

Index

- ABNORMALLY DANGEROUS ACTIVITIES**
 - Products strict liability compared, **5:28**
- ADVERTISING**
 - Certifiers and endorsers of products, **16:29**
 - Direct-to-consumer, **9:25, 19:13**
 - Drugs
 - off-label promotion, **19:11**
 - over-promotion, **19:10**
 - Misrepresentation Liability, this index
 - Puffery, **4:10**
 - Sponsorship of products, **6:29**
 - Warning and Instruction Defects, this index
 - Warranty Liability, this index
- AGENT ORANGE LITIGATION**
 - Generally, **11:15**
- AGGREGATE LITIGATION**
 - See Consolidation and Aggregate Litigation, this index
- ALLERGIC PRODUCT USERS**
 - Defenses to claims of, **19:20**
 - Warnings duties owed to, **9:27**
- ALTER EGO LIABILITY**
 - Parent manufacturers, **16:14**
- ALTERNATIVE LIABILITY**
 - Multiple defendants, causation in fact, **11:7**
- ANIMALS**
 - Generally, **17:35**
- APPARENT MANUFACTURERS**
 - Defendant parties, **16:13, 16:15**
- APPRECIATION OF RISK**
 - Assumption of known risks, **13:14**
- ASBESTOS LITIGATION**
 - Causation in fact, **11:18**
 - Successor corporation liability, **16:21**
- ASSUMPTION OF RISK**
 - Appreciation of the risk, **13:14**
 - Contractual, **13:18**
 - Express assumption, **13:18**
 - Fireman's rule, **13:19**
 - Knowledge of risk, **13:14**
 - Misrepresentation liability, **13:35**
 - Reform statutes, **13:17**
 - Strict liability, **13:16**
 - Voluntariness of encounter, **13:15**
 - Warranty liability, **13:28**
- ATTORNEY'S FEES**
 - Magnuson-Moss Warranty Act, **4:46**
- AUTOMOBILES**
 - See Motor Vehicles, this index
- AVIATION**
 - General Aviation Revitalization Act, **14:13, App. L**
- AWARENESS OF BUYER ELEMENT**
 - Express warranty liability, **4:12**
- BAILMENT TRANSACTIONS**
 - Generally, **17:2 et seq.**
- BASIS OF THE BARGAIN**
 - Express warranty liability, **4:11**
- BIOLOGICS**
 - See Drugs, Blood, and Biologics, this index
- BIO-MATERIALS ACCESS ASSURANCE ACT OF 1998**
 - Generally, **App. K**
- BIZARRE CONSEQUENCES**
 - Proximate cause, **12:6**

BLOOD

See Drugs, Blood, and Biologics, this index

BOOKS

Generally, 17:27
Freedom of expression issues, 17:31

BREACH OF WARRANTY

See Warranty Liability, this index

BULK SALES

Warnings and instructions defects, 9:29

BUYER AWARENESS ELEMENT

Express warranty liability, 4:12

BYSTANDERS

Warnings duties owed to, 9:26
Warranty claims, 4:29

CASUAL SALES

Generally, 17:34

CAUSATION IN FACT

Generally, 11:1 *et seq.*
Agent Orange litigation, 11:15
Alternative liability, 11:7
Asbestos litigation, 11:18
Bendectin, 11:16
Bizarre consequences of actions, 12:6
But for test, 11:2
Changes to a product as intervening and superseding causes, 12:10
Concert of action liability, 11:6
Concurrent causation, 11:4
Criminal actions as intervening and superseding causes, 12:9
Damages causation, misrepresentation liability, 3:9
Drugs, blood, & biological products, 19:15
Enterprise liability, 11:8
Expert testimony, 11:12
Intentional torts as intervening and superseding causes, 12:9
Intervening causes. See Proximate Cause, this index
Joint liability, 11:5
Legal cause, 12:5

CAUSATION IN FACT—Cont'd

Market share liability, multiple defendants, 11:9, 11:10
Misrepresentations, damages causation, 3:9
Modern American law, 1:16
Multiple causes
generally, 11:3
concurrent causation, 11:4
Multiple defendants, 11:5 *et seq.*
Negligence liability, 2:4
Proof of causation
generally, 11:11, 11:12
specific causation, toxic substances, 11:19
Proximate Cause, this index
Reliance problems, 11:20
Silicone breast implants litigation, 11:17
Specific causation proof, toxic substances, 11:19
Substantial changes to product, intervening and superseding causes, 12:10
Substantial factor test, 11:2
Sufficiency of evidence, 11:11, 11:12
Superseding causes. See Proximate Cause, this index
Tests of cause, 11:2
Third party intervening acts, cause in fact, 12:8
Third Restatement
generally, 6:30
additional harm, 6:31
Toxic substances causation
generally, 11:13 *et seq.*
Agent Orange litigation, 11:15
asbestos litigation, 11:18
Bendectin, 11:16
proving specific causation, 11:19
silicone gel breast implants litigation, 11:17
specific causation proof, 11:19
Warnings defects, 9:30
Warnings problems, 11:20

CHARTS

Generally, 17:29

INDEX

CHILDREN

- Contributory negligence, **13:5**
- National Childhood Vaccine Act,
App. G

CHOICE OF LAW

- See also Conflict of Laws, this index
- Alternative theories, **24:7**
- Better rule of law approach, **24:6**
- Constitutional limitations, **24:11**
- Erie doctrine
 - generally, **24:12**
 - substance vs procedural matters,
24:13
- Governmental interest analysis, **24:5**
- Limitation of actions, **24:9**
- Modern approaches governing tort actions, **24:3**
- Most significant relationship test,
24:4
- Substance versus procedure, **24:8**
- Traditional approach governing tort actions, **24:2**
- Warranty actions, **24:10**

CLASS ACTION FAIRNESS ACT

- Generally, **22:3, App. P**

CLASS ACTIONS

- Generally, **22:1 et seq.**
- See also Consolidation and Aggregate Litigation, this index
- Adequacy of representation, **22:9**
- Appellate review, **22:17**
- Class Action Fairness Act, **22:3, App. P**
- Commonality requirement, **22:7**
- Effects of judgments, **22:16**
- Equitable relief, **22:11**
- Historical background, **22:2**
- Jurisdiction, **22:14**
- Mandatory class actions
 - generally, **22:10**
 - equitable relief, **22:11**
- Notice requirements, **22:14**
- Numerosity requirement, **22:6**
- Opt-out class actions, **22:12**
- Rule 23(a) requirements, **22:4 et seq.**
- Settlement, **22:13**
- Typicality requirement, **22:8**

COMMERCIAL LESSORS

- Duty to warn, **9:9**

COMPARATIVE FAULT

- Generally, **13:9 et seq., 23:16 et seq.**
- See also Contributory Negligence, this index
- Apportionment among defendants and third parties, **23:18**
- Apportionment between plaintiffs and defendants, **23:17**
- Examples of comparative fault, **13:10**
- Immunities of third parties, **23:20**
- Judgment-proof defendants, **23:19**
- Misrepresentation liability, **13:35**
- Misuse defense, **13:26**
- Satisfaction of judgment issues, **23:19**
- Settlement, **23:21**
- Sole proximate cause, **13:12**
- Strict liability, **13:11**
- Third party immunity issues, **23:20**
- Third Restatement, **23:16**
- Types of comparative fault, **13:10**
- Uniform Comparative Fault Act, **13:11, 13:32**
- Warranty liability, **13:32**

COMPARISONS OF LIABILITY THEORIES

- Abnormally dangerous activities
 - strict liability vs strict products liability, **5:28**
- Negligence liability, strict liability vs, **5:29**
- Warranty liability, strict liability vs, **5:30**

COMPLAINTS

- Warranty liability, filing of complaint as notice of breach, **4:31**

COMPONENT PARTS SUPPLIERS

- Generally, **16:10 et seq.**
- Duty to warn, **9:11**
- Principles of liability, **16:12**
- Theories of liability, **16:11**
- Third Restatement, **6:20**

COMPUTER SOFTWARE

- Generally, **17:30**

COMPUTER SOFTWARE—Cont'd
Freedom of expression issues, **17:31**

CONFLICT OF LAWS
Generally, **24:1**
See also Choice of Law, this index
Alternative theories, **24:7**
Better rule of law approach, **24:6**
Governmental interest analysis, **24:5**
Limitation of actions, **24:9**
Modern approaches governing tort actions, **24:3**
Most significant relationship test, **24:4**
Restatement Second, **24:4**
Substance versus procedure, **24:8**
Traditional approach governing tort actions, **24:2**
Warranty actions, **24:10**

CONSOLIDATION AND AGGREGATE LITIGATION
Generally, **21:1 et seq.**
Class Actions, this index
Criteria for consolidation, **21:3**
Management of consolidated actions, **21:4**
Multi-district litigation
generally, **21:5**
pre-trial procedure, **21:6**
Rule 42 procedure, **21:2**
Settlement of aggregate litigation, **21:7**

CONSUMER EXPECTATIONS TEST
See also Design Defects, this index
Barker approach to tests, **8:16**
Basis of test, **5:15**
Combining consumer expectations and risk-utility, **8:14 et seq.**
Complex vs simple designs, **8:17**
Decline of the test, **5:17, 5:34**
Defining one test in terms of the other, **8:15**
Modern applications, **8:4**
Problems with the test
design defects, **8:5**
strict liability, **5:16**
Soule approach to tests, **8:17**

CONSUMER EXPECTATIONS TEST—Cont'd
Tabert-Potter approach to tests, **8:15**
Third Restatement, **8:21**
Two liability prongs, **8:16**

CONSUMER PRODUCT SAFETY ACT
Generally, **App. E**

CONSUMER PRODUCT SAFETY IMPROVEMENT ACT
Generally, **App. E**

CONTAMINANTS
Generally, **17:36**

CONTINUITY OF ENTERPRISE
Successor corporation liability, **16:19**

CONTRACT LAW
Assumption of risk, contractual, **13:18**
Disclaimers, contractual, **6:33**
Warranty Liability, this index

CONTRACT SPECIFICATION DEFENSE
Generally, **14:2**

CONTRIBUTION
Generally, **23:7, 23:8**

CONTRIBUTORY NEGLIGENCE
Generally, **13:3 et seq.**
See also Comparative Fault, this index
Children, **13:5**
Employees, **13:6**
Misrepresentation liability, **13:35**
Proximate cause of accident, **13:8**
Strict liability, **13:7**
Warning cases, **13:4**
Warranty liability, **13:28**

COSMETICS
Federal preemption, **15:19**

COST-BENEFIT ANALYSES
Negligence liability standard of care, **2:10**
Risk-utility test, cost-benefit analysis fundamentals, **5:19, 8:7**

INDEX

COURTS

Resurgence of negligence in, **2:32**

CRASHWORTHINESS

See Motor Vehicles, this index

CRIMINAL LAW

Punitive damages recoveries, confusion of tort and criminal law, **26:23**

CUSTOMARY STANDARDS

Generally, **2:15**
Manufacturing defects, **7:12**

DAMAGES

Generally, **25:1 et seq.**
Apportionment of damages
indivisible harms, **18:11**
Third Restatement, **6:32**
Attorney's Fees, **4:46**
Causation, misrepresentation liability, **3:9**
Compensatory damages, **25:1 et seq.**
Consortium, **25:5**
Contribution, **23:7, 23:8**
Due process limitations
generally, **25:17**
punitive damages, **26:41, 26:42**
Economic loss
generally, **25:14**
Third Restatement, **6:36**
Emotional distress, **25:9, 25:10**
Future illness risks, **25:7, 25:10**
Hedonic damages, **25:4**
Increased risk of future illness, **25:7, 25:10**
Indemnity, this index
Indivisible harm, damages apportionment, **18:11**
Intergenerational harm, **19:16**
Joint and several liability
reform statutes, **25:16**
specified damages, **23:6**
Limitations on damages, **25:15**
Loss of consortium, **25:5**
Medical care, **25:6**
Medical monitoring, **5:5, 25:8**
Misrepresentation liability
damages causation, **3:9**

DAMAGES—Cont'd

Misrepresentation liability—Cont'd
strict liability, **3:16**
Modern American law, **1:19**
Modification of award, **25:18**
Motor vehicle injuries, **18:11**
Negligence liability, **2:6**
Pain and suffering, **25:3**
Personal physical injuries, **25:2 et seq.**
Property damage
generally, **25:12**
measurement, **25:13**
Punitive Damages, this index
Pure economic loss, **25:14**
Quality of life damages, **25:4**
Rehabilitation, **25:6**
Risk of future illness, **25:7, 25:10**
Specified damages, joint and several liability, **23:6**
Strict liability for misrepresentations, **3:16**
Third-party beneficiaries, warranty liability, **4:26**
Third Restatement
apportionment of damages, **6:32**
economic loss, **6:36**
Unconscionable limitations, warranty liability, **4:40**
Wrongful death and survival, **25:11**

DANGEROUS PRODUCTS

Abnormally dangerous activities
strict liability compared, **5:28**
Appreciation of risk, assumption of risk defense, **13:14**
Assumption of Risk, this index
Employers as manufacturers of dangerous equipment, **16:23 et seq.**
Fireman's rule, **13:19**
Knowledge of risk, assumption of risk defense, **13:14**
Known dangers
Unknowable dangers, below warnings defects, **9:4**
Obvious dangers
limitations on defectiveness
generally, **10:2 et seq.**

DANGEROUS PRODUCTS—Cont'd

- Obvious dangers—Cont'd
 - limitations on defectiveness—Cont'd
 - see also Defectiveness, this index
 - Third Restatement, **6:17**
 - warnings, **9:4**
- Patent-danger doctrine, **10:3**
- State of the Art Doctrine, this index
- Strict products liability
 - abnormally dangerous activities
 - strict liability compared, **5:28**
 - unknowable dangers, **5:32**
- Unknowable dangers
 - duty to warn, **5:32**
 - state of the art doctrine, **10:16**
- Voluntariness of encounter, assumption of risk defense, **13:15**
- Warning and Instruction Defects, this index

DAUBERT STANDARD

- See Expert Witnesses, this index

DEFECTIVENESS

- Basic liability provisions, Third Restatement, **6:15**
- Circumstantial proof of defect, Third Restatement, **6:18**
- Component parts, Third Restatement, **6:20**
- Crashworthiness tests, **18:9**
- Deterioration, **10:21**
- Disposal, **10:22**
- Distinctness of the defect concepts, **6:2**
- Distinguishing the separate types of defects, Third Restatement, **6:16**
- Drugs, Third Restatement, **6:21**
- Expert Witnesses, this index
- Food, Third Restatement, **6:22**
- Foreseeability, **6:17**
- Inherent dangers, **6:17**
- Inherent product hazard limitations on defectiveness
 - generally, **10:7 et seq.**
 - judicial rejection of design liability for inherent hazards, **10:8**

DEFECTIVENESS—Cont'd

- Inherent product hazard limitations on defectiveness—Cont'd
 - reflections on inherent product hazards, **10:11**
 - reform legislation, **10:10**
- Intergenerational harm, **19:16**
- Judicial rejection of design liability for inherent hazards, **10:8**
- Law and fact questions, obvious danger limitations on defectiveness, **10:6**
- Limitations on defectiveness
 - generally, **10:1**
 - Inherent product hazard limitations on defectiveness, above
 - Obvious danger limitations on defectiveness, below
 - State of the Art Doctrine, this index
- Limitations on liability, Third Restatement, **6:17**
- Manufactured products
 - generally, **7:1 et seq.**
 - see also Manufacturing Defects, this index
- Medical devices, Third Restatement, **6:21**
- Misuse, Third Restatement, **6:17**
- Motor vehicles, crashworthiness tests, **18:9**
- Nature and Proof of Defectiveness, this index
- Obvious danger limitations on defectiveness
 - generally, **10:2 et seq.**
 - definitions, **10:4**
 - law and fact questions, **10:6**
 - patent-danger doctrine, **10:3**
 - theory of liability, **10:5**
 - Third Restatement, **6:17**
- Other similar accidents as evidence, **6:10**
- Patent-danger doctrine, **10:3**
- Post-Sale Duties, this index
- Prenatal Harm, this index
- Prescription drugs, Third Restatement, **6:21**

INDEX

DEFECTIVENESS—Cont'd

- Proof. See Nature and Proof of Defectiveness, this index
- Puzzle of Comment j (Second Restatement), **6:3**
- Raw materials, Third Restatement, **6:20**
- Refections on inherent product hazards, **10:11**
- Restatement reforms
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
- Safety obligations, overlapping of, **6:4**
- Safety standards as evidence, **6:9**
- Safety statutes and regulations, Third Restatement, **6:19**
- Salvage, **10:22**
- State of the Art Doctrine, this index
- Subsequent remedial measures as evidence, **6:11**
- Three types of defect, **6:2**
- Used products, Third Restatement, **6:23**

DEFENDANT PARTIES

- Generally, **16:1 et seq.**
- Alter ego liability, **16:14**
- Alternative liability, **11:7**
- Apparent manufacturers, **16:13, 16:15**
- Apportionment of damages, Third Restatement, **6:32**
- Causation in fact, multiple defendants, **11:5 et seq.**
- Certifiers of products, **16:29**
- Component Parts Suppliers, this index
- Concert of action liability, **11:6**
- Consolidation and Aggregate Litigation, this index
- Contribution, **23:7, 23:8**
- Distributors, **16:9**
- Drugs, blood, and biological products, **19:17**
- Employers as Manufacturers, this index
- Endorsers of products, **16:29**

DEFENDANT PARTIES—Cont'd

- Enterprise liability, **11:8**
- Franchisers, **16:13, 16:16**
- Indemnity, this index
- Joint and Several Liability, this index
- Learned Intermediary Doctrine, this index
- Market share liability, **11:9, 11:10**
- Miscellaneous marketing participants, **16:28**
- Multiple defendants, causation in fact, **11:5 et seq.**
- Parent manufacturers
 - generally, **16:13**
 - alter ego liability, **16:14**
- Pharmacists, this index
- Punitive damages vicarious liability and the innocent shareholder, **26:24**
- Raw Material Suppliers, this index
- Retailers and Other Non-Manufacturing Sellers, this index
- Safety inspectors, **16:30**
- Successor Corporations, this index
- Third Restatement, apportionment of damages, **6:32**
- Trade associations, **16:31**
- Trademark licensors, **16:16**
- Vicarious liability for punitive damages and the innocent shareholder, **26:24**
- Wholesalers, **16:9**

DEFENSES

- Generally, **13:1 et seq.**
- Assumption of Risk, this index
- Blood and biological products. See Drugs, Blood, and Biologics, this index
- Comparative Fault, this index
- Compliance with regulations, **14:6**
- Compliance with safety standards as conclusive, **14:8**
- Conduct defenses. User conduct defenses, below
- Contract specification defense, **14:2**
- Contributory Negligence, this index
- Drugs, Blood, and Biologics, this index

DEFENSES—Cont'd

- Federal Preemption, this index
- Fireman's rule, **13:19**
- Government contractor defense, **14:3 et seq.**
- Government standards defense, **14:7**
- Limitations on liability, Third Restatement, **6:17**
- Misuse Defense, this index
- Modern American law, **1:17**
- Motor Vehicles, this index
- Reform legislation
 - special defenses, **14:9**
 - user conduct defenses, **13:2**
- Regulatory compliance defense, **14:6**
- Safety standards compliance as conclusive defense, **14:8**
- Special defenses
 - generally, **14:1**
 - compliance with safety standards as conclusive, **14:8**
 - contract specification defense, **14:2**
 - government contractor defense, **14:3 et seq.**
 - government standards defense, **14:7**
 - reform legislation, **14:9**
 - regulatory compliance defense, **14:6**
- State of the art defense, strict liability, **5:35**
- Statutes of Limitations, this index
- Statutes of Repose, this index
- Strict liability, state of the art defense, **5:35**
- Third Restatement
 - foreseeability, **6:17**
 - limitations on liability, **6:17**
- User conduct defenses
 - generally, **13:1**
 - Misrepresentation Liability, this index
 - Misuse Defense, this index
 - reform legislation, **13:2**
 - Warranty Liability, this index

DEFINITIONS OF PRODUCT

- Generally, **6:34**

DESIGN DEFECTS

- Generally, **8:1 et seq.**
- Alternative designs. Proof of a reasonable alternative design, below
- Automobiles, **18:4**
- Basic liability provisions, Third Restatement, **6:15**
- Basic liability provisions of Third Restatement, **6:15**
- Blood and biological products, **19:8**
- Burdens and benefits, risk-utility test, **8:8**
- Circumstantial proof of defect, Third Restatement, **6:18**
- Complex vs simple designs, **8:17**
- Component parts, Third Restatement, **6:20**
- Constructive knowledge, **8:18**
- Consumer expectations test
 - generally, **8:3 et seq.**
 - see also Consumer Expectations Test, this index
- Cost-benefit analysis fundamentals, **8:7**
- Dangerous drugs, **8:25**
- Distinctness of the defect concepts, **6:2**
- Distinguishing the separate types of defects, Third Restatement, **6:16**
- Drugs. Prescription drugs and medical devices, below
- Due care determinations, **2:12**
- Expert Witnesses, this index
- Feasibility of an alternative design, **8:12**
- Food, Third Restatement, **6:22**
- Foreseeability, Third Restatement, **6:17**
- Fundamentals of cost-benefit analysis, **8:7**
- Hand Formula, risk-utility test, **8:7**
- Inherent dangers, Third Restatement, **6:17**
- Inherently hazardous products, judicial rejection of design liability, **10:8**
- Judicial rejection of design liability for inherent hazards, **10:8**

INDEX

DESIGN DEFECTS—Cont'd

Knowledge, constructive, **8:18**
Limitations on liability, Third Restatement, **6:17**
Medical devices. Prescription drugs and medical devices, below
Misuse, Third Restatement, **6:17**
Motor vehicles, **18:4**
Obvious dangers, Third Restatement, **6:17**
Optional safety devices, **8:23**
Other similar accidents as evidence, **6:10**
Post-Sale Duties, this index
Prescription drugs and medical devices
 generally, **8:24 et seq., 19:1, 19:8**
 dangerous drugs, **8:25**
 empowering warning claims, **8:28**
 question for products liability law, **8:26**
 resolving the dilemma, **8:28**
 Restatements and the courts, **8:27**
 Third Restatement, **6:21**
Problems with consumer expectations test, **8:5**
Proof of a reasonable alternative design
 feasibility of an alternative design, **8:12**
 focusing the risk-utility test on the proposed alternative design, **8:13**
 risk-utility analysis of an alternative design, **8:11**
Proof of defect
 generally, **6:1 et seq.**
 see Nature and Proof of Defectiveness, this index
Punitive damages, **26:16**
Puzzle of Comment j (Second Restatement), **6:3**
Raw materials, Third Restatement, **6:20**
Relationship between warning duties and safe design duties, **9:5**
Restatements and the courts, prescription drugs and medical devices, **8:27**

DESIGN DEFECTS—Cont'd

Risk-utility test
 generally, **8:6**
 alternative design analyses, **8:11**
 Barker approach to tests, **8:16**
 burdens and benefits, **8:8**
 combining consumer expectations and risk-utility, **8:14 et seq.**
 complex vs simple designs, **8:17**
 cost-benefit analysis fundamentals, **8:7**
 defining one test in terms of the other, **8:15**
 focusing the risk-utility test on the proposed alternative design, **8:13**
 fundamentals of cost-benefit analysis, **8:7**
 Hand Formula, **8:7**
 Proof of a reasonable alternative design, above
 Soule approach to tests, **8:17**
 Tabert-Potter approach to tests, **8:15**
 Third Restatement, **8:9**
 two liability prongs, **8:16**
 utility, **8:8**
 Wade factors, **8:8**
Safety devices, optional, **8:23**
Safety obligations, overlapping of, **6:4**
Safety standards as evidence, **6:9**
Safety statutes and regulations, Third Restatement, **6:19**
Special design defect issues, Third Restatement, **8:22**
Standard of care, determining due care, **2:12**
State of the Art Doctrine, this index
Structure of Third Restatement, **6:14**
Subsequent remedial measures as evidence, **6:11**
Testing failures, punitive damages, **26:15**
Tests of liability, **8:2**
Theories of liability, **8:2**
Third Restatement
 generally, **6:12 et seq., 8:19 et seq.**

DESIGN DEFECTS—Cont'd

- Third Restatement—Cont'd
 - see also Third Restatement, this index
- Three types of defect, **6:2**
- Used products, Third Restatement, **6:23**
- Wade factors, risk-utility test, **8:8**
- Wade-Keeton test
 - generally, **8:18**
 - decline of, **5:33**
- Warnings defects and, relationship between warning duties and safe design duties, **9:5**

DETERIORATION

- Defectiveness issues, **10:21**

DIRECTIONS FOR PRODUCT USE

- See Warning and Instruction Defects, this index

DIRECTNESS TEST

- Proximate cause, **12:4**

DISCLAIMERS

- Contractual disclaimers, Third Restatement, **6:33**
- Warranty Liability, this index

DISPOSAL

- Defectiveness issues, **10:22**

DISTRIBUTORS

- Defendant parties, **16:9**
- Third Restatement, **6:35**

DRUGS, BLOOD, AND BIOLOGICS

- Generally, **19:1 et seq.**
- Adequacy of warnings, **19:14**
- Advertising
 - off-label promotion, **19:11**
 - over-promotion, **19:10**
- Blood and biological products, **17:32, 19:6**
- Causation, **19:15**
- Defendant parties, **19:17**
- Defenses
 - generally, **19:18**
 - physicians and pharmacists, **19:19**
- Design defects, **19:8**

DRUGS, BLOOD, AND BIOLOGICS—Cont'd

- Distributors of drugs, **19:17**
 - Drugs
 - Bendectin, **11:16**
 - Bio-Materials Access Assurance Act of 1998, **App. K**
 - causation in fact, **11:16**
 - dangerous drugs, design defects issues, **8:25**
 - distributor liability, **19:17**
 - empowering warning claims, **8:28**
 - federal preemption, **15:19**
 - National Childhood Vaccine Act, **App. G**
 - Pharmacists, this index
 - Third Restatement, **6:21**
 - warning duties of pharmacists, **9:10**
 - Empowering warning claims, prescription drugs and medical devices design defects, **8:28**
 - Intergenerational harm, **19:16**
 - Learned Intermediary Doctrine, this index
 - Nature of claims, **19:2**
 - Pharmacists, this index
 - Physicians' defenses, **19:19**
 - Restatements
 - generally, **19:4 et seq.**
 - Comment k, Second Restatement, **19:5**
 - Third Restatement, **19:7**
 - Statutes of limitation, **19:21**
 - Theories of liability, **19:3**
 - Unavoidably unsafe products, **19:5**
 - Warnings defects
 - generally, **19:9 et seq.**
 - adequacy of warnings, **19:14**
 - empowering warning claims, **8:28**
 - off-label promotion, **19:11**
 - over-promotion, **19:10**
 - persons to be warned, **19:12**
 - Third Restatement, **6:21**
- DUAL CAPACITY DOCTRINE**
- Employers as manufacturers, **16:24**

INDEX

DUTIES

- Care duty. See Negligence Liability, this index
- Post-Sale Duties, this index
- Warning duty. See Warning and Instruction Defects, this index

ECONOMIC LOSS

- Compensatory damages, **25:1**
- Pure economic loss, **5:5, 25:14**
- Warranty damages, **4:24 et seq.**

ELECTRICITY

- Generally, **17:19**

EMOTIONAL DISTRESS

- Damages, **25:9, 25:10**

EMPLOYEES

- Contributory negligence of, **13:6**
- Warnings duties owed to, **9:24**

EMPLOYERS AS MANUFACTURERS

- Generally, **16:22 et seq.**
- Dangerous equipment, employers as suppliers of, **16:23 et seq.**
- Dual capacity doctrine, **16:24**
- Intentional employer misconduct, **16:26**
- Post-merger accidents, **16:25**
- Scope of workers' compensation exclusive remedy rule, **16:27**
- Workers' compensation exclusivity generally, **16:23 et seq.**
- scope of exclusive remedy rule, **16:27**

ENTERPRISE LIABILITY

- Generally, **11:8**

EUROPEAN LAW

- Generally, **1:21**
- Directive on Liability for Defective Products, **1:21, App. R**

EVIDENCE

- Expert Witnesses, this index
- Nature and Proof of Defectiveness, this index
- Proof of Facts, this index

EXPERT WITNESSES

- Generally, **6:5 et seq.**
- Breach of duty, negligence liability, **7:11**
- Causation in fact, **11:12**
- Daubert standard, **6:7**
- Early limitations on expert testimony, **6:6**
- Frye standard, **6:6**
- Historical background, **6:6**
- Negligence liability, breach of duty, **7:11**
- Strict liability, manufacturing defects, **7:19**

FALSITY

- Express warranty liability, **4:9**
- Misrepresentation Liability, this index

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

- Generally, **App. Q**

FEDERAL PREEMPTION

- Generally, **15:1 et seq.**
- Actual conflict preemption, **15:12**
- Agency positions affecting express preemption, **15:9**
- Conflict preemption
 - actual conflict preemption, **15:12**
 - impossibility conflict preemption, **15:13**
 - obstacle conflict preemption, **15:14**
- Cosmetics, **15:19**
- Drugs, **15:19**
- Express preemption
 - generally, **15:4 et seq.**
 - agency positions affecting, **15:9**
 - interpreting express preemption provisions, **15:6**
 - presumption against preemption affecting, **15:8**
 - savings clauses, **15:7**
 - scope, **15:5**
 - when controlling, **15:5**
- Field occupation preemption, **15:11**
- Food, **15:19**
- Fungicide labeling, **15:17**

FEDERAL PREEMPTION—Cont'd

- Government agency positions affecting express preemption, **15:9**
- Implied preemption
 - generally, **15:10**
 - actual conflict, **15:12**
 - field occupation, **15:11**
 - impossibility conflict, **15:13**
 - obstacle conflict, **15:14**
 - occupation of field, **15:11**
- Impossibility conflict preemption, **15:13**
- Insecticide labeling, **15:17**
- Interpreting express preemption provisions, **15:6**
- Labeling
 - insecticide, fungicide, and rodenticide, **15:17**
 - tobacco product, **15:16**
- Medical devices, **15:20, 20:3**
- Motor vehicles, **15:18**
- Obstacle conflict preemption, **15:14**
- Occupation of field preemption, **15:11**
- Pesticide labeling, **15:17**
- Presumption against preemption
 - generally, **15:3**
 - express preemption, **15:8**
- Regulatory role of state safety standards, **15:2**
- Rodenticide labeling, **15:17**
- Savings clauses affecting express preemption, **15:7**
- Scope of express preemption, **15:5**
- Specific regulatory schemes, **15:15 et seq.**
- Tobacco product labeling, **15:16**

FIREMAN'S RULE

- Assumption of risk, **13:19**

FIRST AMENDMENT

- Publications liability, freedom of expression issues, **17:31**

FOOD

- Adulteration
 - negligence liability, **7:7**
 - strict liability, **7:17**
- Federal preemption, **15:19**

FOOD—Cont'd

- Negligence liability, **7:7**
- Proof of facts, manufacturing defects, **7:17**
- Strict liability, **7:17**
- Third Restatement, **6:22**

FOOD AND DRUG ADMINISTRATION

- Drugs, Blood, and Biologics, this index
- Federal Preemption, this index
- Medical devices regulation, **20:2**

FOREIGN LAW

- Generally, **1:20 et seq.**
- EEC Directive on Liability for Defective Products, **1:21, App. R**
- European Law, this index
- State of the art doctrine, **10:19**

FORESEEABILITY

- Misuse defense, foreseeability limitation, **13:24**
- Negligence liability, **2:9**
- Proximate cause, foreseeability test, **12:3**
- Third Restatement, **6:17**

FRANCHISERS

- Generally, **16:13, 16:16**

FRAUD

- See Misrepresentation Liability, this index
- Punitive damages, fraud supporting, **26:13**

FRYE STANDARD

- See Expert Witnesses, this index

FUNGICIDE LABELING

- Federal preemption, **15:17**

GAMES

- Generally, **17:28**
- Freedom of expression issues, **17:31**

GOVERNMENT CONTRACTOR DEFENSE

- Generally, **14:3 et seq.**

INDEX

GOVERNMENT STANDARDS

DEFENSE

Generally, **14:7**

HAND FORMULA

Design defects, **8:7**

Negligence, **2:10**

Strict liability context, Hand Formula in, **5:20**

HISTORICAL BACKGROUND

Generally, **1:7 et seq.**

Class actions, **22:2**

Early American law, **1:10**

Early English law, **1:9**

Expert testimony, **6:6**

Misuse defense, **13:21**

Modern American Law, this index

Punitive damages, **26:3**

Roman law, **1:8**

Second Restatement, **5:3 et seq.**

Strict liability, **5:2 et seq.**

Third Restatement, **6:13**

Warranty liability, **4:2**

HOMELAND SECURITY ACT

Generally, **App. N**

HOMES AND RELATED STRUCTURES

Strict liability, **17:21**

Warranty liability, **17:22**

HUMAN TISSUE

Generally, **17:32**

IDIOSYNCRATIC PRODUCT

USERS

Defenses to claims of, **19:20**

Warnings duties owed to, **9:27**

IMMUNITIES

Third party immunities, comparative fault, **23:20**

INDEMNITY

Generally, **23:7, 23:9 et seq.**

Active/passive negligence, implied indemnity based on, **23:12**

Comparative Fault, this index

Express indemnity, **23:9**

Implied indemnity, **23:9 et seq.**

INDEMNITY—Cont'd

Negligence actions, **23:10**

Relationship, implied indemnity based on, **23:11**

Strict liability actions, **23:15**

Warranty actions

generally, **23:13**

vouching in, **23:14**

INDUSTRY STANDARDS

Generally, **2:15**

Manufacturing defect, **7:12**

INHERENTLY HAZARDOUS PRODUCTS

Dangerous Products, this index

Defectiveness, this index

INSECTICIDE LABELING

Federal preemption, **15:17**

INSTALLERS OF PRODUCTS

Generally, **17:11**

INSTRUCTIONS FOR PRODUCT USE

See Warning and Instruction Defects, this index

INSTRUMENTS

See Medical Devices, this index

INSURANCE COVERAGE

Punitive damages, **26:25**

INTENTIONAL TORTS

Employers as manufacturers, intentional misconduct, **16:26**

Proximate cause, intervening and superseding causes, **12:9**

Punitive damages recoveries, confusion of tort and criminal law, **26:23**

INTERGENERATIONAL HARM

Generally, **10:20, 19:16**

JOINT AND SEVERAL LIABILITY

Generally, **23:1 et seq.**

See also Comparative Fault, this index

Causation in fact, **11:5**

Contribution, **23:7, 23:8**

JOINT AND SEVERAL LIABILITY

—Cont'd

- Damages
 - reform statutes, **25:16**
 - specified, **23:6**
- Indemnity, this index
- Pure joint and several liability, **23:2**
- Pure several liability, **23:3**
- Reallocation, **23:4**
- Reform statutes, **25:16**
- Specified damages, **23:6**
- Threshold minimums, **23:5**

JUDICIAL REFORMS

- Punitive damages, **26:28 et seq.**
- Resurgence of negligence in the courts, **2:32**

JURISDICTION

- Generally, **24:1 et seq.**
- Choice of Law, this index
- Class actions, **22:14**
- Conflict of Laws, this index
- Erie doctrine
 - generally, **24:12**
 - substance vs procedural matters, **24:13**
- Magnuson-Moss Warranty Act, **4:46**

JUSTIFIABLE RELIANCE

- Misrepresentation liability, **3:8**

KNOWLEDGE

- Assumption of risk, **13:14**
- Dangers, known, warnings defects, **9:4**
- Dangers, unknowable
 - duty to warn, **5:32**
 - state of the art doctrine, **10:16**
- Design defects, constructive knowledge, **8:18**
- Misrepresentation liability, knowledge of falsity, **3:7**
- Warranty of fitness for particular purpose, **4:21**

LABELING

- Federal Preemption, this index
- Off-label promotion of drugs, **19:11**

LANDLORD LIABILITY

- Real property defects, **17:24**

LEARNED INTERMEDIARY DOCTRINE

- Drugs, blood, and biological products, **19:13**
- Medical devices, **20:9**
- Warnings and instructions defects, **9:25**

LEASES

- Generally, **17:2 et seq.**
- Commercial lessors' duty to warn, **9:9**

LICENSES

- Generally, **17:2 et seq.**
- Trademark licensors as defendant parties, **16:16**

LICENSING STATUTES

- Violations as per se negligence, **2:20**

LIMITATIONS OF ACTIONS

- Statutes of Limitations, this index
- Statutes of Repose, this index

LIMITATIONS OF REMEDIES

- See Warranty Liability, this index

LIMITATIONS ON DEFECTIVENESS

- See Defectiveness, this index

MAGAZINES

- Generally, **17:27**
- Freedom of expression issues, **17:31**

MAGNUSON-MOSS WARRANTY ACT

- Generally, **4:44 et seq., App. D**
- Attorney's fees, **4:46**
- Jurisdiction, **4:46**
- Private claims, **4:45**

MANUFACTURING DEFECTS

- Generally, **7:1 et seq.**
- Apparent manufacturers as defendant parties, **16:13, 16:15**
- Automobiles, **18:3**
- Basic liability provisions, Third Restatement, **6:15**

INDEX

MANUFACTURING DEFECTS

—Cont'd

- Care duty, negligence liability, **7:5**
- Circumstantial proof of defect, Third Restatement, **6:18**
- Component parts, Third Restatement, **6:20**
- Custom of industry, negligence liability, **7:12**
- Defect at time of sale, strict liability, **7:18**
- Defective condition generally, strict liability, **7:15**
- Distinctness of the defect concepts, **6:2**
- Distinguishing the separate types of defects, Third Restatement, **6:16**
- Drugs, Third Restatement, **6:21**
- Due care in manufacturing, **2:11**
- Employers as Manufacturers, this index
- Expert Witnesses, this index
- Food, this index
- Foreseeability, Third Restatement, **6:17**
- Frequency or efficacy of testing, negligence liability, **7:8**
- Industry custom and practice, negligence liability, **7:12**
- Inherent dangers, Third Restatement, **6:17**
- Inspection duty, negligence liability, **7:6**
- Limitations on liability, Third Restatement, **6:17**
- Malfunction theory, strict liability, **7:20**
- Medical devices, Third Restatement, **6:21**
- Misuse, Third Restatement, **6:17**
- Motor vehicles, **18:3**
- Negligence
 - generally, **7:4 et seq.**
 - see also Negligence Liability, this index
- Obvious dangers, Third Restatement, **6:17**
- Other similar accidents as evidence, **6:10**

MANUFACTURING DEFECTS

—Cont'd

- Parent Manufacturers, **16:13**
- Post-Sale Duties, this index
- Practice of industry, negligence liability, **7:12**
- Prescription drugs, Third Restatement, **6:21**
- Proof of breach of duty
 - generally, **7:10**
 - expert testimony, **7:11**
- Proof of defect
 - generally, **6:1 et seq., 7:16 et seq.**
 - see also Nature and Proof of Defectiveness, this index
- Puzzle of Comment j (Second Restatement), **6:3**
- Raw materials, Third Restatement, **6:20**
- Res ipsa loquitur, **7:13**
- Restatements, **7:2**
- Safety obligations, overlapping of, **6:4**
- Safety standards as evidence, **6:9**
- Safety statutes and regulations, Third Restatement, **6:19**
- Standard of care
 - generally, **2:8**
 - determining due care, **2:11**
- Strict liability
 - generally, **7:14 et seq.**
 - see also Strict Liability, this index
- Structure of Third Restatement, **6:14**
- Subsequent remedial measures as evidence, **6:11**
- Testing duty
 - generally, **7:6**
 - failures, punitive damages, **26:15**
 - frequency or efficacy of testing, **7:8**
 - third-party testing duties, **7:9**
- Theories of liability, **7:3**
- Third Restatement
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
- Three types of defect, **6:2**
- Time of sale, defect at, **7:18**

MANUFACTURING DEFECTS

—Cont'd

Used products, Third Restatement, **6:23**

MARKETING

See Warranty Liability, this index

MARKET SHARE LIABILITY

Multiple defendants, **11:9, 11:10**

MEDICAL DEVICES

Generally, **20:1 et seq.**

Causation in fact, breast implants, **11:17**

Design Defects, this index

Empowering warning claims, **8:28**

Federal preemption, **15:20, 20:3**

Food and Drug Administration regulation, **20:2**

Learned intermediary doctrine, **20:9**

Misuse defense, **20:10**

Negligence liability, **20:5**

Pharmacists' duty to warn, **9:10**

Restatements, **20:8**

Silicone gel breast implants litigation, **11:17**

Statutes of limitation, **20:11**

Strict liability, **20:7**

Theories of liability, **20:4 et seq.**

Warning duties of pharmacists, **9:10**

Warnings and instructions defects, **20:9**

Warranty liability, **20:6**

MEDICINES

See Drugs, Blood, and Biologics, this index

MISREPRESENTATION LIABILITY

Generally, **3:1 et seq.**

Assumption of risk, **13:35**

Basic liability provisions of Third Restatement, **6:15**

Causation of damage, **3:9**

Certifiers of products as defendant parties, **16:29**

Comparative negligence, **13:35**

Conduct defenses. User conduct defenses, below

MISREPRESENTATION LIABILITY—Cont'd

Contributory negligence, **13:35**

Damages

causation, **3:9**

strict liability, **3:16**

Defenses. User conduct defenses, below

Endorsers of products as defendant parties, **16:29**

Express warranty, strict liability misrepresentations compared, **4:7**

Facts, fraudulent, **3:4**

Falsity

generally, **3:5**

knowledge of falsity, **3:7**

Fraud

generally, **3:2 et seq.**

causation of damage, **3:9**

damages causation, **3:9**

facts, **3:4**

falsity

generally, **3:5**

knowledge of falsity, **3:7**

intent to deceive, **3:7**

justifiable reliance, **3:8**

knowledge of falsity, **3:7**

materiality, **3:6**

punitive damages, fraud supporting, **26:13**

reliance, justifiable, **3:8**

representations, **3:3**

resulting damage, **3:9**

scienter, **3:7**

Intent to deceive, **3:7**

Justifiable reliance, **3:8**

Knowledge of falsity, **3:7**

Materiality, **3:6**

Misuse defenses, **13:35**

Negligent misrepresentation

generally, **3:11**

per se negligence, **3:12**

violations of statutes, **3:12**

Per se negligence, **3:12**

Post-Sale Duties, this index

Punitive damages, fraud supporting, **26:13**

INDEX

MISREPRESENTATION LIABILITY—Cont'd

- Reliance
 - justifiable, **3:8**
 - when justifiable, **13:34**
- Representations, fraudulent, **3:3**
- Resulting damage, **3:9**
- Retailers and other non-manufacturing sellers, **16:5**
- Scienter, **3:7**
- Statutory violations, **3:12**
- Strict liability
 - generally, **3:13 et seq.**
 - background, **3:14**
 - damages, **3:16**
 - express warranty compared, **4:7**
 - nature of liability, **3:15**
- Third Restatement
 - generally, **6:12 et seq., 6:24**
 - see also Third Restatement, this index
- User conduct defenses
 - generally, **13:33**
 - when is reliance justifiable, **13:34**
- Violations of statutes, **3:12**
- Warning and Instruction Defects, this index

MISUSE DEFENSE

- Generally, **13:20**
- Burden of pleading and proof, **13:23**
- Comparative fault, **13:26**
- Development of the doctrine, **13:21**
- Foreseeability limitation, **13:24**
- Historical background, **13:21**
- Medical devices, **20:10**
- Misrepresentation liability, **13:35**
- Theory of liability, **13:22**
- Third Restatement, **6:17**
- Warnings defects, **13:25**
- Warranty liability, **13:29**
- Whether misuse is a defense, **13:23**

MODEL UNIFORM PRODUCT LIABILITY ACT

- Generally, **App. H**

MODERN AMERICAN LAW

- Generally, **1:11**

MODERN AMERICAN LAW —Cont'd

- See also Third Restatement, this index
- Anatomy of modern products liability litigation, **1:13**
- Causation, **1:16**
- Damages, **1:19**
- Defenses, **1:17**
- Product defectiveness, **1:15**
- Reforms, **1:12**
- Special defendants, transactions, products, and litigation, **1:18**
- Theories of recovery, **1:14**

MORAL FOUNDATIONS OF LAW

- Generally, **1:5**

MOTOR VEHICLES

- Generally, **18:1 et seq.**
- Accidents, defects that cause, **18:2 et seq.**
- Apportionment of damages, indivisible harm and, **18:11**
- Ascertaining crashworthiness, **18:8**
- Crashworthiness
 - generally, **18:6**
 - ascertaining crashworthiness, **18:8**
 - defects tests, **18:9**
 - duties of manufacturers, **18:7**
 - proof of facts, **18:8**
 - theories of liability, **18:9**
- Damages apportionment, indivisible harm and, **18:11**
- Defects, **18:2 et seq.**
- Defenses
 - generally, **18:12**
 - failure to use seatbelts and other safety devices, **18:14**
 - intoxication, **18:13**
- Design defects, **18:4**
- Federal preemption, **15:18**
- Indivisible harm and damages apportionment, **18:11**
- Intoxication defense, **18:13**
- Magnuson-Moss Warranty Act, this index
- Manufacturing defects, **18:3**

MOTOR VEHICLES—Cont'd

- National Traffic Motor Vehicle Safety Act, **App. F**
- Plaintiff fault issues, **18:12 et seq.**
- Proof of facts, **18:8**
- Theories of liability, **18:9**
- Warning and instruction defects, **18:5**
- Warranty liability. See Magnuson-Moss Warranty Act, this index

MULTIPLE CASES

- See Consolidation and Aggregate Litigation, this index

MULTIPLE DEFENDANTS

- See Class Actions, this index;
- Defendant Parties, this index

MUSIC

- Generally, **17:28**
- Freedom of expression issues, **17:31**

**NATIONAL CHILDHOOD
VACCINE ACT**

- Generally, **App. G**

**NATIONAL TRAFFIC MOTOR
VEHICLE SAFETY ACT**

- Generally, **App. F**

**NATURE AND PROOF OF
DEFECTIVENESS**

- Generally, **7:16 et seq.**
- Defect at time of sale, **7:18**
- Distinctness of the defect concepts, **6:2**
- Expert Witnesses, this index
- Food adulteration cases, **7:17**
- Malfunction theory, **7:20**
- Other similar accidents as evidence, **6:10**
- Puzzle of Comment j (Second Restatement), **6:3**
- Safety obligations, overlapping of, **6:4**
- Safety standards as evidence, **6:9**
- Subsequent remedial measures, **6:11**
- Three types of defect, **6:2**

NAVIGATIONAL CHARTS

- Generally, **17:29**

NEGLIGENCE LIABILITY

- Generally, **2:1**
- Active/passive negligence, implied indemnity based on, **23:12**
- Adulteration of food, **7:7**
- Basic liability provisions of Third Restatement, **6:15**
- Breach of duty
 - generally, **2:3**
 - proof of facts
 - generally, **7:10**
 - expert testimony, **7:11**
- Care duty
 - generally, **2:2**
 - Determining due care, below
 - manufacturing defects, **7:5**
 - Standard of care, below
- Cause in fact, **2:4**
- Cost-benefit analyses, **2:10**
- Courts, resurgence of negligence in, **2:32**
- Customary standards
 - generally, **2:15**
 - manufacturing defect, **7:12**
- Damages, **2:6**
- Defenses, this index
- Design
 - generally, **2:12**
 - see also Design Defects, this index
- Determining due care
 - generally, **2:10 et seq.**
 - cost-benefit analyses, **2:10**
 - design, due care in, **2:12**
 - manufacture, due care in, **2:11**
 - Standard of care, below
 - warnings and instructions, due care in, **2:13**
- Duty, **2:2**
- Elements of res ipsa loquitur, **2:29**
- Excuses, per se negligence, **2:21**
- Expert in the field standard of care, **2:8**
- In fact causation, **2:4**
- Food adulteration, **7:7**
- Foreseeability, **2:9**
- Frequency or efficacy of testing, manufacturing defects, **7:8**
- Indemnity, **23:10**

INDEX

NEGLIGENCE LIABILITY

—Cont'd

- Industry standards
 - generally, **2:15**
 - manufacturing defect, **7:12**
- Inspection duty, **7:6**
- Instructions, due care in
 - generally, **2:13**
 - see also Warning and Instruction
 - Defects, this index
- Licensing statutes, per se negligence, **2:20**
- Manufacture, due care in
 - generally, **2:11**
 - standard of care, **2:8**
- Manufacturing defects
 - generally, **7:4 et seq.**
 - adulteration of food, **7:7**
 - care duty, **7:5**
 - custom of industry, **7:12**
 - duty of care, **7:5**
 - expert testimony, **7:11**
 - food adulteration, **7:7**
 - frequency or efficacy of testing, **7:8**
 - industry custom and practice, **7:12**
 - inspection duty, **7:6**
 - practice of industry, **7:12**
 - proof of breach of duty, **7:10, 7:11**
 - res ipsa loquitur, **7:13**
 - testing duty
 - generally, **7:6**
 - frequency or efficacy of testing, **7:8**
 - third-party testing duties, **7:9**
 - third-party testing duties, **7:9**
- Medical devices, **20:5**
- Misrepresentation
 - generally, **3:11**
 - per se negligence, **3:12**
 - violations of statutes, **3:12**
- Per se negligence
 - generally, **2:17 et seq.**
 - compatibility with ordinary negligence claims, **2:24**
 - excuses, **2:21**
 - federal law, **2:23**
 - licensing statutes, **2:20**

NEGLIGENCE LIABILITY

—Cont'd

- Per se negligence—Cont'd
 - misrepresentation, **3:12**
 - procedural effect, **2:22**
 - two-pronged test, **2:18**
- Practice of industry, manufacturing defects, **7:12**
- Procedural effects
 - per se negligence, **2:22**
 - res ipsa loquitur, **2:30**
- Proof of breach of duty
 - generally, **7:10**
 - expert testimony, **7:11**
- Proof of facts
 - breach of duty
 - generally, **7:10**
 - expert testimony, **7:11**
- Proof of negligence
 - generally, **2:14**
 - compliance with statutory standards, **2:25**
 - customary standards
 - generally, **2:15**
 - manufacturing defect, **7:12**
 - excuses, per se negligence, **2:21**
 - federal law, **2:23**
 - licensing statutes, **2:20**
 - misrepresentation, **3:12**
 - Per se negligence, above
 - procedural effect, **2:22**
 - Res ipsa loquitur, below
 - statute, violation of
 - generally, **2:16**
 - misrepresentations as violations, **3:12**
 - statutory compliance, **2:25**
 - two-pronged test, per se negligence, **2:18**
- Proximate cause, **2:5**
- Reform statutes, resurgence of negligence, **2:34**
- Res ipsa loquitur
 - generally, **2:26 et seq.**
 - elements, **2:29**
 - limitations, **2:28**
 - manufacturing defects, **7:13**
 - nature of doctrine, **2:27**

NEGLIGENCE LIABILITY

—**Cont'd**

- Res ipsa loquitur—Cont'd
 - procedural effect, **2:30**
- Responsibility limited by reasonable foreseeability, **2:9**
- Resurgence of negligence
 - generally, **2:31**
 - courts, **2:32**
 - reform statutes, **2:34**
 - Third Restatement, **2:33**
- Retailers and other non-manufacturing sellers, **16:3**
- Standard of care
 - generally, **2:7 et seq.**
 - cost-benefit analyses, **2:10**
 - design, due care in, **2:12**
 - Determining due care, above due care
 - design, **2:12**
 - manufacture, **2:11**
 - warnings and instructions, **2:13**
 - expert in the field, **2:8**
 - foreseeability, **2:9**
 - manufacture, due care in, **2:11**
 - manufacturers, **2:8**
 - responsibility limited by reasonable foreseeability, **2:9**
 - warnings and instructions, due care in, **2:13**
- Strict liability compared, **5:29**
- Testing duty, manufacturing
 - generally, **7:6**
 - frequency or efficacy of testing, **7:8**
 - third-party testing duties, **7:9**
- Third-party testing duties, **7:9**
- Third Restatement
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
- Two-pronged test, per se negligence, **2:18**
- Warnings
 - generally, **2:13, 9:14**
 - see also Warning and Instruction Defects, this index

NEGLIGENT ENTRUSTMENT

- Retailers and other non-manufacturing sellers, **16:4**

NEGLIGENT

MISREPRESENTATION

- See Misrepresentation Liability, this index

NON-MANUFACTURING SELLERS

- See Retailers and Other Non-Manufacturing Sellers, this index

NON-PROFESSIONAL SERVICES

- Generally, **17:11**

NOTICE REQUIREMENTS

- Class actions, **22:14**
- Warranty Liability, this index

PARENT MANUFACTURERS

- Generally, **16:13**
- Alter ego liability, **16:14**

PARTIES

- Defendant Parties, this index
- Plaintiff Parties, this index

PATIENTS

- Learned Intermediary Doctrine, this index
- Warnings duties owed to, **9:25**

PER SE NEGLIGENCE

- See also Negligence Liability, this index
- Compatibility with ordinary negligence claims, **2:24**

PESTICIDE LABELING

- Federal preemption, **15:17**

PHARMACISTS

- Generally, **19:17**
- Defenses, **19:19**
- Duty to warn, **9:10**
- Liability, **19:17**
- Warning duties, **9:10**

PHYSICIANS

- Defenses, **19:19**

INDEX

PHYSICIANS—Cont'd

- Learned Intermediary Doctrine, this index
- Warnings duties owed to, **9:25**

PLAINTIFF PARTIES

- Allergic product users, warnings duties owed to, **9:27**
- Bystanders, this index
- Children, this index
- Class Actions, this index
- Consolidation and Aggregate Litigation, this index
- Employees, this index
- Idiosyncratic product users, warnings duties owed to, **9:27**
- Learned Intermediary Doctrine, this index
- Patients, warnings duties owed to, **9:25**
- Physicians, warnings duties owed to, **9:25**
- Professional product users, warnings, **9:28**
- Sophisticated product users, warnings, **9:28**
- Warning and Instruction Defects, this index

PLEADING

- Misuse defense, burden of pleading and proof, **13:23**

POLICY CONSIDERATIONS

- Punitive damages insurance coverage, **26:25**
- Reform Legislation, this index
- Strict Liability, this index
- Warranty disclaimers, **4:42**

POST-SALE DUTIES

- Generally, **10:23 et seq.**
- Punitive damages, **26:18**
- Recalls
 - generally, **10:23, 10:25**
 - punitive damages, **26:18**
 - Third Restatement, **6:26**
- Repairs, **10:23**
- Retrofits, **10:25**
- Successor corporations
 - generally, **6:27**

POST-SALE DUTIES—Cont'd

- Successor corporations—Cont'd
 - warning duty, **6:28**
- Third Restatement, **6:25 et seq.**
- Warnings
 - generally, **10:23, 10:24**
 - punitive damages, **26:18**
 - successor corporations, **6:28**
 - Third Restatement, **6:25, 6:28**

PREEMPTION

- See Federal Preemption, this index

PRENATAL HARM

- Bendectin, **11:16**
- Defectiveness issues, **10:20**
- Intergenerational harm, **19:16**

PRESCRIPTION DRUGS

- See Drugs, Blood, and Biologics, this index

PRINT MEDIA

- Generally, **17:27**
- Freedom of expression issues, **17:31**

PRIVATE CLAIMS

- Magnuson-Moss Warranty Act, **4:45**

PRIVITY

- See Warranty Liability, this index

PRODUCT, DEFINITIONS OF TERM

- Generally, **6:34**

PRODUCT INSTALLERS

- Generally, **17:11**

PRODUCT LINE EXCEPTION

- Successor corporation liability, **16:19**

PROFESSIONAL PRODUCT USERS

- Warnings duties owed to, **9:28**

PROFESSIONAL SERVICES

- Generally, **17:10**

PROOF OF FACTS

- Alternative designs. See Design Defects, this index
- Causation in fact, **11:11, 11:12**

PROOF OF FACTS—Cont'd

- Circumstantial proof of defect, Third Restatement, **6:18**
- Compliance with statutory standards, negligence liability, **2:25**
- Crashworthiness, motor vehicles, **18:8**
- Customary standards, negligence liability
 - generally, **2:15**
 - manufacturing defect, **7:12**
- Defectiveness. See Nature and Proof of Defectiveness, this index
- Elements of res ipsa loquitur, **2:29**
- Excuses, per se negligence, **2:21**
- Expert Witnesses, this index
- Federal law, per se negligence, **2:23**
- Industry standards, negligence liability
 - generally, **2:15**
 - manufacturing defect, **7:12**
- Licensing statutes, per se negligence, **2:20**
- Manufacturing defects
 - breach of duty
 - generally, **7:10**
 - expert testimony, **7:11**
 - strict liability
 - generally, **7:16 et seq.**
 - defect at time of sale, **7:18**
 - defective condition, **7:19**
 - expert testimony, **7:19**
 - food adulteration cases, **7:17**
 - malfunction theory, **7:20**
- Misrepresentation, per se negligence, **3:12**
- Misuse defense, burden of pleading and proof, **13:23**
- Motor vehicle crashworthiness, **18:8**
- Nature and Proof of Defectiveness, this index
- Negligence
 - generally, **2:14 et seq.**
 - see also Negligence Liability, this index
- Other similar accidents as evidence of defect, **6:10**

PROOF OF FACTS—Cont'd

- Per se negligence
 - generally, **2:17 et seq.**
 - compatibility with ordinary negligence claims, **2:24**
 - misrepresentation, **3:12**
- Procedural effect of evidence
 - per se negligence, **2:22**
 - res ipsa loquitur, **2:30**
 - state-of-the-art evidence, **10:15**
- Puzzle of Comment j (Second Restatement), **6:3**
- Res ipsa loquitur
 - generally, **2:26 et seq.**
 - see also Negligence Liability, this index
- Safety standards, **6:9**
- Statute, violation of
 - generally, **2:16**
 - misrepresentations as violations, **3:12**
- Statutory compliance, **2:25**
- Strict liability, manufacturing defects
 - generally, **7:16 et seq.**
 - defect at time of sale, **7:18**
 - defective condition, **7:19**
 - expert testimony, **7:19**
 - food adulteration cases, **7:17**
 - malfunction theory, **7:20**
- Subsequent remedial measures as evidence of defect, **6:11**
- Third Restatement
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
- Two-pronged test, per se negligence, **2:18**
- Violation of statute
 - generally, **2:16**
 - misrepresentations as violations, **3:12**

**PROTECTION OF LAWFUL
COMMERCE IN ARMS ACT**

Generally, **10:9, App. O**

PROXIMATE CAUSE

Generally, **12:1**
See also Causation in Fact, this index

INDEX

PROXIMATE CAUSE—Cont'd

- Bizarre consequences, **12:6**
- Changes to a product as intervening and superseding causes, **12:10**
- Comparative fault defense, sole proximate cause of accident, **13:12**
- Contributory negligence defense, sole proximate cause of accident, **13:8**
- Criminal actions as intervening and superseding causes, **12:9**
- Directness test, **12:4**
- Foreseeability test, **12:3**
- Intentional torts, **12:9**
- Intervening and superseding causes
 - generally, **12:7 et seq.**
 - changes to a product, **12:10**
 - criminal actions, **12:9**
 - intentional torts, **12:9**
 - substantial changes to a product, **12:10**
 - third party intervening acts, **12:8**
 - violation of statute or regulation, **12:11**
- Legal cause, **12:5**
- Negligence liability, **2:5**
- Second Restatement test, **12:5**
- Sole proximate cause of accident
 - comparative fault defense, **13:12**
 - contributory negligence defense, **13:8**
- Substantial changes to a product as intervening and superseding causes, **12:10**
- Superseding causes. Intervening and superseding causes, **12:7**
- Tests of proximate cause
 - generally, **12:2 et seq.**
 - bizarre consequences, **12:6**
 - directness, **12:4**
 - foreseeability, **12:3**
 - legal cause, **12:5**
 - Second Restatement, **12:5**
- Third party intervening acts, **12:8**
- Violation of statute or regulation, intervening and superseding causes, **12:11**

PUBLICATIONS

- Generally, **17:26 et seq.**
- Freedom of expression issues, **17:31**

PUBLIC POLICY

- See Policy Considerations, this index

PUFFERY

- Express warranty liability, **4:10**

PUNITIVE DAMAGES

- Generally, **26:1 et seq.**
- Amounts of awards, **26:27**
- Basis of liability, **26:19**
- Basis of punitive damages claim, **26:21**
- Basis of underlying claim, **26:20**
- Bifurcation of proceedings, **26:38**
- Caps reforms, **26:35**
- Compensation functions, **26:10**
- Compliance with government standards reforms, **26:33**
- Confusion of tort and criminal law, **26:23**
- Constitutional law, **26:41, 26:42**
- Controversial nature of punitive damages, **26:4**
- Damages claim basis, **26:21**
- Design failures, **26:16**
- Deterrence functions, **26:9**
- Due process limitations, **26:41, 26:42**
- Education functions, **26:8**
- Evidentiary rulings reforms, **26:30**
- Fraud supporting, **26:13**
- Functions of punitive damages, **26:6 et seq.**
- Historical background, **26:3**
- Insurance coverage, **26:25**
- Judgments on the merits reforms, **26:31**
- Judicial determination of amount of awards, **26:39**
- Judicial reforms, **26:28 et seq.**
- Law enforcement functions, **26:11**
- Liability basis, **26:19**
- Liability standards reforms, **26:29**
- Measurement standards reforms, **26:29**
- Misconduct supporting, **26:12**
- Multipliers reforms, **26:35**

PUNITIVE DAMAGES—Cont'd

- Nature and sources of punitive damages, **26:1**
- Nature of punitive damages, **26:2**
- Post-sale failures to warn or recall, **26:18**
- Pretrial showings reforms, **26:30**
- Prima facie case reforms, **26:30**
- Problems, **26:22 et seq.**
- Public policy, insurance coverage, **26:25**
- Recurring criticism, **26:22 et seq.**
- Remittiturs, **26:34**
- Restitution functions, **26:10**
- Retribution functions, **26:7**
- Single award reforms, **26:36**
- Splitting awards with the state, **26:37**
- Standard of proof reforms, **26:32**
- Statutory reforms, **26:28 et seq.**
- Testing failures, **26:15**
- Underlying claim basis, **26:20**
- Use in products liability cases, **26:5**
- Vagueness in liability standards, **26:26**
- Vicarious liability and the innocent shareholder, **26:24**
- Violation of safety standards, **26:14**
- Warning failures, **26:17**
- Written explanations of awards, **26:40**

RAW MATERIAL SUPPLIERS

- Generally, **16:10 et seq.**
- Component parts suppliers, **16:12**
- Principles of liability, **16:12**
- Theories of liability, **16:11**
- Third Restatement, **6:20**
- Warnings and instructions defects, **9:29**

REAL ESTATE

- Generally, **17:20**
- Homes and Related Structures, this index
- Landlord liability, **17:24**
- Statutes of repose, **17:25**

RECALLS

- See Post-Sale Duties, this index

REFORM LEGISLATION

- Generally, **App. I, App. J**
- Anti-disclaimer and other warranty reform legislation, **4:41**
- Assumption of risk, **13:17**
- Bailment transactions, **17:6**
- Class Action Fairness Act, **22:3, App. P**
- Defenses
 - special defenses, **14:9**
 - user conduct defenses, **13:2**
- Inherent product hazard limitations on defectiveness, **10:10**
- Joint and several liability damages, **25:16**
- Lease transactions, **17:6**
- License transactions, **17:6**
- Model Uniform Product Liability Act, **App. H**
- Modern American law, **1:12**
- National Childhood Vaccine Act, **App. G**
- National Traffic Motor Vehicle Safety Act, **App. F**
- Path away from strict liability in tort. See Strict Liability, this index
- Product Liability Risk Retention Act, **App. M**
- Punitive damages, **26:28 et seq.**
- Restatement proposals
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
- Resurgence of negligence, **2:34**
- Retailers and other non-manufacturing sellers, **16:8**
- Service transactions, **17:13**
- Special defenses, **14:9**
- State of the art doctrine, **10:17**
- User conduct defenses, **13:2**
- Warranty liability, **4:41**

RELIANCE

- Causation in fact reliance problems, **11:20**
- Express warranty liability, **4:11**
- Implied warranty of fitness for particular purpose, **4:20**
- Justifiable, **3:8**

INDEX

RELIANCE—Cont'd

- Misrepresentation liability
 - justifiable reliance, **3:8**
 - when is reliance justifiable, **13:34**

REMEDIES

- Attorney's Fees, **4:46**

REPAIRED, REBUILT, AND RECONDITIONED PRODUCTS

- Generally, **17:14**
- Reform statutes, **17:17**

REPAIRS, POST-SALE

- Generally, **10:23**

REPRESENTATIONS

- See Misrepresentation Liability, this index

RES IPSA LOQUITUR

- See Negligence Liability, this index

RESTATEMENTS

- Second Restatement, this index
- Third Restatement, this index

RESURGENCE OF NEGLIGENCE

- See Negligence Liability, this index

RETAILERS AND OTHER NON-MANUFACTURING SELLERS

- Generally, **16:2**
- Distributors, **16:9**
- Duty to warn, **9:7**
- Misrepresentation liability, **16:5**
- Negligence liability, **16:3**
- Negligent entrustment, **16:4**
- Statutory reform, **16:8**
- Strict liability, **16:7**
- Third Restatement, **6:35**
- Warranty liability, **16:6**
- Wholesalers, **16:9**

RETROFITS

- Post-sale duties, **10:25**

RISK

- Product Liability Risk Retention Act, **App. M**

RISK—Cont'd

- Strict liability, risk-spreading policies and rationales, **5:11**

RISK-UTILITY TEST

- Generally, **5:18 et seq.**
- See also Design Defects, this index
- Alternative design analyses, **8:11**
- Alternative tests, **5:23 et seq.**
- Barker approach to tests, **8:16**
- Burdens and benefits, **8:8**
- Combining consumer expectations and risk-utility tests, **5:25, 8:14 et seq.**
- Complex vs simple designs, **8:17**
- Cost-benefit analysis fundamentals, **8:7**
- Defining one test in terms of the other, **8:15**
- Focusing the test on the proposed alternative design, **8:13**
- Hand Formula
 - design defects, **8:7**
 - strict liability context, **5:20**
- Nature of the test, **5:19**
- Problems with the test, **5:22**
- Soule approach to tests, **8:17**
- Strict Liability, this index
- Tabert-Potter approach to tests, **8:15**
- Theory, **5:21**
- Two liability prongs, **8:16**

RODENTICIDE LABELING

- Federal preemption, **15:17**

SAFETY LAWS AND STANDARDS

- Bio-Materials Access Assurance Act of 1998, **App. K**
- Compliance as conclusive defense, **14:8**
- Compliance as defense, **2:25, 14:6**
- Consumer Product Safety Act, **App. E**
- Consumer Product Safety Improvement Act of 2008, **App. E**
- Defectiveness, safety standards as evidence, **6:9**
- Design defects, optional safety devices, **8:23**

SAFETY LAWS AND STANDARDS

—**Cont'd**

- Federal preemption of state safety standards, **15:2**
- General Aviation Revitalization Act, **14:13, App. L**
- Insecticide, Fungicide, and Rodenticide Act, **11:15, 15:17**
- Inspectors, safety, as defendant parties, **16:30**
- Motor vehicles liability defenses, failure to use seatbelts, **18:14**
- National Traffic Motor Vehicle Safety Act, **App. F**
- Optional safety devices, design defects, **8:23**
- Overlapping of safety obligations, **6:4**
- Products liability law, safety laws distinguished, **1:2**
- Proximate cause, violation of statute as intervening and superseding causes, **12:11**
- Punitive damages, violation of safety standards, **26:14**
- State safety standards, federal preemption, **15:2**
- Third Restatement, **6:19**

SALES

- Merchantability warranty, sale requirement, **4:15**
- Time of sale, manufacturing defect existing at, **7:18**

SALVAGE

- Defectiveness issues, **10:22**

SCIENTER

- Misrepresentation liability, **3:7**

SECOND RESTATEMENT

- Generally, **App. A**
- Comment k, **19:5**
- Medical devices, **20:8**
- Proximate cause, **12:5**
- Unavoidably unsafe products, **19:5**

SELLERS OF PRODUCTS

- See Retailers and Other Non-Manufacturing Sellers, this index

SERVICE TRANSACTIONS

- Generally, **17:7 et seq.**
- Classic cases, **17:8**
- Installers of products, **17:11**
- Non-professional services, **17:11**
- Product installers, **17:11**
- Professional services, **17:10**
- Statutory reforms, **17:13**

SETTLEMENT

- Aggregate litigation, **21:7**
- Class actions, **22:13**
- Comparative fault, **23:21**

SILICONE BREAST IMPLANTS

- Causation in fact, **11:17**

SOFTWARE

- Generally, **17:30**
- Freedom of expression issues, **17:31**

SOPHISTICATED PRODUCT USERS

- Warnings duties owed to, **9:28**

SOURCES OF LAW

- Generally, **1:3**

STANDARD OF CARE

- See Negligence Liability, this index

STATE OF THE ART DOCTRINE

- Generally, **10:12 et seq.**
- Applicability to different types of claims, **10:14**
- Common-law developments, **10:16**
- Definitions, **10:13**
- Foreign law, **10:19**
- Procedural effect of state-of-the-art evidence, **10:15**
- Reform legislation, **10:17**
- Scope of doctrine, **10:14**
- Strict liability, **5:35**
- Third Restatement, **10:18**
- Unknowable dangers, **10:16**

STATUTES

- Compliance with statutes, **2:25**
- Family Smoking Prevention and Tobacco Control Act, **App. Q**
- Homeland Security Act, **App. N**

INDEX

STATUTES—Cont'd

- Protection of Lawful Commerce in Arms Act, **App. O**
- Reform Legislation, this index
- Safety Laws and Standards, this index
- Violation of Statute, this index
- Warranty Liability, this index

STATUTES OF LIMITATIONS

- Generally, **14:10, 14:11**
- Drugs, blood, and biological products, **19:21**
- Medical devices, **20:11**

STATUTES OF REPOSE

- Generally, **14:10, 14:12**
- Product liability rules, **14:13**
- Real estate defects, **17:25**

STRICT LIABILITY

- Generally, **5:1 et seq.**
- Abnormally dangerous activities
 - strict liability, strict products liability compared, **5:28**
- Adoption of Section 402A, Second Restatement, **5:6**
- Adulteration of food, manufacturing defects, **7:17**
- Alternative tests of liability, **5:23 et seq.**
- Assumption of risk, **13:16**
- Basic liability provisions of Third Restatement, **6:15**
- Basis of consumer expectations test, **5:15**
- Combining consumer expectations and risk-utility tests of liability, **5:25**
- Comparative fault, **13:11**
- Comparisons of liability theories
 - generally, **5:27 et seq.**
 - abnormally dangerous activities
 - strict liability, **5:28**
 - negligence liability, **5:29**
 - warranty liability, **5:30**
- Consumer expectations test
 - generally, **5:14**
 - see also Consumer Expectations Test, this index

STRICT LIABILITY—Cont'd

- Consumer expectations test—Cont'd
 - alternative tests, **5:23 et seq.**
 - combining consumer expectations and risk-utility tests, **5:25**
- Contributory negligence, **13:7**
- Decline of consumer expectations test, **5:17**
- Decline of the consumer expectations test, **5:34**
- Decline of the Wade-Keeton test, **5:33**
- Defect at time of sale, manufacturing defects, **7:18**
- Defective condition generally,
 - manufacturing defects, **7:15**
- Defect-specific tests of liability, **5:26**
- Defenses, this index
- Deterrence policies and rationales, **5:11**
- Express warranty, strict liability for misrepresentations compared, **4:7**
- Food adulteration, manufacturing defects, **7:17**
- Future of strict liability claims, **5:37**
- Hand Formula in the strict liability context, **5:20**
- Historical background
 - generally, **5:2 et seq.**
 - Second Restatement, **5:3 et seq.**
- Homes and related structures, **17:21**
- Indemnity, **23:15**
- Liability tests. Tests of liability,
 - below
- Malfunction theory, manufacturing defects, **7:20**
- Manufacturing defects
 - generally, **7:14 et seq.**
 - adulteration of food, **7:17**
 - expert testimony, **7:19**
 - food adulteration, **7:17**
 - malfunction theory, **7:20**
 - proof of defective condition, **7:16 et seq.**
 - time of sale, defect at, **7:18**
- Medical devices, **20:7**
- Misrepresentations
 - generally, **3:13 et seq.**

STRICT LIABILITY—Cont'd

- Misrepresentations—Cont'd
 - background, **3:14**
 - damages, **3:16**
 - express warranty compared, **4:7**
 - nature of liability, **3:15**
- Nature of risk-utility test, **5:19**
- Nature of strict products liability in tort, **5:5**
- Negligence liability compared, **5:29**
- Path away from strict liability in tort
 - generally, **5:31 et seq.**
 - decline of the consumer expectations test, **5:34**
 - decline of the Wade-Keeton test, **5:33**
 - future of strict liability claims, **5:37**
 - rejection of a duty to warn of unknowable dangers, **5:32**
 - rise of the state of the art defense, **5:35**
 - Third Restatement, **5:36**
- Path to strict liability in tort, **5:2**
- Policies and rationales
 - generally, **5:8 et seq.**
 - deterrence, **5:11**
 - risk-spreading, **5:11**
 - safety, **5:11**
- Problems with consumer expectations test, **5:16**
- Problems with risk-utility test, **5:22**
- Proof of defective condition
 - generally, **7:16 et seq.**
 - defect at time of sale, **7:18**
 - expert testimony, **7:19**
 - food adulteration cases, **7:17**
 - malfunction theory, **7:20**
- Recent theoretical developments, **5:12**
- Reforms. Path away from strict liability in tort, above
- Rejection of a duty to warn of unknowable dangers, **5:32**
- Restatements
 - Second Restatement, below
 - Third Restatement, below

STRICT LIABILITY—Cont'd

- Retailers and other non-manufacturing sellers, **16:7**
 - Rise of the state of the art defense, **5:35**
 - Risk-spreading policies and rationales, **5:11**
 - Risk-utility test
 - generally, **5:18 et seq.**
 - see also Risk-Utility Test, this index
 - Safety policies and rationales, **5:11**
 - Second Restatement
 - adoption of Section 402A, **5:6**
 - Comment j to Section 402A, **6:3**
 - historical background, **5:3 et seq.**
 - nature of strict products liability in tort, **5:5**
 - variations on Section 402A, **5:7**
 - State of the art defense, rise of, **5:35**
 - Tests of liability
 - generally, **5:13**
 - alternative tests, **5:23 et seq.**
 - combining consumer expectations and risk-utility tests, **5:25**
 - Consumer Expectations Test, this index
 - defect-specific tests, **5:26**
 - Risk-Utility Test, this index
 - verbal standards test, **5:24**
 - Theoretical developments, **5:12**
 - Theory, risk-utility, **5:21**
 - Third Restatement
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
 - Time of sale, defect at, **7:18**
 - Unknowable dangers, rejection of a duty to warn of, **5:32**
 - Verbal standards test of liability, **5:24**
 - Wade-Keeton test
 - generally, **8:18**
 - decline of, **5:33**
 - Warnings and instructions defects, **9:15**
 - Warranty liability compared, **5:30**
- SUCCESSOR CORPORATIONS**
- Generally, **16:17**

INDEX

SUCCESSOR CORPORATIONS

—Cont'd

- Asbestos litigation, **16:21**
- Continuity of enterprise exceptions to non-liability rule, **16:19**
- Duty to warn, **16:20**
- Employers as manufacturers, post-merger accidents, **16:25**
- Exceptions to non-liability rule, **16:18**
- Non-liability rule with specific exceptions, **16:18**
- Post-merger accidents, employers as manufacturers, **16:25**
- Post-sale duties
 - generally, **6:27**
 - warnings, **6:28**
- Product line exceptions to non-liability rule, **16:19**
- Third Restatement, **6:27, 6:28**

TESTING OF PRODUCTS

- Crashworthiness tests, **18:9**
- Failures to test, punitive damages, **26:15**
- Manufacturing Defects, this index

THEORIES OF LIABILITY

- Generally, **2:1 et seq.**
- Alter ego liability, parent manufacturers, **16:14**
- Biological products, **19:3**
- Blood, **19:3**
- Comparisons of Liability Theories, this index
- Component parts suppliers, **16:11**
- Continuity of enterprise, successor corporation non-liability rule, **16:19**
- Contract law. See Warranty Liability, this index
- Crashworthiness, **18:9**
- Design defects, **8:2**
- Drugs, **19:3**
- Dual capacity doctrine, **16:24**
- Federal Preemption, this index
- Fraud. See Misrepresentation Liability, this index
- Manufacturing defects, **7:3**
- Medical devices, **20:4 et seq.**

THEORIES OF LIABILITY

—Cont'd

- Misrepresentation Liability, this index
- Misuse defense, **13:22**
- Motor vehicles, crashworthiness, **18:9**
- Negligence Liability, this index
- Parent manufacturers, alter ego liability, **16:14**
- Product line exception to successor corporation non-liability rule, **16:19**
- Raw material suppliers, **16:11**
- Recovery theories, **1:14**
- Res ipsa loquitur. See Negligence Liability, this index
- State of the Art Doctrine, this index
- Successor Corporations, this index
- Tort and warranty claims compared, **4:3**
- Warranty Liability, this index

THIRD RESTATEMENT

- Generally, **App. B**
- Apportionment of damages, **6:32**
- Causation
 - generally, **6:30**
 - additional harm, **6:31**
- Circumstantial proof of defect, **6:18**
- Comparative fault, **23:16**
- Component parts, **6:20**
- Conclusion, **6:37**
- Consumer expectations, **8:21**
- Contractual disclaimers, **6:33**
- Damages apportionment, **6:32**
- Defectiveness provisions, structure of, **6:14**
- Definitions of product, **6:34**
- Design defects
 - generally, **8:19 et seq.**
 - consumer expectation test, **8:21**
 - risk-utility test, **8:9**
 - special design defect issues, **8:22**
- Disclaimers, contractual, **6:33**
- Distinguishing the separate types of defects, **6:16**
- Distributors, **6:35**
- Drugs, **6:21**

THIRD RESTATEMENT—Cont'd

- Drugs, blood, & biological products, **19:4 et seq.**
- Economic loss, **6:36**
- Food, **6:22**
- Foreseeability, **6:17**
- Future of strict liability claims, **5:37**
- Historical background, **6:13**
- Inherent dangers, **6:17**
- Limitations on liability, **6:17**
- Medical devices, **6:21, 20:8**
- Misrepresentations, **6:24**
- Misuse, **6:17**
- Negligence liability, resurgence of, **2:33**
- Obvious dangers, **6:17**
- Path away from strict liability in tort, **5:36**
- Post-Sale Duties, this index
- Prescription drugs, **6:21**
- Product sponsorship, **6:29**
- Raw materials, **6:20**
- Resurgence of negligence liability, **2:33**
- Risk-utility test, **8:9**
- Safety statutes and regulations, **6:19**
- Sellers, **6:35**
- Special design defect issues, **8:22**
- State of the art doctrine, **10:18**
- Structure of defectiveness provisions, **6:14**
- Used products, **6:23**

TIME OF SALE

- Manufacturing defect existing at, **7:18**

TORTIOUS

MISREPRESENTATION

- See Misrepresentation Liability, this index

TOXIC CONTAMINANTS

- Generally, **17:36**

TRADE ASSOCIATIONS

- Generally, **16:31**

TRADEMARK LICENSORS

- Generally, **16:16**

UNAVOIDABLY UNSAFE PRODUCTS

- Drugs, blood, & biological products, **19:5**
- Second Restatement, **19:5**

UNIFORM COMMERCIAL CODE

- See Warranty Liability, this index

UNKNOWABLE DANGERS

- State of the art doctrine, **10:16**

USED GOODS

- Dealers' duty to warn, **9:8**

USED PRODUCTS

- Generally, **17:18**
- Dealers' duty to warn, **9:8**
- Repaired, rebuilt, and reconditioned products
 - generally, **17:14**
 - reform statutes, **17:17**

USER CONDUCT DEFENSES

- Generally, **13:1**
- Comparative Fault, this index
- Contributory Negligence, this index
- Misuse Defense, this index

VACCINES

- Drugs, Blood, and Biologics, this index
- National Childhood Vaccine Act, **App. G**

VIDEO GAMES

- Generally, **17:28**
- Freedom of expression issues, **17:31**

VIOLATION OF STATUTE

- Misrepresentations as violations, **3:12**
- Proof of negligence liability, **2:16**

VOLUNTARINESS OF ENCOUNTER

- Assumption of risk defense, **13:15**

WADE FACTORS

- Risk-utility test, **8:8**

WARNING AND INSTRUCTION DEFECTS

- Generally, **9:1 et seq.**

INDEX

WARNING AND INSTRUCTION DEFECTS—Cont'd

- See also Misrepresentation Liability, this index
- Adequacy of warnings
 - generally, **9:18 et seq.**
 - advertising impacts on, **9:20**
 - content adequacy, **9:19**
 - drugs, blood, and biological products, **19:14**
 - form or procedural adequacy, **9:21**
 - nullifying warnings with overpromotion, **9:20**
 - overwarning, **9:22**
 - procedural or form adequacy, **9:21**
 - substantive adequacy, **9:19**
 - warnings pollution, **9:22**
- Advertising impacts on adequacy of warnings, **9:20**
- Allergic product users, warnings duties owed to, **9:27**
- Automobiles, **18:5**
- Basic liability provisions, Third Restatement, **6:15**
- Basis of the warning obligation, **9:2**
- Blood and biological products
 - generally, **19:9 et seq.**
 - see also Drugs, Blood, and Biologics, this index
- Bulk sales, **9:29**
- Causation, **9:30**
- Causation in fact warnings problems, **11:20**
- Circumstantial proof of defect, Third Restatement, **6:18**
- Commercial lessors, duty to warn, **9:9**
- Component parts manufacturers
 - generally, **9:11**
 - Third Restatement, **6:20**
- Content adequacy of warnings, **9:19**
- Contributory negligence, warning cases, **13:4**
- Dealers in used goods, duty to warn, **9:8**
- Defenses, this index
- Design defects and, relationship between warning duties and safe design duties, **9:5**

WARNING AND INSTRUCTION DEFECTS—Cont'd

- Distinctness of the defect concepts, **6:2**
- Distinguishing the separate types of defects, Third Restatement, **6:16**
- Drugs
 - generally, **19:9 et seq.**
 - see also Drugs, Blood, and Biologics, this index
- Due care in manufacturing, determining, **2:13**
- Employees, warnings duties owed to, **9:24**
- Empowering warning claims, prescription drugs and medical devices design defects, **8:28**
- Expert Witnesses, this index
- Failure to follow warnings and instructions, **13:25**
- Federal Preemption, this index
- Food, Third Restatement, **6:22**
- Foreseeability, Third Restatement, **6:17**
- Form or procedural adequacy, **9:21**
- Idiosyncratic product users, warnings duties owed to, **9:27**
- Inherent dangers, Third Restatement, **6:17**
- Labeling. See Federal Preemption, this index
- Learned Intermediary Doctrine, this index
- Lessors, commercial, duty to warn, **9:9**
- Limitations on liability, Third Restatement, **6:17**
- Medical devices
 - generally, **20:9**
 - design defects, empowering warning claims, **8:28**
 - Third Restatement, **6:21**
- Misuse defense
 - generally, **13:25**
 - Third Restatement, **6:17**
- Motor vehicles, **18:5**
- Nature of the duty to warn, **9:3**
- Nature of the risk to be warned, **9:4**
- Negligence liability, **9:14**

**WARNING AND INSTRUCTION
DEFECTS—Cont'd**

- Non-manufacturing sellers, duty to warn, **9:7**
- Nullifying warnings with overpromotion, **9:20**
- Obvious dangers, Third Restatement, **6:17**
- Obvious or known dangers, **9:4**
- Off-label promotion, **19:11**
- Other similar accidents as evidence, **6:10**
- Over-promotion, **19:10**
- Overwarning, **9:22**
- Patients, warnings duties owed to, **9:25**
- Persons to be warned
 - generally, **9:23 et seq.**
 - bystanders, **9:26**
 - drugs, blood, and biological products, **19:12**
 - Learned Intermediary Doctrine, this index
- Pharmacists' duty to warn, **9:10**
- Physicians, warnings duties owed to, **9:25**
- Post-Sale Duties, this index
- Procedural or form adequacy, **9:21**
- Professional product users, warnings duties owed to, **9:28**
- Proof of defect
 - generally, **6:1 et seq.**
 - see also Nature and Proof of Defectiveness, this index
- Punitive damages, **26:17**
- Puzzle of Comment j (Second Restatement), **6:3**
- Raw materials sales
 - generally, **9:29**
 - Third Restatement, **6:20**
- Relationship between warning duties and safe design duties, **9:5**
- Safety obligations, overlapping of, **6:4**
- Safety standards as evidence, **6:9**
- Safety statutes and regulations, Third Restatement, **6:19**
- Sellers, non-manufacturing, duty to warn, **9:7**

**WARNING AND INSTRUCTION
DEFECTS—Cont'd**

- Sophisticated product users, warnings duties owed to, **9:28**
- Standard of care, determining due care, **2:13**
- Strict liability, **9:15**
- Structure of Third Restatement, **6:14**
- Subsequent remedial measures as evidence, **6:11**
- Substantive adequacy of warnings, **9:19**
- Successor corporation's duty to warn, **16:20**
- Theories and tests of liability
 - generally, **9:13 et seq.**
 - negligence, **9:14**
 - strict liability, **9:15**
 - warranties, **9:16**
- Third Restatement
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
- Three types of defect, **6:2**
- Unintended or unforeseeable uses, **9:17**
- Used goods dealers, duty to warn, **9:8**
- Used products, Third Restatement, **6:23**
- Variety of warning issues, **9:12**
- Warnings pollution, **9:22**
- Warranty liability, **9:16**
- Who owes the duty to warn, **9:6 et seq.**

WARRANTY LIABILITY

- Generally, **4:1**
- Advertising, express warranty, **4:8**
- Anti-disclaimer and other warranty reform legislation, **4:41**
- Assumption of risk, **13:28**
- Automobiles. See Magnuson-Moss Warranty Act, this index
- Awareness of buyer element, **4:12**
- Basic liability provisions of Third Restatement, **6:15**
- Basis of the bargain, express warranty, **4:11**

INDEX

WARRANTY LIABILITY—Cont'd

- Breach
 - express warranty, **4:9**
 - Notice of breach, below
 - sellers to whom notice should be given, **4:30**
- Buyer awareness element, **4:12**
- Bystanders, notice of breach by, **4:29**
- Choice of law, **24:10**
- Communication of express warranties, **4:8**
- Comparative fault, **13:32**
- Complaint, filing as notice of breach, **4:31**
- Conduct defenses. User conduct defenses, below
- Contributory negligence, **13:28**
- Damages
 - Limitations of remedies, below
 - personal injury damage exclusions, **4:40**
 - third-party beneficiaries, **4:26**
 - unconscionable limitations, **4:40**
- Defenses. User Conduct defenses, below
- Disclaimers
 - generally, **4:32**
 - anti-disclaimer and other warranty reform legislation, **4:41**
 - express warranties, **4:34**
 - implied warranties, **4:35**
 - limiting rights of third-party beneficiaries by disclaimer or limitation, **4:33**
 - policy considerations, **4:42**
 - state anti-disclaimer statutes, **4:43**
- Third Restatement, **6:33**
- unconscionable
 - generally, **4:36**
 - personal injury damages exclusions, **4:40**
- Express warranties
 - generally, **4:5**
 - advertising, **4:8**
 - awareness of buyer element, **4:12**
 - basis of the bargain, **4:11**
 - breach, **4:9**
 - buyer awareness element, **4:12**

WARRANTY LIABILITY—Cont'd

- Express warranties—Cont'd
 - communication of, **4:8**
 - conduct defenses, **13:31**
 - disclaimers, **4:34**
 - fact vs opinion, **4:10**
 - falsity, **4:9**
 - interpretation
 - generally, **4:9**
 - fact vs opinion, **4:10**
 - Limitations of remedies, below
 - limitations on rights of third-party beneficiaries, **4:33**
 - manner of communication, **4:8**
 - marketing, **4:8**
 - misrepresentation strict liability compared, **4:7**
 - puffery, **4:10**
 - reliance, **4:11**
 - strict liability in tort for misrepresentation compared, **4:7**
 - UCC Section 2-313, **4:6**
- Failure of essential purpose, limitations of remedies, **4:39**
- Falsity, express warranty, **4:9**
- Filing of complaint as notice of breach, **4:31**
- Fitness for ordinary purpose, **4:16**
- Fitness for particular purpose
 - generally, **4:17 et seq.**
 - buyer's particular purpose, **4:19**
 - knowledge of seller, **4:21**
 - merchantability warranty compared, **4:22**
 - reliance, **4:20**
 - seller's knowledge, **4:21**
 - UCC Section 2-315, **4:18**
- Form of notice of breach, **4:31**
- Historical background, **4:2**
- Homes and related structures, **17:22**
- Horizontal privity, **4:25**
- Implied warranties
 - disclaimers, **4:35**
 - fitness for ordinary purpose, **4:16**
- Fitness for particular purpose, above
 - homes and related structures, **17:22**

WARRANTY LIABILITY—Cont'd

Implied warranties—Cont'd
 Limitations of remedies, below
 Merchantability, below
 unconscionable disclaimers
 generally, **4:36**
 personal injury damages exclu-
 sions, **4:40**

Indemnity
 generally, **23:13**
 vouching in, **23:14**

Interpretation of express warranties
 generally, **4:9**
 fact vs opinion, **4:10**

Knowledge of seller, fitness for par-
 ticular purpose, **4:21**

Limitations of remedies
 generally, **4:37**
 failure of essential purpose, **4:39**
 personal injury damage exclusions,
4:40
 repair or replacement, **4:38**

Limitations on rights of third-party
 beneficiaries, **4:33**

Magnuson-Moss Warranty Act, this
 index

Marketing, express warranty, **4:8**

Medical devices, **20:6**

Merchantability
 generally, **4:13 et seq.**
 fitness for ordinary purpose, **4:16**
 fitness for particular purpose war-
 ranty compared, **4:22**
 merchant requirement, **4:15**
 sale requirement, **4:15**
 UCC Section 2-314, **4:14**

Merchant requirement, merchant-
 ability, **4:15**

Method of notice of breach, **4:31**

Misrepresentation strict liability in
 tort for, express warranty
 compared, **4:7**

Misuse defense, **13:29**

Modern warranty law
 statutory basis, **4:2**
 UCC, below

Motor vehicles. See Magnuson-Moss
 Warranty Act, this index

WARRANTY LIABILITY—Cont'd

Non-purchasers. notice of breach by,
4:29

Notice of breach
 generally, **4:27**
 bystanders, **4:29**
 filing of complaint as, **4:31**
 form of notice, **4:31**
 method of notice, **4:31**
 non-purchasers, **4:29**
 reasonable time for, **4:28**
 sellers to whom notice should be
 given, **4:30**
 time for, **4:28**

Personal injury damage exclusions,
4:40

Policy considerations, warranty
 disclaimers, **4:42**

Privity of contract
 generally, **4:23 et seq.**
 damages, **4:26**
 horizontal, **4:25**
 notice of breach by bystanders and
 non-purchasers., **4:29**
 vertical, **4:24**

Puffery, **4:10**

Purpose of buyer
 fitness for ordinary purpose, **4:16**
 Fitness for particular purpose,
 above

Reasonable time for notice of breach,
4:28

Reform statutes, **4:41**

Reliance
 express warranty, **4:11**
 implied warranty of fitness for par-
 ticular purpose, **4:20**

Remedies. Limitations of remedies,
 above

Repair or replacement limitations of
 remedies, **4:38**

Retailers and other non-manufactur-
 ing sellers, **16:6**

Sale requirement, merchantability,
4:15

Seller's knowledge, fitness for partic-
 ular purpose, **4:21**

Sellers to whom notice should be
 given, **4:30**

INDEX

WARRANTY LIABILITY—Cont'd

- State anti-disclaimer statutes, **4:43**
- Statutory basis of modern warranty law, **4:2**
- Strict liability compared, **5:30**
- Strict liability in tort for misrepresentation, express warranty compared, **4:7**
- Third-party beneficiaries
 - generally, **4:23 et seq.**
 - bystanders. notice of breach by, **4:29**
 - damages, **4:26**
 - horizontal privity, **4:25**
 - limiting rights of by disclaimer or limitation, **4:33**
 - non-purchasers. notice of breach by, **4:29**
 - notice of breach by bystanders and non-purchasers., **4:29**
 - UCC Section 2-318, **4:25**
 - vertical privity, **4:24**
- Third Restatement
 - generally, **6:12 et seq.**
 - see also Third Restatement, this index
 - disclaimers, **6:33**
- Time for notice of breach, **4:28**
- Topics covered, **4:4**
- Tort and warranty claims compared, **4:3**
- UCC
 - generally, **App. C**
 - conduct defenses, **13:30**
 - historical background, **4:2**

WARRANTY LIABILITY—Cont'd

- UCC—Cont'd
 - Section 2-313, express warranty, **4:6**
 - Section 2-314, merchantability, **4:14**
 - Section 2-315, fitness for particular purpose, **4:18**
 - Section 2-318, third-party beneficiaries, **4:25**
- Unconscionable disclaimers
 - generally, **4:36**
 - personal injury damages exclusions, **4:40**
- User conduct defenses
 - Generally, **13:27 et seq.**
 - assumption of risk, **13:28**
 - comparative fault, **13:32**
 - contributory negligence, **13:28**
 - express warranty, **13:31**
 - misuse, **13:29**
 - UCC, **13:30**
- Vertical privity, **4:24**
- Warnings and instructions defects, **9:16**

WEBSITES

- Generally, **17:28**
- Freedom of expression issues, **17:31**

WHOLESALEERS

- Defendant parties, **16:9**

WORKERS' COMPENSATION LAWS

- See Employers as Manufacturers, this index

Index

CONSUMER EXPECTATIONS TEST

Barker approach to tests, **8:16**
Two liability prongs, **8:16**

COST-BENEFIT ANALYSES

Negligence liability standard of care,
2:10
Risk-utility test, cost-benefit analysis
fundamentals, **8:7**

DESIGN DEFECTS

Cost-benefit analysis fundamentals,
8:7
Fundamentals of cost-benefit analy-
sis, **8:7**

DRUGS, BLOOD, AND BIOLOGICS

Theories of liability, **19:3**

HAND FORMULA

Negligence, **2:10**

MODERN AMERICAN LAW

Anatomy of modern products liability
litigation, **1:13**
Product defectiveness, **1:15**
Theories of recovery, **1:14**

NEGLIGENCE LIABILITY

Cost-benefit analyses, **2:10**
Determining due care
generally, **2:10 et seq.**
cost-benefit analyses, **2:10**
Standard of care
cost-benefit analyses, **2:10**

RISK-UTILITY TEST

Barker approach to tests, **8:16**
Cost-benefit analysis fundamentals,
8:7
Two liability prongs, **8:16**

STRICT LIABILITY

Path away from strict liability in tort
future of strict liability claims,
5:38
Policies and rationales
generally, **5:8 et seq.**
Second Restatement
variations on Section 402A, **5:7**
Tests of liability
verbal standards test, **5:24**
Verbal standards test of liability, **5:24**

THEORIES OF LIABILITY

Generally, **19:3**

