greenman case, strict liability and 7.01[C][1],
   7.01[C][2]
   Grinding mill, high speed 18.05[A][1][c]
   Guarantee, express warranty and use of term
   under U.C.C. 3.06[B]

Gun Control Legislation 11.03[G][22]

Guns
   (See Firearms; Handguns)

H
   Hair dyes 3.05[E], 21.03[C][1], 23.12[G][4]
   Hammers 8.03[A], 12.03[C][1]
   Handguns 5.04[D], 7.01[A], 8.06[G], 8.06[M][3],
   8.09, 9.13[J], 14.04[B][3], 20.05[B][2],
   29.04[I][2], 29.09[D]
   advertising 1.01[B]
   defects generally 8.06[G]
   design defect, ordinary use 9.13[A]
   Colorado, product liability based on actual
   defect only 8.06[G]
   Missouri case 8.06[G]
   risk/utility theory of liability inappropriate
   8.06[G]
   warnings, duty as to, adequacy of warnings
   19.12[A]

Hastert v. Zorgati decision, non-fault
   misrepresentation and 4.01[D]
   Hawaii law 19.09[C][3]

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

Heating system 30.11

Heaven v. Pender, negligence and 5.04[A]

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

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[A][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[A]

software providers, liability of 12.18[A][3a]

Impact

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][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]

IN-17

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM via free access
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]
vendors 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]
conspiracy 12.24[G]
denial of liability, asbestos 12.24[D][2]
DES problem and 12.24[D] et seq.,
12.24[D][1][c]
diverse focuses 12.24[A]
joint and several liability 12.24[C]
judicial objections, DES 12.24[D][6]
legislative solutions 12.24[I]
other products, liability for 12.24[G]
rejection of traditional doctrine, DES
12.24[D][1][a]
vaccines 12.24[D][1]
Reference, doctrines of
(See Res ipsa loquitur)
Information
access to 5.08[G][2][a]
cost of 5.08[G][2][c]
discovery process 5.02[A]
seller’s superiority, express warranty 3.05[D][1]
Information costs, duty to warn and 19.08 et seq.
Inherently dangerous products
cigarettes 8.06[E][2]
handguns 8.06[G]
Injurious occurrence, time of, statutes of
limitations and 30.03 et seq.
Insecticide, Fungicide and Rodenticide Act
[federal] 11.03[G][8]
Installers and installation 12.13
denial of liability 12.13[B]
notdefective product, effect 12.13[B][2]
separate process, effect 12.13[B][1]
strict liability denied installation as separate
process 12.13[B][1]
strict liability imposed 12.13[A]
Instruction manual as a product 30.12[B][1]
Insulation, urea formaldehyde 27.05[J],
29.04[I][3]
Insurance
intentionality as concept 5.13
Intentional infliction of emotional distress 5.10
Intentional torts
(See Battery, intentional infliction of emotional
distress)
Intended use of product
(See Misuse of product)
Intermediate distributors, duty to warn 19.07[C]
Inventors, liability of 12.02
IUD’s
warnings, duty to as to, defects 19.11[D][2][c]

J
Joint and several liability
 apportionment generally 14.08[G][1]
 statutes abolishing the doctrine 14.08[G][3]
 industry wide liability and related issues
 12.24[C]
Joint liability
comparative apportionment 14.08[G]
state statutes abolishing 14.08[G][3]
states adopting 14.08[G][2]
traditional applications 12.23
Judge and jury
negligence 5.07
Jurisdiction
“Ashby” decision and its implications jurisdiction
denied eventual destination insufficient
31.01[B][1][c]
limitations on stream of commerce concept
31.01[B][1][b]
small amount of business 31.01[B][1][a]
jurisdiction sustained factual distinctions
31.01[B][2][b]
general frameworks 31.01[B][2][a]
reasonable anticipation of litigation
31.01[B][2][d]
“stream of commerce” test 31.01[B][2][f]
worldwide market concept 31.01[B][2][c]
Jurisdiction mail advertising, and 31.01[B][2][c]
K
Ketterer v. Armour & Co. 6.01[B], 6.02[E]
Kitchen appliances 8.06[M][2], 9.02[E],
12.06[A], 23.04[B], 23.06[B][1],
23.12[G][3], 24.05[B], 24.09[G][2],
25.02[B][5]
(See also Clothes dryers)
Knowledge
(See also Information)
of risk 5.02[A]

L
Label intended user 21.03[C][1]
Ladders 21.08[B], 23.07[B][14][a], 23.12[F],
23.12[I][3], 23.12[O][2], 24.10[A],
28.02[A], 29.04[I][2]
European law regarding E.05
Language other than English, duty to warn in
19.12[F]
Larsen doctrine 9.14[A][4], 9.14[B]
Laundry extractor, exploding 9.13[A][5]
Lawnmowers 10.02[B], 14.04[A][2],
16.04[C][2][b], 16.01[D][2][b],
21.08[E][1], 23.09[C], 25.01[B]
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]
imposing 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]
rationale 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][c]
implications of 12.10[A][2]
tended seller and 12.10[D]
mandated 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]
Lornet rule 4.01[C], 4.01[D], 4.05[A]
Loss distribution
strict liability spreading rationale 7.05[G][1], 7.05[G][3]
“Lost chance” rule 23.03[A][1][c]
M
Mace 4.06
Machinery, general purpose 9.13[B]
Machines in hospitals, liability of furnishers of 12.16[A][3]
MacPherson v. Buick, liability origins and 5.03
Magnuson-Moss Act, effect on disclaimers 17.07[A]
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[A][2][a]
holding out as general aspects 12.03[B][1]
state statutes 12.03[B][2]
distributional context, unavoidably unsafe products and 8.05[G][2]
rejected 12.03[H][2][d]
modifications 32.05[b][i]
pleadings and proof in actions, specifically required 12.03[C]
defendants 12.03[C][1]
plaintiffs 12.03[C][2]
postaccident conduct, punitive damages and 29.09[E]
postmanufacture, preaccident modifications 25.07
remedial changes, evidence of, admissibility 25.01[C]
safety devices, obligation to maintain 9.13[K][4]
responsibility to provide 9.09[A]
successor liability 12.03[D][3]
INDEX
INDEX

Missing text
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]
document 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]
consciousness, 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]
partial markets, need to identify
21.03[C][2]
proximate cause, manner of use of product and
21.03[C][1]
multiple defenses, practical implications of
21.08[F][4] et seq.
doctrinal elasticity, effect 21.08[F][4][b]
overlapping characterizations 21.08[F][4][a]
other concepts, overlapping of 21.08
overuse defined 21.09
permissible use, boundaries of 21.07
plaintiff's conduct, analysis of defenses based on
21.08[F] et seq.
assumption of risk and 21.08[F][2] et seq.
contributory negligence and 21.08[F][1]
distinguishing misuse and assumption of risk
21.08[F][1][a]
plaintiff's conduct, application of comparative
principles of liability 22.15[C]
misconduct of plaintiff 21.08[F][3]
material, core of 21.08[F][2][a]
material, 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]
material as matter of degree 21.08[F][3][b]
proof of 21.08[G]
proximate cause and 21.08[E]
general aspects 21.08[E][1]
judge, role as to 21.08[E][2]
jury, role as to 21.08[E][2]
third-party user 21.08[E][1]
screwdriver/lever cases 21.05[A] et seq.
semantics of use 21.02[E]
should-have-known cases 21.05[A][2][a]
intended use focus, rejection of
21.05[A][2][b]
jury instructions as to 21.10
unforeseeable manner, intended use in
21.05[A][2][c]
specialized vehicles, joyriding in 21.05[B]
spedding as 21.02[B][1]
recovery available 21.02[B][2]
terminology as to 21.01
third parties 21.10
third-party acts, duty issues generated by 21.08
warnings as to use, disregard of 21.04 et seq.
communication, quality of 21.04[B]
explicit and vivid warnings, effect
21.04[B][2]
precise language requirements 21.04[B][1]
Model Uniform Products Liability Act 9.02[D],
10.01[A], 15.06
Modifications to product
implied warranty of fitness 6.03[D]
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)
al-terrain vehicle, demonstration of 3.01[B]
assembly 4.01[C]
brake failure 12.10[A]
buses 9.15[A], 23.09[A]
chassis misalignment 12.03[G][1]
dump truck bed, faulty 16.01[D][2][a]
gear-box, broken 25.04[B][1]
legislation, preemption issues 11.03[G][1]
restraints 11.03[G][1][b]

IN-22

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM
via free access
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]
vehicles, res ipsa loquitur and 24.09[G][4]
water wagon 20.01[N]
Movies, injuries because of influence of 19.15
Multiple causes, proof issue 23.03[A][1][b]
Multiple defendants 12.23
control, element of and 24.03[B]
Multiple purpose products 9.13[B]
Negligence, generally (See also Contributory negligence; Disclaimers; Used products)
affirmative duty 5.04[E]
applicability of concept 5.01
"as is" clauses and 18.03
assessment of the doctrine 5.09
bargaining model of negligence 5.08[G]
access to information and 5.08[G][2] et seq.
advancing technology, impact of 5.08[G][2][b]
comparative advantage in acquisition and 5.08[G][2][a]
economic models and cost of information 5.08[G][2][c]
product appearance, effect 5.08[G][1]
warnings, need for 5.08[G][1]
care in design/hazard, relative degrees of 5.04[D]
classic formulas of 5.04 et seq.
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.
failure to warn 19.09[B][3]
favored theory, as 5.09
foreseeability and 5.06 et seq.
elasticity of the concept 5.06[A]
test of reasonableness and 5.06[B]
general standard for negligence liability 5.02
harm, severity of 5.08[C][3]
industry standards and 5.08[A]
complexity of cases involving 5.08[D]
compliance as defense 5.08[A][1]
court's role in saying what is required 5.08[A][2]
state-of-the defense 5.08[A][1]
judge and jury, division of authority in actions involving 5.07
Learned Hand test 5.04[B]
lessors, liability of 12.10[G]
liability, irrelevance in determining 14.04[E][1][a]
litigation 5.08[B]
using single expert's testimony 5.08[B]
miuse of product distinguished 21.08[F][1][b]
negligence implied by statutory language 28.05[C]
negligence per se, comparative principles, application of 22.13[A]
other factors 5.02[B]
other doctrines, comparisons with 5.09
outrageous conduct requirement 5.10
parties consideration of all parties fault 22.05[A]
privity, elimination of 5.03, 16.01[A][2]
product standards and 11.03[A]
punitive damages and comparative 29.07[A]
relational concept 5.04[A]
reasonable care, standard of 5.08[D]
reasonable prevention measures, need for 5.08[E]
reasonably prudent person standard 5.02[A]
factors affecting 5.02[B]
reasonable prudence 5.02[B]
relational aspects of negligence 5.04[A]
repairers' standard 12.14[A]
Restatement definition 5.04[C]
specificity 5.05
state-of-the-art defense 10.06[D][1]
statutes of limitations and statutory language, effect 28.05[A], 28.05[B], 28.05[C]
strict liability and 25.04[B][4], 26.04 et seq.
comparative principles favoring defendant 22.05[A]
critical overview of theoretical distinction 26.04[D]
distinctions emphasized 26.04[B] et seq.
INDEX

multiple defendants, distinguishing theories
for 26.04[C]
strict liability, comparisons and distinctions
7.04, 10.06[D][1]
fault element and 7.04[B][2]
fireman’s rule and 7.04[B][3][b]
foreseeability and 7.04[B][3][a]
practical consequences of distinction
7.04[B][3]
similarities 7.04[C]
strictness of strict liability 7.04[B][1]
Sumner Simpson Papers 19.09[B][3]
technology and definition of 9.18[B][1]
T.J. Hooper, The 5.08[A][2]
unreasonably dangerous element and 8.05[B]
variations at different levels of generality
5.04[D]
various types of 5.02[B]
warnings, duty as to 19.09[A], 19.09[B],
19.09[D][2]
warranty and 26.05
distinctions blurred 26.05[C]
judicial differences 26.05[A]
warranty without negligence, but no
negligence without warranty 26.05[B]
workers’ compensation and 15.03[C], 15.05[B]
Negligent misrepresentation 2.03
basis for theory of recovery 2.03
express warranty and 3.05
Federal Tort Claims Act, recovery against
government barred for list of named torts
2.03
NEISS News (of U.S. Consumer Product Safety
Commission) 19.06[E][1]
No duty concept, obviousness and 20.05[B][1],
20.06[A]
Noise hazards 19.10[D][6]
Nondefective products 8.12
Nondisclosure in fraud law 2.02[C]
Non-fault misrepresentation
analogies between other doctrines and 4.05[A]
behavioral effects of representations 4.01[D][1]
broadness of concept of representation 4.03
definitions 4.01
advertising for product that is not warranted
4.01[C]
express warranty and 4.01[C]
section 402A and 4.01[B], 4.07
section 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]
deefined 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]
asumption of risk and 20.05[A]
consumer, to 9.17
defect and 8.11[A], 8.11[C]
design, risks and 9.13
European law concerning 6.03[C]
general understanding 20.05[A]
handguns 8.09
“known hazard” 9.17[A]
non-obvious dangers 19.11[A][1]
patent (open and obvious) danger 20.01[N]
risk 9.17
warnings, duty as to 19.11[A], 19.11[B][1]
Occupational Safety and Health Administration
(OSHA) 11.02[H][3], 11.03[G][12]
Occurrences, previous and subsequent 23.06
One time sales 12.06[D][1]
Oral assurance
insufficient to create express warranty 3.05[E]
Oral contraceptives
(See Contraceptives)
Ordinariness of a danger, as a defense 8.06[B]
Ordinary consumer 8.06[I]
Ordinary products, duty to warn and 19.03
Ordinary purpose
concept of, implied warranty and 6.04[D]
IMPLIED WARRANTIES, MERCHANTABILITY 6.02[G]
Ordinary use, burden of showing 6.02[G]
Overpromotion theory 4.05[D]
Over-the-counter drugs
(See Nonprescription drugs)
Overuse and misuse defined 21.09
Oxygen tank, exploding 24.12

P
Packages and containers
defect in 8.04[A]
manufacturer identity on 12.03[B][1]

IN-24
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]
Particular purpose 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
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
Performance
implied warranties, merchantability 6.02[I]
Performance
(See Industry standards; standards, generally)
Personal injury
disclaimers and 17.03[F]
Particularity of implied warranties
implied warranty of fitness 6.03[L][1]
Particular purpose 6.03[L][1]
INDEX

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

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

Processing 12.15
Producers, European law regarding E3.01
Product alteration 30.12[B][7]
Product appearance 1.02[D], 5.08[G][1], 8.06[J][2]
Product complexity, design defects and 9.12 et seq.
persuasiveness against liability 9.12[B]
Product (condition of) vs. manufacturer’s conduct, strict liability and 8.04[B]
Product components
product damage 27.05[B][4]
Product configuration, adherence to following specifications of others 12.12
arguments against liability 12.12[A][1]
arguments for liability 12.12[A][2]
government contract defense and 12.12[B]
Product continuums 9.11
Product, court definitions of 7.03[A]
Product design
(See Industry standards; Standards, generally)
Product line exception, successor liability and 13.07, 13.07[A]
limitations to 13.07[B]
Product modifications, intervening, extended consequences and 32.05
Product performance
(See Industry standards; Standards, generally)
Product, policy goals and 7.03[G]
Product portrayals 1.01, 1.01[B]
qualified language 3.05[F]

Product liability, public policy assumptions and 25.04[B][1]

Professional, express warranties and 3.07
Promotional language representation and nonrepresentation theories 1.02[C]
Proof 23.01, 23.03
(See also Evidence; Expert testimony basic elements of)
burdens, of 23.15
general considerations 23.15[A]
multiple defendants 23.15[B]
causation, as to 23.09 et seq.
Daubert rules 23.04[A][1]
defects, as to 23.09 et seq., 23.12[I][3]
doctrines of 23.01

federal agencies, reports of 23.14
governmental hazard information and 23.09[F]“lemon” vehicles, as to 23.11
materiality, as to 23.09 et seq.
previous occurrences, as to 23.06
lack of prior claims and injury reports 23.06[C]
prior claims, existence of 23.06[A][1]
proper inferences from 23.08
basic aspects 23.08[A]
experts, requirement of 23.08[B] et seq.
risk, rather than loss already caused 23.03[A][1]
semantic problems 23.01
terminology as to 23.01
theories of liability and 23.02
warranty claims and 23.10

Property damage 27.05 et seq., 27.05[A], 27.05[E], 29.07[G]
comparisons and contrasts 27.05[G][2]
Prosthesis devices 24.09[F], 29.04[B], 30.03[A]
Protective products 19.11[A][1]
Providers 12.26
(See also Manufacturers; Retailers; Sellers; Wholesalers)
roles of 12.01 et seq.
Proximate cause 1.01[C]
(See also Causation advertising and) duty and, extended consequences and 32.01 et seq.

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

Publishers’ liability, duty to warn and 19.15
Puerto Rico, warranty for hidden defects 28.01[A][5]

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

imprecise generalities 3.05[E]
motorcycle ad 1.01[B]
product portrayals, mass media 1.01[B]
qualified language 3.05[F]
warranty and 6.01[A]
Punch press 11.02[D], 21.08[B], 32.05[A][1]

Punitive damages
acquiring firms and 29.07[D]
arguments favoring awards 29.07[D][2]
awards denied 29.07[D][1]
amount of awards 29.09
compensatory damages, relation to 29.09[C]
culpability, degree of 29.09[A]
deterrence, high enough to be 29.08[A]
plurality of awards 29.09[D]
relation to compensatory damages 29.09[C]
appropriateness of 29.01[A][1]
arguments against awards 29.02[B] et seq.
assessing 29.10
constitutional considerations 29.10[D]
justice: general policy criticisms 29.10[A]
multiple awards and overkill 29.10[B]
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]
dead, 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]
minimal requirements 29.01[B]
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]
extension of right from custom 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]
financers 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]
deterrence-to-repair, hypothesis, strict liability and 25.04[B][1]
hybrid of sales and service, as 12.14[C]
manufacturers who repair 12.14[D]
negligence standard and 12.14[A]
strict liability and
applying 12.14[C]
opposition to 12.14[B]
warnings, duty as to, design defects and
19.07[I]

Repetitive stress injuries
statutes of limitations, discovery rule 30.08[C]
Replacement parts
warnings, distributors and manufacturers
19.07[A][3]
Replacement products, extended consequences and
32.07

Reports
Representational background of products 1.01[A],
1.02[C]

Representations
(See also Negligent misrepresentation)

basic
factual representation 2.02[A]

fraud or deceit 2.02[B]

implied warranty of fitness 6.03[M]

“knowledge” of falsity 2.02[B]

overview of theories 2.01

scienter test 2.02[B]

behavioral effects of 4.01[E][1]

culpability standard and 2.02[B]

express warranties 3.01[A], 3.04

fraud

causation, element of 2.02[E]

materiality as element 2.02[E]

nondisclosure of material facts and 2.02[A]

rationales of fraud law 2.02[F]

scienter 2.02[B]

implicit, in products liability 1.01[A]

imprecise generalities 3.05[E]

mixed theories 1.02[B]

nonsense representational theories 1.02

public, effect of portrayal of products to

1.01[A]

publishers’ liability, duty to warn and 19.15

representational and

doctrines 1.02[A]

nonrepresentational theories 1.02

representational liability without fault

functional development and

historical tracings, innocent

misrepresentation and 2.04[B][2]

innocent misrepresentation 2.04[B] et seq.

Michigan cases 2.04[B][3]

mistake 2.04, 2.05

misrepresentation and 2.04[B][1]

overview 2.04[A]

Restatement (Second) section 402B 4.01[A]

Restatement (Third) section 9 4.01[A]

strict accountability, innocent 2.04[B][1]

representational products 1.01[A], 1.02

theories of liability and 1.01[A]

rescuers
basic aspects of liability and 16.02[C][1]

plaintiffs fault, effect 16.02[C][4]

professional 16.02[C][2]

property of 16.02[C][3]

recovery allowed 16.02[C][1]

Res ipsa loquitur
(See also Circumstantial evidence)

alternative causes 24.09[C] et seq.

alternatives ruled out 24.09[C][1]

analysis under the doctrine, significant matters

in 24.09

alternatives, ruling out 24.09[C][1]

automatic cutoff time, lack of 24.09[G][2]

defensive proofs, clusters of 24.09[D]

denial of liability and 24.09[G][1]

difficulty of harmonizing decisions and

24.09[G][2]

event “ordinarily does not occur” and fitness

24.09[E]

history of safety 24.09[B]

intermediate meddling, opportunity for

24.09[A]

Michigan vehicle cases 24.09[G][4][b]

New Jersey vehicle cases 24.09[G][4][a]

opportunity for intermediate meddling

24.09[A]

other alternatives negating defect

24.09[C][3]

period of use 24.09[G][4][b]

plausible remaining alternative and user

conduct 24.09[C][2]

possible defects in manufacturing process

24.09[F]

range of users 24.09[H]

safety history 24.09[B]

tire blowouts 24.09[C][1], 24.09[G][5]
,

24.09[G][5][b]

use: time and character 24.09[G],

24.09[G][5][b]

vehicle cases 24.09[G][4]

causation and 24.08

clusters of uncertain facts

control, element of 24.03[A]

multiple defendants 24.03[B]

defects and proof of defects 24.10

general understanding 24.10[A]

merchantability and 24.10[B]

warranty and 24.10[B]

definitions 24.02

doctrinal elements 24.01

flexibility of 24.07

plaintiff’s conduct and 24.07[A]

technical requirements, absence of 24.07[B]

doctrine and function of 24.01

event “ordinarily does not occur” and experience

24.06

basic understanding 24.06[A]

sudden mechanical failures and 24.06[B]

flexibility of doctrinal elements

plaintiff’s conduct 24.07[B]

Michigan vehicle cases 24.09[d][ii]

New Jersey vehicle cases 24.09[G][4][a]
occurrence of accident, insufficient evidence and 24.05
conjecture and 24.05[B]
expert testimony 24.05[C]
inadequate specific proofs and 24.05[A]
speculation and 24.05[B]
procedural conceptualization of 24.04
other proofs, contrasted with 24.04[B]
rule of evidence vs. presumption 24.04[A]
significant matters
alternative causes 24.09[C][3]
theories of liability and 24.11
distinctions 24.11[B]
similarities 24.11[A]
Rescuers 16.02[C]
Research
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
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]
non-fault theories applicable 12.04[B][2]
intermediate distributors 12.05[D]
policy considerations 12.04[E]
sellers, defining the class of 12.04[A]
occasional 12.04[A]
specific activities 12.04[D]
motor vehicle dealers 12.04[C][2]
pharmacists and 12.04[C][1]
strict liability
statutes exempting retailers from liability 12.04[C]
warnings, duty as to 19.07[A], 19.07[C]
wholesalers vs. 12.05[C]
Retail sale date 30.02[B][4]
Revolvers
(See also Handguns)
Risk 19.12[N]
(See also Assumption of risk allocation of:
Disclaimers incidence of, duty to warn and
layered 19.05
Risk-benefit analysis 8.05[G][3]
as affirmative defense 9.04[C]
utility outweighing 9.13[E]
Risk-benefit standards
defects, overlap with consumer expectations 8.08
Risk-utility standard 8.07
derg 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]
ontransferability 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]
layer additional of 19.14[B]
manufacturer’s responsibility 9.09
Safety features
state-of-the-art implications 8.10[F][2]
Sale, time of, statutes of limitation and 30.02[B]
et seq.
possession and control 30.02[B][5]
purchase date, proof of 30.02[B][6]
Santor v. A & M Kourouklis, 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]
Scintec 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 [duty and proximate cause] 32.10
Separate disease rule 30.06[C][1]
Services
furnishers of
(See Medical materials, furnishers of)
liability 12.16
Settlements 14.03
Severity of harm
negligence 5.08[C]
Ship and boats
blowout preventer on barge, warnings and 19.06[D][2]
economic loss and 27.03[C][3], 27.03[E], 27.04[E]
sudden and calamitous damage 27.05[F]
negligence and 5.05, 5.08[A][2]
res ipsa loquitur and 24.07[A]
tractor-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]
Showing of alternative design 9.18[B] et seq.
Sindell v. Abbott Laboratories 12.24[D] et seq.,
12.24[D][1][c], 12.24[D], 29.07[I]
Slingshots 5.07
Smith v. Richards ("gold or snowballs" case) 2.04[B][2], 2.04[B][3]
Snowthrower 20.01[M]
Social justice
basis for decision in warranty cases 6.01[B]
Solidarity doctrine 30.09[D]
"Sophisticated user" 19.06[D], 19.11[A][2]
Space heater 21.08[C]
Specific obligation 19.02[E]
Specifications for product configuration adherence to 12.12
government contract defense
Boyle v United Technologies Corp. 12.12[B][1]
specialized issues 12.12[B][2]
Spreading 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]
isufficient specificity of regulation 11.03[E][4]
manufactured housing standards, preemption standards 11.03[G][17]
preemption issues, generally 11.03[G]
strict liability 11.01, 11.02[D]
vioations, effect 11.03[A] et seq., 11.03[A][1]
virus-serum-toxin act, preemption issues
11.03[G][18]
warranty 11.01

IN-31

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM
via free access
INDEX

property damage 30.05[C][4]
rejection of discovery rule 30.05[C]
    30.05[C][2], 30.05[C][3], 30.05[C][5], 30.09[A][1]
retroactivity 30.09[F]
significant factors in discovery issues 30.07 et seq.
specific manufacturer, identity of 30.07[D] et seq.
stale and fraudulent claims 30.05[B][4]
statutes extending limitations period
    30.13[D]
statutory discovery rule mandatory
    30.05[B][6]
statutory trigger, disability as 30.07[E]
sudden traumatic event 30.05[C][2]
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]
    identity of specific manufacturer 30.07[D][1]
    statutes extending limitations periods
    discovery statutes 30.13[D]
    revival statutes 30.13[C]
    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
    death begins statutory period 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]
procedural vs. substantive 30.12[B][14]
purchaser terminology and leases
    30.12[B][8]
rationales 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]
“fraudulent concealment exception and rigorous enforcement 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
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]
documental 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]
warrenty 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]
theories distinguished 19.02[B]
notation 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]
ordinary 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]
primary rationale 22.03[A][1]
privity and 16.01[A][5], 27.05[B][2]
product issue and 7.03 et seq.
electricity 7.03[C]
gas 7.03[E]
general considerations 7.03[A]
manufacturer’s conduct 8.04[B]
oil well 7.03[A]
packages and containers and 7.03[B]
speculative applications: computer programs 7.03[F]
X-rays 7.03[D]
public nuisance 7.01[B]
punitive damages and, doctrinal controversy over 29.02 et seq.
rationsales 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]

IN-34

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM
via free access
INDEX

warranty and 26.03 et seq.
  fitness vs. unreasonable dangerousness 26.03[C][2][d]
Subcontractors liability of 12.03[E][1]
  passage of time and 13.06[D]
  Summer Simpson Papers 19.09[B][3]
superseding causes
  extended consequences [duty and proximate cause] 32.06
  Suppliers
  European law regarding E.3.06
  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, 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]
  misrepresentations to 2.02[C], 2.02[D]
  misuse as proximate cause, third-party users and
  21.08[E][1]

IN-35

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM
via free access
INDEX

misuse of product
jury instructions as to 21.10
warnings and 19.11[B][4]
punitive damages and 29.04[H]
used products and 18.04

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

Tire blowouts
assumption of risk and misuse 21.08[F][2][a]
causation and duty to warn 23.09[E]
causation, sufficiency of evidence expert testimony 23.04[A][1]
contributory negligence 20.06[B]
demonstration accident 12.07[B]
foreseeability and misuse 21.02[C][1]
liabilities adjustment 14.08[E]

misuse and foreseeability and 21.02[C][3]
negligence and 5.03, 12.03[H][1][b]
pressurized circumstances 20.01[P]
reciprocity with user's knowledge 19.11[E]
res ipsa loquitur and 24.09[G][5]
alternatives ruled out 24.09[G][5][b]
infERENCE OF defect 24.09[G][5][b]
rejection of liability 24.09[G][5][a]

strict liability and 12.05[A]
tort vs. contract 28.01[A][1], 28.01[A][2]
waiver vs. strict liability 26.02[B][1]

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

Tort over contract, theory of liability, statutes of limitations and 28.01
bar to action 28.01[A]

contrasting policy bases 28.01[A][3]
Louisiana and redhibition 28.01[A][4]
plaintiff's success and 28.01[B][1]
indemnity, implications for 28.01[B][3]
tort and contract, contrasting 28.01[B][1]
U.C.C. as contrary to tort policies 28.01[B][2]
products liability label and 28.01[A][1]
redhibition; Louisiana 28.01[A][4]
U.C.C., rejection and classifications of 28.01[A][2]

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

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

Toxic chemicals 20.03][J][4]
Toxic shock syndrome 8.06[J][5][c], 20.03[A], 20.06[A], 25.06[A][2], 19.1[4], 29.09[E]
Toxics, exposure to, circumstantial evidence and 23.12[L]

Toxic Substances Control Act 11.03[G][25]

Toys
(See Games and toys)

Trade definitions
express warranty 3.06[A]

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

Trenching machines 14.01[C], 29.04[A]

Trucks
(See Motor vehicles)

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

U

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

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

Uniform Commercial Code
(See also Statutes of limitations)
disclaimers 17.02, 17.03, 17.12[A]
express warranty, definitions of 3.01[A], 3.05, 3.06[B], 3.09
horizontal privity, as affecting; section 2–318 and 16.01[C] et seq.
limitation of remedies 17.03
merchantability and implied warranty 6.02[B], 6.03[B]
non-fault misrepresentation and 4.05[B]
notice principles 6.02[N]
tort vs. contract 26.03[A] et seq.
used products 18.02[A], 18.02[C]

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

Uniform Sales Act 17.06[C]
Unreasonably dangerous requirement strict liability 8.05[A]
unavoidably unsafe 8.05[A]

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

IN-36

Marshall S. Shapo - 9781786433725
Downloaded from Elgar Online at 07/21/2019 09:51:13PM
via free access
Unreasonably dangerous products 8.06[G][1], 19.09[B][1][a]
manufacturer’s duty to refrain from selling 17.10[C][4]
Unusual dangers 9.13[A][3]
Used products, liability for arguments favoring liability 18.05[B], 18.05[B][1] et seq.
consumer expectations and 18.05[B][3][a]
defective work by sellers/dealers, effect 18.05[B][2][c]
failure to remedy and 18.05[B][2][d]
functional position and 18.05[B][2] et seq.
issue of business of selling 18.05[B][2]
rebuilders and reconditioners and 18.05[B][2][b]
"as is" clauses 18.02[A]
negligence and 18.03 et seq.
third-party plaintiffs 18.04[A]
California appellate cases against liability 18.05[A][4]
causation, effect of lack of 18.05[A][5]
compensation rationale and 18.05[A][3][a]
fruity 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
"as is" clauses 18.02[A]
merchandising 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
representation 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]
arbitrary distinctions between new and used products, liability for 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]
implicating 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]
comprehensive arguments against applicability of 19.13[D][1], 23.09[E]
comprehensive arguments against applicability of 19.13[D][1], 23.09[E]
comprehensiveness of elements to consider 19.13[C]
comprehensiveness of elements to consider 19.13[C]
consumer 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]
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[B]
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]
proof as to claims 23.10, 24.10[B]
quality vs. performance 30.02[B][3]
strict liability and 26.03[C]

employment 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[B] et seq.
indemnity and dual capacity 14.07[D][2]
implications for successors 14.07[D][1]
insurance 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.
standard for liability and 15.05[A]
third-party recovery, denial to manufacturers 15.03[A], 15.03[D]
equitable contribution and 15.05[B][1]
insurer, contribution from 15.05[B][3]
standard for liability and 15.05[A]
third-party tortfeasor, insurer reimbursement 15.04
torto suits vs. 15.01

Workplace hazards
assumption of risk 20.03[E][2], 20.03[F][3], 20.03[J][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] et seq.
employment carelessness 32.11
express warranty 3.01[A]

indemnity 14.04[B][3], 14.04[D][2], 14.06[B]
intervening 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]
implement 21.08[B][1], 21.08[A], 21.08[C]
duty to warn and 21.08[C]

INDEX
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], 20.06C3[3]
other employer conduct 32.05[A][5]
prior claims, lack of 23.06[C]
res ipsa loquitur 24.12
sudden danger, property damage and 27.05[E]
sudden traumatic event, discovery and 30.05[C][2]
warnings
  adequacy of 19.12[A]
  duty as to 19.07[E], 19.07[F]
  risky product and 19.06[E][2]

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

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

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