

TABLE OF CONTENTS

PREFACE	V
ACKNOWLEDGMENTS	VII
TABLE OF CASES	XIX
TABLE OF STATUTES	XXXIX
TABLE OF REGULATIONS.....	XLIII
TABLE OF RULES.....	XLV
TABLE OF RESTATEMENTS	XLVII
Chapter 1. Introduction to Tort Liability.....	1
A. History	1
B. Negligence.....	4
MacPherson v. Buick Motor Co.	5
Notes and Questions	9
Hatch v. Ford Motor Co.	9
Notes and Questions	11
C. Misrepresentation	13
Hauter v. Zogarts	16
Notes and Questions	19
Chapter 2. Warranty	21
A. Introduction	21
B. Express Warranty	23
1. Affirmations of Fact.....	24
Notes and Questions	25
2. Interpreting the Language	26
Lane v. C. A. Swanson & Sons.....	26
Notes and Questions	29
3. Basis of the Bargain	30
Hauter v. Zogarts.....	30
Notes and Questions	31
C. Implied Warranty of Merchantability.....	33
Dewitt v. Eveready Battery Co.....	34
Notes and Questions	39
D. Implied Warranty of Fitness for Particular Purpose	42
Problem	43
E. Persons Who Are Protected: Privity of Contract	44
Compex International Co., Ltd. v. Taylor.....	46
Notes and Questions	49

F.	Disclaimers of Warranties, Limited Warranties, and Limitations of Remedies	50
	Henningsen v. Bloomfield Motors, Inc.	50
	Notes and Questions	55
	Potomac Plaza Terraces, Inc. v. QSC Products, Inc.	57
	Notes and Questions	64
	Problem	69
G.	Notice	69
Chapter 3. Emergence of Product Liability		71
A.	Adoption	71
	Escola v. Coca Cola Bottling Co. of Fresno	71
	Notes and Questions	76
	Greenman v. Yuba Power Products, Inc.	76
	Notes and Questions	80
B.	Policies Underlying Products Liability	83
	Richard Posner, Strict Liability: A Comment	83
	Gary Schwartz, Contributory and Comparative Negligence: A Reappraisal	90
	Steven Shavell, Strict Liability Versus Negligence	93
	A. Mitchell Polinsky & Steven Shavell, The Uneasy Case for Product Liability	94
	John C. P. Goldberg & Benjamin C. Zipursky, The Easy Case For Products Liability Law: A Response To Professors Polinsky and Shavell.....	104
Chapter 4. Defect		115
A.	Introduction	115
B.	Manufacturing Defects.....	116
	Welge v. Planters Lifesavers Co.	116
	Notes and Questions	119
	Hunt v. Ferguson-Paulus Enterprises	123
	Notes and Questions	125
C.	Proof of Non-Specific Defect Through Circumstantial Evidence	129
	Smoot v. Mazda Motors of America, Inc.	129
	Notes and Questions	133
D.	Design Defects	137
	1. Introduction	137
	2. Consumer Expectations	138
	Gray v. Manitowoc Co., Inc.	138
	Notes and Questions	142
	Keller v. Welles Department Store of Racine	145
	Notes and Questions	148
	Bourne v. Gilman	148
	Notes and Questions	154
	3. Risk-Utility	160
	Nelson v. Sunbeam Products, Inc.	160

	Notes and Questions	168
	Fallon v. Clifford B. Hannay & Son, Inc.	171
	Notes and Questions	174
4.	Allowing Plaintiffs to Use Both Consumer Expectations and Risk-Utility	180
	Barker v. Lull Engineering Co.	180
	Notes and Questions	185
5.	Special Issues Related to Design Defects.....	189
	(a) The Foresight/Hindsight Distinction.....	189
	(b) Product Misuse	193
	Morgen v. Ford Motor Co.	194
	Notes and Questions.....	200
	(c) Changes in Technology.....	206
	Boatland of Houston, Inc. v. Bailey	206
	Notes and Questions.....	213
	O'Brien v. Muskin Corp.....	217
	Notes and Questions.....	222
	(d) If There Are Multiple Participants in a Design Process, Who Should Be Deemed Responsible for the Product's Design?	227
	Bexiga v. Havir Manufacturing Corp.	228
	Notes and Questions.....	232
	Mott v. Callahan AMS Machine Co.....	237
	Notes and Questions.....	242
	(e) Special Problems with Medical Devices and Pharmaceuticals	249
	Grundberg v. Upjohn Co.	249
	Notes and Questions.....	264
E.	Warning Defects	270
	1. Duty to Warn	270
	Hollister v. Dayton Hudson Corp.	270
	Notes and Questions	277
	(a) Foresight and Hindsight in Warning Cases	281
	2. Adequacy of Warning	283
	Spruill v. Boyle-Midway, Inc.	283
	Notes and Questions	289
	Edwards v. California Chemical Co.	292
	Notes and Questions	296
	Problem	298
	Broussard v. Continental Oil Co.	298
	Notes and Questions	304
	3. Obvious or Known Dangers	313
	Campos v. Firestone Tire & Rubber Co.	313
	Notes and Questions	319
	4. Who to Warn	324
	(a) Users, Consumers, and Bystanders	324
	Humble Sand & Gravel, Inc. v. Gomez	324

	Notes and Questions.....	334
(b)	Learned Intermediaries	337
	Centocor, Inc. v. Hamilton	337
	Notes and Questions.....	351
(1)	Allergies and Idiosyncratic Reactions	356
(c)	The Continuing Duty to Warn	358
	Lovick v. Wil-Rich.....	358
	Notes and Questions.....	364
	Problem	369
Chapter 5. Causation in Fact.....		371
A.	Tests for Determining Causation	371
	Doull v. Foster	373
	Notes and Questions	384
	Problems on Causation	385
B.	Proof of Causation	386
1.	Reliance on Warnings	386
	Burke v. Spartanics Ltd.....	386
	Notes and Questions	391
	Town of Bridport v. Sterling Clark Lurton Corp.....	393
	Notes and Questions	396
2.	Enhanced Injuries	401
	Jahn v. Hyundai Motor Company	401
	Notes and Questions	411
	Problem	412
3.	Linking the Defendant to the Product	413
	In re Methyl Tertiary Butyl Ether (“MTBE”) Products Liability Litigation.....	413
	Notes and Questions	424
	Rutherford v. Owens-Illinois, Inc.	425
	Notes and Questions	438
Chapter 6. Admissibility of Evidence Bearing on Proof of Defect and Causation.....		445
A.	Industry Standard and Custom	445
	Kim v. Toyota Motor Corporation	445
	Notes and Questions	455
	Alevromagiros v. Hechinger Co.....	459
	Notes and Questions	464
B.	Post-Accident Remedial Measures	464
	First Premier Bank v. Kolcraft Enterprises, Inc.....	464
	Notes and Questions	468
C.	Expert Witnesses.....	470
	Daubert v. Merrell Dow Pharmaceuticals, Inc.....	470
1.	Science and Causation in Toxic Tort Cases	478
	Notes and Questions	494
	General Electric Company v. Joiner	496

Notes and Questions	503
Kumho Tire Co., Ltd. v. Carmichael	504
Notes and Questions	511
Milanowicz v. The Raymond Corporation.....	512
Notes and Questions	522
Best v. Lowes Home Centers, Inc.	525
Notes and Questions	534
2. State Court Approaches to Admissibility.....	542
Chapter 7. Duty and Proximate Cause (Scope of Liability).....	551
A. Introduction	551
B. Duty, Foreseeability and Remoteness.....	557
Quisenberry v. Huntington Ingalls Inc.	558
Notes and Questions	567
Grover v. Eli Lilly & Co.	568
Notes and Questions	574
C. Intervening and Superseding Causes	576
Green Plains Otter Tail, LLC v. Pro-Environmental, Inc.	576
Notes and Questions	580
Barry v. Quality Steel Products, Inc.	581
Notes and Questions	588
D. The Special Problem of Product Alteration	592
Robinson v. Reed-Prentice Div. of Package Mach. Co.	592
Notes and Questions	600
Anderson v. Dreis & Krump Manufacturing Corporation.....	601
Notes and Questions	609
Southwire Co. v. Beloit Eastern Corp.	610
Notes and Questions	613
Chapter 8. The Effect of Statutes and Regulations.....	615
A. Introduction	615
B. The Role of Non-Compliance and Compliance with Safety Statutes ...	617
Harned v. Dura Corporation.....	617
Notes and Questions	621
C. Regulation.....	626
Southland Mower Co. v. Consumer Product Safety Commission	627
Notes and Questions	642
D. Preemption.....	643
1. Express Preemption	644
Bates v. Dow Agrosciences LLC	644
Notes and Questions	655
2. Implied Preemption.....	659
BIC Pen Corporation v. Carter.....	659
Notes and Questions	666

Chapter 9. Damages	673
A. In General	673
B. Pecuniary Loss and Harm to Property	677
Alloway v. General Marine Industries	677
Notes and Questions	687
C. Emotional Distress	689
Gnirk v. Ford Motor Co.	689
Notes and Questions	693
Burns v. Jaquays Mining Corp.	695
Notes and Questions	702
D. Punitive Damages	705
Acosta v. Honda Motor Co., Ltd.	705
David Owen, Problems in Assessing Punitive Damages Against Manufacturers of Defective Products	710
Notes and Questions	712
Clark v. Chrysler Corp.	716
Notes and Questions	726
 Chapter 10. Apportionment of Liability Among Multiple Parties	 733
A. Consumer Conduct Defenses and Comparative Responsibility	733
1. The Movement to Comparative Responsibility	735
Daly v. General Motors Corp.	735
Notes and Questions	743
2. Assumption of the Risk	750
Krajewski v. Enderes Tool Co., Inc.	751
Notes and Questions	755
Problem	758
3. Product Misuse	759
B. Apportioning Liability Among Defendants and the Special Role of Employers: Contribution and Indemnity	759
1. Apportionment Within the Distributive Chain: Indemnity	762
Vandermark v. Ford Motor Co.	763
Notes and Questions	764
Owens & Minor, Inc. v. Ansell Healthcare Products Inc.	765
Notes and Questions	772
2. Apportionment Outside The Distributive Chain: Contribution	775
3. Partial Settlements	779
4. The Special Case of Employers	783
Conwed Corp. v. Union Carbide Corp.	784
Notes and Questions	788
 Chapter 11. Statutes of Limitation and Repose	 791
Raymond v. Eli Lilly & Co.	791
Notes and Questions	797
Heath v. Sears, Roebuck & Co.	799
Notes and Questions	803

Daley v. A.W. Chesterton, Inc. 808
 Notes and Questions 819

Chapter 12. Parties and Transactions Governed by Strict

Liability **823**

A. Parties Who Can Be Sued 823

 1. Retailers, Wholesalers, and Distributors 823
 Hinton v. Sportsman’s Guide, Inc. 824
 Notes and Questions 830

 2. Government Contractors 831
 Boyle v. United Technologies Corp. 831
 Notes and Questions 838
 Problem 841

 3. Successor Corporations 842
 Savage Arms, Inc. v. Western Auto Supply Co. 842
 Notes and Questions 848

B. Transactions Covered by Products Liability and Warranty 852

 1. Leases and Bailments 853
 Samuel Friedland Family Enterprises v. Amoroso 853
 Notes and Questions 859
 Monroe v. Savannah Electric and Power Company 860
 Notes and Questions 863

 2. Franchisors and Trademark Licensors 865
 Kosters v. Seven-Up Co. 865
 Notes and Questions 869

 3. Facilitators 871
 Erie Insurance Company v. Amazon.com, Inc. 871
 Notes and Questions 879

 4. Publications 883
 Winter v. G.P. Putnam’s Sons 883
 Notes and Questions 887

 5. Used Products 889
 Allenberg v. Bentley Hedges Travel Serv. Inc. 889
 Notes and Questions 893

 6. Real Estate 897
 Keck v. Dryvit Systems, Inc. 897
 Notes and Questions 903

 7. Services 907
 Whitaker v. T.J. Snow Co. 909
 Notes and Questions 913
 Two Two v. Fujitec America, Inc. 914
 Notes and Questions 918
 Royer v. Catholic Medical Center 922
 Notes and Questions 926

Chapter 13. Complex Litigation	929
A. Introduction	929
Notes and Questions	929
B. Multidistrict Litigation	930
In re Silicone Gel Breast Implants Products Liability Litigation	932
Notes and Questions	935
1. The Vioxx Settlement	938
C. Class Actions	945
Valentino v. Carter-Wallace, Inc.	948
Notes and Questions	955
In re Rhone-Poulenc Rorer Inc.	957
Notes and Questions	964
Amchem Products, Inc. v. Windsor	965
Notes and Questions	984
1. The Class Action Fairness Act of 2005.....	987
2. Mandatory Class Actions	988
Sullivan v. Saint-Gobain Performance Plastics Corporation	993
Notes and Questions	1004
D. The Bankruptcy Option	1004
In re Joint Eastern & Southern District Asbestos Litigation	1006
In re Asbestos Litigation.....	1008
Notes and Questions	1012
INDEX.....	1017