Index

ACCIDENT

Prior

see EVIDENCE

Scene

see EVIDENCE

ADMISSIONS

Generally, **13:24**, **13:25**, **14:8**, **14:16**

Of liability, 16:13

ADVERTISING

Generally, **5:8**, **5:16**, **5:18**, **6:4**, **13:8**, **13:22**, **16:9**

AFFILIATES

See DISCOVERY

ALTERATION OF PRODUCT

Defence of see DEFENCES Warnings and see WARNINGS

ANTI-SUIT INJUNCTIONS

See CONFLICT OF LAWS

ASSUMPTION OF RISK

See DEFENCES

AUTOMOBILES

See MOTOR VEHICLES

BAR ORDERS

Generally, **17:16**

BLOOD PRODUCTS

Generally, **4:17**, **6:11**

BURDEN OF PROOF

Generally, 2:15, 2:16, 5:3 Causation in fact, 7:2 to 7:4 Insurance disputes, in, 10:15, 11:4

BURDEN OF PROOF—Cont'd

Multiple possible causes, **7:5**Res ipsa loquitur
see CAUSATION

CAUSATION

Alternative theories, 7:3
Crumbling skull, 7:7
Duty to warn, and, 7:9
Failure to establish, 13:20, 13:28
Intermediate examination, 7:10,
7:15

Intervening cause, 6:7, 7:14, 13:29 Last clear chance doctrine, 7:13 Material risk theory, 7:3 to 7:5 Negligence, 1:9

Novus actus interveniens, 7:12, 7:14

Post-Snell decisions, **7:5**Pre-existing conditions, **7:7**Probabilistic causation, **7:3**Remoteness

see REMOTENESS
Res ipsa loquitur, **2:16**, **7:8**Thin skull, **7:7**Voluntary assumption of risk see DEFENCES

CAVEAT EMPTOR

Generally, 4:1, 4:10 to 4:14

CHOICE OF LAWS

See CONFLICT OF LAWS

CLASS ACTION

Causes of action generally, 12:3 to 12:13 breach of contract, 12:7 breach of warranty, 12:8 conspiracy, 12:8

CLASS ACTION—Cont'd Causes of action—Cont'd breach of warranty, 12:8—Cont'd consumer protection legislation, 12:8 sale of goods legislation, 12:8 strict liability, 12:8 damage, essential element of, 12:12 failure to warn, 12:5 misrepresentation, 12:6 negligence, 12:4 waiver of tort, 12:13 Certification generally, 12:2	CONFIDENTIALITY Communications with regulators, 14:10 Confidentiality orders generally, 13:13, 14:24 to 14:29, 17:3 availability, 14:27 discovery material and productions, 14:25, 14:28 purpose, 14:26 Sealing orders, 14:24 to 14:29 CONFLICT OF LAWS Anti-suit injunctions, 10:11 Assumption of jurisdiction, new framework, 10:3
necessary evidence, 12:21	· · · · · · · · · · · · · · · · · · ·
onus, at, 12:21	Choice of laws, 10:15 Connection facts, presumption of,
rates, 12:22	10:4
requirement, 12:2	Costs, 10:20
Class treatment, "paradigm" case, 12:1	Defensive declaratory actions, 10:12
Common issues, 12:18	Enforcing foreign judgments, 10:1 ,
Indentifiable class	10:14
generally, 12:14 to 12:17	Forum non conveniens, 10:2 , 10:8
classes, 12:14 to 12:17	forum selection clauses, 10:10
derivative claims, 12:14 to 12:17	recent decisions, 10:9
national and international, 12:14	Forum of necessity, 10:7
to 12:17	Hague Convention, 10:13
requirement of, 12:14 to 12:17	Interprovincial judgments, 10:14
Preferable procedure, 12:19	Judicial comity, 10:1 , 10:8 , 10:11 , 10:14
Representative plaintiff, 12:20 Trials, 12:23 , 12:24	Juridical advantage, 10:8, 10:11
commomn issues, 12:23	Jurisdiction, 10:1, 10:2, 10:8
individual trials, 12:24	Jurisdiction generally, 10:2
	Lex fori, 10:15
COMPETITORS	Lex loci delicti, 10:15, 10:16
State of the art	Practical considerations
see DEFENCES	generally, 10:16
Warnings, evidence of	choice of laws, 10:17
see WARNINGS	costs, 10:20
COMPONENT PARTS	enforcement of judgment, 10:21
Insurance coverage and, 9:8, 11:25,	evidentiary issues, 10:18
11:28, 11:29	forum selection clause, 10:30.20
Liability for, 5:4 , 5:6	procedural laws, 10:19

CONFLICT OF LAWS-Cont'd

Rebutting the presumption, 10:5 Recent decisions, 10:6 Service, foreign, 10:2, 10:13, 10:14

CONTAINERS

See WARNINGS

CONTRACEPTIVES

Generally, **3:10**, **3:13**, **6:11**, **6:12**

CONTRIBUTION

Apportionment of liability, 13:26, 17:13

Contributory fault, 13:26

CORONER'S INQUESTS

Generally, 13:5

COSTS

Allocation of defence costs (insurers), 11:15
Sanction for spoliation

see SPOLIATION OF EVI-DENCE

DAMAGES

Consequential loss, **4:23**Economic loss
see ECONOMIC LOSS

DANGEROUS PRODUCTS

Generally, 3:1, 9:7

DEFECT

Concept of, 1:5, 2:3 to 2:12 Implied warranties, and, 4:3, 4:8, 4:13

Knowledge of, 3:7

Latent, 2:6

Obscure, 16:12

Obvious, 2:3 to 2:12

Proof of, 2:4, 14:17, 16:12

DEFENCES

Alteration of product, **3:3, 6:6**

DEFENCES—Cont'd

Compliance with regulatory standards

see REGULATIONS AND REGULATORY AGEN-CIES

Limitation period, expiry see LIMITATION PERIOD

Misuse, 2:5, 2:7, 3:3, 3:7, 6:3, 16:9, 17:7

No-fault insurance, 6:22

Obvious and apparent danger, **3:4**, **6:10**

State of the art, **6:13**, **13:20**, **16:4** Voluntary assumption of risk, **3:2**, **6:2**

DEFENSIVE DECLARATORY ACTIONS

See CONFLICT OF LAWS

DESIGN

Defective, 13:20 Foreseeability, 2:5 Negligence in, 2:1, 2:3 to 2:25, 13:20 Risk/utility analysis, 2:10, 6:13 Testing, 2:23

Viable alternatives, 2:9, 6:13

DISCLAIMERS

See WARRANTIES

DISCOVERY

Confidentiality orders see CONFIDENTIALITY

Documents

generally, **14:2 to 14:12** affiliates, production from, **13:13**, **13:18**, **14:6**

possession, control and power, 14:7

Foreign affiant, 14:11

Implied undertaking, 13:5, 14:24 to 14:29

Oral examination

defendant, 14:18 to 14:23

DISCOVERY-Cont'd EVIDENCE—Cont'd Oral examination—Cont'd Computer generated, 8:29 plaintiff, 14:14 to 14:17 Demonstrative, 8:22 to 8:35, 16:11 Parallel foreign litigation, 14:8 Diagrams, 8:32 Prior incidents Experiments, 8:33 see EVIDENCE Experts Product see WITNESSES inspection, 13:12, 13:13 Gathering, 13:4 to 13:8 locating, 13:10 Maps, 8:32 preserving, 13:9 Models, 8:32 Proprietary information, 17:2 to Opinion evidence, 8:46 17:7 Oppressive, 8:21 Relevance, 14:9 Photographs, 8:24, 13:12 Similar fact evidence Preservation of, 8:2 to 8:11, 13:9 see EVIDENCE Preservation orders. 13:9 Translations, 14:12 Prior incidents, 8:16 to 8:21, 13:8, Translators, 14:23 13:29, 14:9, 16:8 Product DISTRIBUTOR see DISCOVERY See PARTIES Re-creations, 8:31 **DRUGS** Remedial measures, 8:12 to 8:15, 16:7 See PHARMACEUTICALS Similar fact evidence, 8:16 to 8:21, DUTY 14:9, 16:8 Of care, 1:7, 5:3, 5:6, 5:8, 5:16 to Simulations, 8:30 5:18, 6:4 Spoliation of To defend see SPOLIATION OF EVIsee INSURANCE **DENCE** To inspect Summary judgment where evidence see INSPECTION lacking, **15:4** To warn Videotaped recordings, 8:25 see WARNINGS day-in-the-life recordings, 8:27 surveillance tapes, 8:26 ECONOMIC LOSS View, taking a, 8:34 Breach of implied warranties, and, 4:23 **EXEMPLAR** Categories of loss, 9:1, 9:7 to 9:9 Generally, 13:5, 13:6 Complex structures, 9:8 FOOD PRODUCTS Dangerous products, 9:7, 9:9 Generally, **4:8**, **5:3**, **5:6**, **6:13** Indeterminate liability, **9:1 to 9:7** Policy reasons, **9:1 to 9:7, 9:9** FOREIGN JUDGMENTS Proximity, 9:2 to 9:6, 9:9 Enforcement Shoddy products, 9:7, 9:9 see CONFLICT OF LAWS **EVIDENCE** FOREIGN SERVICE

See CONFLICT OF LAWS

Accident scene, 13:5

FORUM NON CONVENIENS

See CONFLICT OF LAWS

FRANCHISEES

See PARTIES

FUNDAMENTAL BREACH

Generally, 4:21

HAGUE CONVENTION

See CONFLICT OF LAWS

HAZARD

See RISK

HEALTH CANADA

Recall questionnaire, 18:26

IMPLIED WARRANTIES

WARRANTIES

INDUSTRY STANDARDS

Breach of, effect of, 2:18, 2:19 to 2:25, 3:11

Compliance with, effect of, 2:11, 2:18, 3:11

Duty of care

see DUTY

Effect on standard of care, 2:18,

2:25, 3:11

Sources of, **13:7**, **13:15**

Warnings, 3:11

INSPECTION

Duty to inspect, 5:4, 5:8, 5:12

Inspectors, potential liability of, 5:22

Intermediate examination see CAUSATION

Opportunity to inspect, 4:14, 5:8

INSTRUCTIONS

See WARNINGS

INSURANCE

Adjuster, **11:21**

Ambiguity, 11:5 to 11:7

Brokers' manuscript policies, 11:6

Commercial general liability policy

(CGL), 11:2

INSURANCE—Cont'd

Contra proferentem, 11:8 to 11:11

Defence costs, allocation of

generally, 11:15

claim over limits, 11:18

claim within deductible. 11:17

common issues. 11:15

covered and non-covered claims,

Definitions

property damage, 11:22 to 11:25

Duty to defend, 11:13 to 11:18

Exclusions

contractual liability, 11:26, 11:27

failure to perform, 11:34, 11:35

injury to the work, 11:32, 11:33

own product, 11:28, 11:29

product withdrawal (recall)

exclusion, 11:30, 11:31

recall

see product withdrawal, supra sistership (recall) exclusion

see product withdrawal, supra

Historical development, 11:3, 11:7

Insuring agreements, 11:20

Insuring intent, 11:21

Interpretation

American cases, 11:12

authorship endorsement, 11:6

basic rules, 11:9, 11:11

contextual, 11:10

Manifestation theory, 11:38

No-fault

see DEFENCES

Policy limits, 17:9

Standard policy forms

IBC wordings, 11:5, 11:7

policy structure, 11:4

Trigger theories

continuous trigger theory, 11:40

exposure theory, 11:37

injury in fact theory, 11:39

Underwriters, 11:5, 11:21

INTERMEDIATE EXAMINATION

See CAUSATION

INTERPROVINCIAL JUDGMENTS

Enforcement of see CONFLICT OF LAWS

INTERVENING CAUSE

See CAUSATION

JOINDER

See PARTIES

JURIES

Generally, 16:5

JURISDICTION

See CONFLICT OF LAWS

LEARNED INTERMEDIARY

See WARNINGS

LIMITATION PERIOD

Conflict of laws, and, 10:1, 10:16 Dependant claims, 6:17 Disability, parties under, 6:20 Discoverability rule, 6:19, 15:5

Expiration, **13:24**, **13:27** Limitations Acts, **6:14**

Minors, **6:20**

Motor vehicles, 6:16

Summary judgment

see SUMMARY JUDGMENT

Tolling, **6:18**Trustees, **6:19**

MANUFACTURE

Negligence in, 2:13 to 2:25, 5:3 Standards of see INDUSTRY STANDARDS

MANUFACTURERS

See PARTIES

MARKETING

See ADVERTISING

MISREPRESENTATIONS

Generally, 13:22

MISUSE OF PRODUCT

(See also DEFENCES) Knowledge of, 2:7, 2:21

MODIFICATION

See DEFENCES

MOTOR VEHICLES

Crashworthiness, 6:4

Limitations

see LIMITATION PERIOD

NEGLIGENCE

Causation

see CAUSATION

Design

see DESIGN

Duty of care

see DUTY

Elements, 5:3

Manufacture

see MANUFACTURE

Remoteness

see REMOTENESS

Standard of care

see STANDARD OF CARE

Testing

see TESTING

Warnings

see WARNINGS

NO-FAULT INSURANCE

See DEFENCES

NOVUS ACTUS INTERVENIENS

See CAUSATION

OBVIOUS DANGERS

See WARNINGS

PACKAGING

Adequacy of, **5:4**, **5:6**Labels and warnings
see WARNINGS

PARTIES

Corporations, 16:5, 17:5

PARTIES—Cont'd RECONSTRUCTION Defendants See EVIDENCE consumer associations, 5:19 REGULATIONS AND franchisees, 5:14 REGULATORY AGENCIES government regulators Communications with regulators, see REGULATIONS AND 13:7, 13:8, 14:10 REGULATORY AGEN-Compliance with regulations, 2:17, CIES 3:10, 6:12 inspectors, 3:9, 5:22 Liability of regulators, 5:21, 5:22 installers, 5:17 Non-compliance with regulations, lenders, **5:16** 2:17, 4:13, 4:15, 6:12 lessors. **4:15 to 4:17. 5:15** Regulatory standards, 2:17, 5:20, manufacturers. 5:4 6:12 Warn, failure to standard of care, 2:15, 2:25, 5:1, 5:3 see WARNINGS repairers, 5:17 REMEDIAL MEASURES retailers, 5:1, 5:10, 6:6, 6:9, See EVIDENCE 6:12, 13:2, 13:23 standards associations, 5:19 REMOTENESS suppliers, parts, 5:5 Generally, 7:10 wholesale distributors, 5:7, 5:9 REPAIRERS Foreign parties, 13:18 See PARTIES see also CONFLICT OF LAWS REPRESENTATIONS Joinder of, 13:24 See MISREPRESENTATIONS Limiting parties, 14:5 **RES IPSA LOQUITUR PARTS** See CAUSATION See COMPONENT PARTS RETAILER PHARMACEUTICALS See PARTIES Generally, 3:2, 3:10, 3:12 to 3:14, 5:3, 6:11 RISK Assumption of, voluntary PLEADINGS see DEFENCES Statement of claim, drafting, 13:18 Foreseeable, 2:20, 6:4 to 13:23 Obvious, 2:4, 3:4, 6:10 Statement of defence, drafting, 13:24 to 13:30 Risk/utility analysis Statutes, pleading specific, 13:27, see DESIGN 13:30 Unreasonable, 2:3 to 2:12 PRE-EMPTION SALE OF GOODS Generally, 6:12 See WARRANTIES RECALLS SERVICE Generally, 13:7, 13:21, 18:26 See CONFLICT OF LAWS

SETTLEMENT

Mary Carter agreements, 17:10
Minutes of settlement, 17:5
Multi-party litigation, 17:8 to 17:16
Offer to contribute, 17:15
Releases, 17:4, 17:5

SPOLIATION OF EVIDENCE

Generally, **8:3**, **13:5**Avoidance of, **13:8**, **13:9**, **13:11**, **13:12**

Cause of action, as, **8:11**Dismissal or judgment as sanction for, **8:9**

Evidentiary presumption arising from, **8:4**

Independent tort of, 8:11 Sanctions for, 8:2, 8:3, 8:5 to 8:7, 8:10, 15:6

Summary judgment as sanction for, **8:9, 15:6**

STANDARD OF CARE

Generally, 1:7, 2:1, 2:13 to 2:25, 4:3, 5:3, 5:6, 5:8, 5:17, 6:12, 13:20

STANDARDS ASSOCIATIONS

Generally, **13:7**, **13:8**Information source, as, **13:7**, **13:15**Liability of, **5:18**, **5:19**

STATE OF THE ART

See DEFENCES

STRICT LIABILITY

Generally, 2:11, 2:15, 2:16, 2:19 to 2:25, 4:3, 5:1, 5:3, 5:10, 6:13

Duty to warn see WARNINGS Warranties

see WARRANTIES

SUBSIDIARIES

See DISCOVERY

SUMMARY JUDGMENT

Generally, 15:1

SUMMARY JUDGMENT—Cont'd

As sanction for spoliation see SPOLIATION OF EVI-DENCE

Expert evidence, and, **14:17**, **15:4** Limitation periods, and, **15:5**

SUPPLIERS

See PARTIES

TESTING

Design, **2:23**, **6:4**Manufacture, **2:24**, **5:5**, **6:13**Post-sale, **2:25**, **5:12**

TRIALS

Generally, 16:1

USE

Foreseeable, 2:5, 2:15, 3:1, 6:4 Intended, 2:5, 6:4 Misuse see DEFENCES

VOLUNTARY ASSUMPTION OF RISK

See DEFENCES

WARNINGS

Adequacy, 2:10, 2:25, 3:2, 3:11, 16:10

Alteration of product, **3:3**, **6:6** Children, **3:4**

Competitors' warnings, evidence of, 3:11, 16:10

Duty to warn, 2:8, 2:25, 3:1, 5:3, 5:8, 5:13, 6:4, 6:10, 6:11, 7:9, 9:7, 9:9, 13:21

Foreseeability of risk, 13:21

Government regulators, **3:9**

Ignored, unheeded, 3:7, 7:10, 7:12, 13:26

Inherently dangerous product, **2:9**, **3:6**

Instructions, 2:7, 3:3, 3:11, 13:2 Labels, 3:2, 3:10, 3:11, 13:21 Learned intermediary, 3:12, 3:13,

6:11

WARNINGS—Cont'd	WARRANTIES—Cont'd
Obvious dangers, 3:4 , 3:6 , 6:8 , 6:10	Private sales, and, 4:7 , 4:12
Packaging, 3:1, 13:21	Privity of contract, 1:2 , 4:2 , 13:23
Post-sale duty, 3:14, 13:21	Promotional sales, 4:7, 4:12
Risk of harm, 2:9, 2:10, 3:2, 3:6,	Regulatory breach, 4:13, 4:15
3:8, 6:13	Reliance, 4:6, 4:15
Skilled users, 3:5	Sale of goods legislation, 4:1 , 4:5
Statutory requirements, 3:10	to 4:14, 4:19 to 4:23, 5:10,
WARRANTIES	11:27, 13:23
Breach of, 1:10, 5:10, 13:23	Sale under patent or trade name, 4:9
Collateral, 4:2	Strict liability, 4:3
Conditions, versus, 4:4 to 4:14 ,	Used goods, 4:13
4:22	Warnings, and, 4:13
Consumer sales, 4:20	WHOLESALERS
Damages, 4:23	See PARTIES
Disclaimers of liability, 4:18, 4:19	WITNESSES
to 4:22	WITNESSES
Distributor as warrantor, 5:9	Generally, 13:5 , 16:5 , 16:6
Examination, 4:14	Bias, 8:49, 16:6
Existence of defect, 4:3 , 4:8	Credibility, 8:48 , 8:49 , 16:5 , 16:6
Express, 4:1, 4:18, 5:10, 13:2,	Experts
13:23	generally, 8:36 to 8:49 , 13:5 , 13:11 , 13:12 , 13:14 to
Fundamental breach, 4:21	13:16, 15:4, 16:6
Implied	company, 16:6
common law, 4:15 to 4:17, 5:10,	hypothetical questions, 8:46
13:2, 13:23	independance of, 8:41
biological products, 4:17	in-house, 13:8 , 13:15
leased goods, 4:16	necessity, 8:39
service contracts, 4:15	novel scientific theories, 8:43
statute fitness, reasonable, 4:5 to 4:9	opinion, 8:46, 8:47, 8:49, 13:16,
	15:4, 16:6
merchantable quality, 4:10 to 4:14	qualifications, 8:40, 8:49, 13:15
Knowledge of purpose, 4:6, 4:23	relevance, 8:38
Knowledge of use, 4:6 , 4:23	reports, 15:4
Latent defects, 4:13	retaining, 13:14 to 13:16
Minor defects, 4:13	role, 8:44, 13:14 to 13:16
Packaging, 4:8, 4:13	Turncoat employee, 13:7, 13:8,
Price, and, 4:13	16:6