

Summary of Contents

Volume 1

PART I. IN GENERAL

Chapter 1. An Introduction to Products Liability Law

PART II. THEORIES OF LIABILITY

Chapter 2. Negligence

Chapter 3. Tortious Misrepresentation

Chapter 4. Warranty

Chapter 5. Strict Liability in Tort

Chapter 6. Nature and Proof of Defectiveness

PART III. PRODUCT DEFECTS

Chapter 7. Manufacturing Defects

Chapter 8. Design Defects

Chapter 9. Warning Defects

Volume 2

PART III. PRODUCT DEFECTS (CONTINUED)

Chapter 10. Limitations on Defectiveness

PART IV. CAUSATION

Chapter 11. Cause in Fact

Chapter 12. Proximate Cause

PART V. DEFENSES

Chapter 13. User Conduct Defenses

Chapter 14. Special Defenses

Chapter 15. Federal Preemption

PART VI. SPECIAL DEFENDANTS, TRANSACTIONS & PRODUCTS

- Chapter 16. Special Defendants
- Chapter 17. Special Transactions and Products
- Chapter 18. Automotive Vehicles
- Chapter 19. Pharmacological Drugs, Blood, and Biological Products
- Chapter 20. Medical Devices, Instruments, and Equipment

Volume 3

PART VII. MULTIPLE CASES, PARTIES & JURISDICTIONS

- Chapter 21. Multiple Cases—Consolidation
- Chapter 22. Multiple Plaintiffs—Class Actions
- Chapter 23. Multiple Defendants—Joint and Several Liability, Contribution, Indemnity, and Apportionment
- Chapter 24. Multiple Jurisdictions—Conflict of Laws

PART VIII. DAMAGES

- Chapter 25. Compensatory Damages
- Chapter 26. Punitive Damages

Appendices

- Appendix A. Restatement Second, Torts
- Appendix B. Restatement Third, Torts: Products Liability
- Appendix C. Uniform Commercial Code
- Appendix D. Magnuson Moss Warranty Act
- Appendix E. Consumer Product Safety Act; Consumer Product Safety Improvement Act of 2008
- Appendix F. National Traffic Motor Vehicle Safety Act—Selected Sections
- Appendix G. National Childhood Vaccine Act
- Appendix H. Model Uniform Product Liability Act
- Appendix I. State Products Liability Reform Statutes—General

SUMMARY OF CONTENTS

Volume 4

Appendices (Continued)

- Appendix J. State Products Liability Reform Statutes—
Particular Topics
- Appendix K. Biomaterials Access Assurance Act of 1998
- Appendix L. General Aviation Revitalization Act of 1994
- Appendix M. Product Liability Risk Retention Act
- Appendix N. Homeland Security Act of 2002—Selected
Sections
- Appendix O. Protection of Lawful Commerce in Arms Act
- Appendix P. Class Action Fairness Act of 2005
- Appendix Q. Family Smoking Prevention and Tobacco
Control Act—Selected Sections
- Appendix R. EEC Directive on Liability for Defective
Products

Table of Laws and Rules

Table of Cases

Index

Table of Contents

Volume 1

PART I. IN GENERAL

CHAPTER 1. AN INTRODUCTION TO PRODUCTS LIABILITY LAW

- § 1:1 Introduction
- § 1:2 —Product safety law distinguished
- § 1:3 —Mixed sources of products liability law
- § 1:4 —The “field” of products liability law
- § 1:5 —The moral foundations of products liability law
- § 1:6 —Products liability resources
- § 1:7 Early products liability law
- § 1:8 —Roman law
- § 1:9 —Early English law
- § 1:10 —Early American law
- § 1:11 Modern American law
- § 1:12 —Reform
- § 1:13 —Anatomy of modern products liability litigation
- § 1:14 —Theories of recovery
- § 1:15 —Product defectiveness
- § 1:16 —Causation
- § 1:17 —Defenses
- § 1:18 —Special defendants, transactions, products, and litigation
- § 1:19 —Damages
- § 1:20 Foreign law
- § 1:21 —Europe
- § 1:22 —Other nations

PART II. THEORIES OF LIABILITY

CHAPTER 2. NEGLIGENCE

- § 2:1 Negligence
- § 2:2 —Duty
- § 2:3 —Breach
- § 2:4 —Cause in fact

- § 2:5 —Proximate cause
- § 2:6 —Damage
- § 2:7 The standard of care
- § 2:8 —Manufacturers held to standard of “expert in the field”
- § 2:9 —Responsibility limited by reasonable foreseeability
- § 2:10 —Determining due care—Cost-benefit analysis
- § 2:11 — —Due care in manufacture
- § 2:12 — —Due care in design
- § 2:13 — —Due care in warnings and instructions
- § 2:14 Proof of negligence—Generally
- § 2:15 —Industry standards as custom
- § 2:16 —Violation of statute
- § 2:17 —Negligence per se
- § 2:18 — —The two-pronged test
- § 2:19 — —Other negligence per se requirements
- § 2:20 — —Licensing statutes
- § 2:21 — —Excuses
- § 2:22 — —Procedural effect
- § 2:23 — —Federal law and federal courts
- § 2:24 — —Compatibility with ordinary negligence claims
- § 2:25 —Compliance with statutory standards
- § 2:26 —Res ipsa loquitur
- § 2:27 — —Nature of the doctrine
- § 2:28 — —Limitations
- § 2:29 — —Elements
- § 2:30 — —Procedural effect
- § 2:31 The resurgence of negligence
- § 2:32 —Resurgence in the courts
- § 2:33 —Resurgence in the *Restatement*
- § 2:34 —Resurgence in reform statutes

CHAPTER 3. TORTIOUS MISREPRESENTATION

- § 3:1 Misrepresentation
- § 3:2 Fraud
- § 3:3 —Representation
- § 3:4 —Fact
- § 3:5 —Falsity
- § 3:6 —Materiality
- § 3:7 —“Scienter”; knowledge of falsity and intent to deceive
- § 3:8 —Justifiable reliance
- § 3:9 —Resulting damage
- § 3:10 —Other issues
- § 3:11 Negligent misrepresentation

TABLE OF CONTENTS

- § 3:12 —Misrepresentation as a violation of statute;
negligence per se
- § 3:13 Strict liability for misrepresentation
- § 3:14 —Background
- § 3:15 —Nature of liability
- § 3:16 —Damage

CHAPTER 4. WARRANTY

- § 4:1 Warranty
- § 4:2 —Statutory basis of modern warranty law
- § 4:3 —Warranty and tort claims compared
- § 4:4 —Topics covered
- § 4:5 Express warranty
- § 4:6 —Uniform Commercial Code § 2-313
- § 4:7 —Compared to strict liability in tort for
misrepresentation
- § 4:8 —Manner of communication
- § 4:9 —Breach; falsity and interpretation
- § 4:10 —Interpretation; fact *vs.* opinion (“puffs”)
- § 4:11 —Basis of the bargain; reliance
- § 4:12 —Trend toward requiring a buyer’s awareness
- § 4:13 Implied warranty of merchantability
- § 4:14 —Uniform Commercial Code § 2-314
- § 4:15 —Requirements of “merchant” and “sale”
- § 4:16 —Fitness for ordinary purpose
- § 4:17 Implied warranty of fitness for particular purpose
- § 4:18 —Uniform Commercial Code § 2-315
- § 4:19 —Buyer’s particular purpose
- § 4:20 —Buyer’s reliance
- § 4:21 —Seller’s knowledge
- § 4:22 —Compared to implied warranty of merchantability
- § 4:23 Privity of contract and third-party beneficiaries
- § 4:24 —Vertical privity
- § 4:25 —Horizontal privity; third-party beneficiaries under
§ 2-318
- § 4:26 —Damage claims available
- § 4:27 Notice of breach
- § 4:28 —“Reasonable” time
- § 4:29 —Bystanders and other non-purchasers
- § 4:30 —Sellers to whom notice should be given
- § 4:31 —Method and form of notice; filing of complaint
- § 4:32 Disclaimers
- § 4:33 —Limiting rights of third-party beneficiaries by
disclaimer or limitation
- § 4:34 —Disclaimers of express warranties
- § 4:35 —Disclaimers of implied warranties

- § 4:36 —Unconscionability
- § 4:37 Limitations of remedy
- § 4:38 —Repair or replacement
- § 4:39 —Failure of essential purpose
- § 4:40 —Personal injury damage exclusions; unconscionability
- § 4:41 Anti-disclaimer and other warranty reform legislation
- § 4:42 —The disclaimer problem in the products liability context
- § 4:43 —State anti-disclaimer statutes
- § 4:44 —The Federal Magnuson-Moss Warranty Act
- § 4:45 —Private claims under Magnuson-Moss
- § 4:46 —Jurisdiction and attorney’s fees under Magnuson-Moss

CHAPTER 5. STRICT LIABILITY IN TORT

- § 5:1 Strict liability in tort
- § 5:2 The path to strict liability in tort
- § 5:3 *Restatement Second, Torts* § 402A
- § 5:4 —The progression of § 402A drafts
- § 5:5 —Nature of strict products liability in tort
- § 5:6 —Adoption of § 402A
- § 5:7 —Variations on § 402A
- § 5:8 Policies and rationales
- § 5:9 —Background
- § 5:10 —Rationales generally
- § 5:11 —Deterrence (safety) and risk-spreading
- § 5:12 —Recent theoretical developments
- § 5:13 Liability tests generally
- § 5:14 The consumer expectations test
- § 5:15 —Basis of the consumer expectations test
- § 5:16 —Problems with the consumer expectations test
- § 5:17 —The decline of the consumer expectations test
- § 5:18 The risk-utility test
- § 5:19 —Nature of the risk-utility test
- § 5:20 —The Hand Formula in the strict liability context
- § 5:21 —Risk-utility theory
- § 5:22 —Problems with the risk-utility test
- § 5:23 Alternative tests
- § 5:24 —Verbal standards
- § 5:25 —Combining tests; consumer expectations and risk-utility
- § 5:26 —Defect-specific tests
- § 5:27 Comparison with other liability theories
- § 5:28 —Strict products liability *vs.* strict liability for abnormally dangerous activities
- § 5:29 —Strict liability *vs.* negligence

TABLE OF CONTENTS

- § 5:30 —Strict liability in tort *vs.* warranty
- § 5:31 The path away from strict liability in tort
- § 5:32 —The rejection of a duty to warn of unknowable dangers
- § 5:33 —The decline of the Wade-Keeton test
- § 5:34 —The decline of the consumer expectations test
- § 5:35 —The rise of the state of the art defense
- § 5:36 —The *Restatement Third, Torts: Products Liability*
- § 5:37 —Whence strict liability?

CHAPTER 6. NATURE AND PROOF OF DEFECTIVENESS

- § 6:1 Defectiveness
- § 6:2 The three types of defect—The distinctness of the defect concepts
- § 6:3 —The puzzle of comment *j*
- § 6:4 —Overlap of safety obligations
- § 6:5 Proof of defect—Expert testimony
- § 6:6 — —Early limitations on expert testimony; *Frye*
- § 6:7 — —*Daubert* and its progeny
- § 6:8 —Other recurring issues
- § 6:9 — —Safety standards
- § 6:10 — —Other similar accidents
- § 6:11 — —Subsequent remedial measures
- § 6:12 *Restatement Third, Torts: Products Liability*
- § 6:13 —Development
- § 6:14 —Structure
- § 6:15 —Basic liability provisions
- § 6:16 —Distinguishing the separate types of defect
- § 6:17 —Limitations on liability; obvious and inherent danger, foreseeability, misuse
- § 6:18 —Circumstantial proof of defect
- § 6:19 —Product safety statutes and regulations
- § 6:20 —Component parts and raw materials
- § 6:21 —Defective drugs and medical devices
- § 6:22 —Food
- § 6:23 —Used products
- § 6:24 —Misrepresentation
- § 6:25 —Post-sale duty to warn
- § 6:26 —Post-sale duty to recall
- § 6:27 —Liability of successor corporations
- § 6:28 —Successor post-sale duty to warn
- § 6:29 —Product sponsorship
- § 6:30 —Causation generally
- § 6:31 —Causation of additional harm
- § 6:32 —Apportionment of damages

- § 6:33 —Contractual disclaimers
- § 6:34 —“Product” defined
- § 6:35 —Sellers and distributors
- § 6:36 —Economic loss
- § 6:37 —Conclusion

PART III. PRODUCT DEFECTS

CHAPTER 7. MANUFACTURING DEFECTS

- § 7:1 Manufacturing defects
- § 7:2 —*Restatement Second, Torts* and *Restatement Third, Torts: Products Liability* approaches
- § 7:3 —Theories of liability
- § 7:4 Negligence—Generally
- § 7:5 —Duty of care generally
- § 7:6 —Duty to test and inspect
- § 7:7 —Food adulteration
- § 7:8 —Required testing frequency or efficacy
- § 7:9 —Effect of third party’s duty to inspect
- § 7:10 —Proof of breach of duty—Generally
- § 7:11 —Expert testimony
- § 7:12 —Effect of industry custom and practice
- § 7:13 —*Res ipsa loquitur*
- § 7:14 Strict tort liability
- § 7:15 —Defective condition generally
- § 7:16 —Proof of defective condition
- § 7:17 —Food adulteration cases
- § 7:18 —Defect at time of sale
- § 7:19 —Expert testimony
- § 7:20 —Malfunction theory

CHAPTER 8. DESIGN DEFECTS

- § 8:1 Design defects
- § 8:2 Theories and tests of liability
- § 8:3 The consumer expectations test
- § 8:4 —Modern application of the test
- § 8:5 —Problems with the test
- § 8:6 The risk-utility test
- § 8:7 —Fundamentals of cost-benefit analysis; the Hand Formula
- § 8:8 —Burdens, benefits, and utility; the Wade factors
- § 8:9 —The *Products Liability Restatement*
- § 8:10 Proof of a reasonable alternative design
- § 8:11 —Risk-utility analysis of an alternative design
- § 8:12 —The “feasibility” of an alternative design

TABLE OF CONTENTS

- § 8:13 —Focusing risk-utility on the proposed alternative design
- § 8:14 Combining consumer expectations and risk-utility
- § 8:15 —Defining one test in terms of the other; the *Tabert-Potter* approach
- § 8:16 —Two liability “prongs”; the *Barker* approach
- § 8:17 —Complex *vs.* simple designs; the *Soule* approach
- § 8:18 Constructive knowledge; the Wade-Keeton test
- § 8:19 Design defects in the *Third Restatement*
- § 8:20 —Design defects in §§ 1 and 2
- § 8:21 —Consumer expectations
- § 8:22 —Special design defect issues
- § 8:23 Optional safety devices
- § 8:24 Prescription drugs and medical devices
- § 8:25 —The problem of dangerous drugs
- § 8:26 —The question for products liability law
- § 8:27 —The *Restatements* and the courts
- § 8:28 —Resolving the dilemma: empowering warning claims

CHAPTER 9. WARNING DEFECTS

- § 9:1 Warnings and instructions defects
- § 9:2 —Basis of the warning obligation
- § 9:3 —Nature of the duty to warn
- § 9:4 —Nature of the risk to be warned; obvious or known dangers
- § 9:5 —Relationship between duty to warn and duty of safe design
- § 9:6 Who owes the duty to warn
- § 9:7 —Non-manufacturing sellers
- § 9:8 —Dealers in used goods
- § 9:9 —Commercial lessors
- § 9:10 —Pharmacists
- § 9:11 —Component part manufacturers
- § 9:12 Variety of warning issues
- § 9:13 Theories and tests of liability
- § 9:14 —Negligence
- § 9:15 —Strict liability in tort
- § 9:16 —Breach of warranty
- § 9:17 Warnings as to unintended or unforeseeable use of the product
- § 9:18 Adequacy of warnings
- § 9:19 —Content or “substantive” adequacy
- § 9:20 —Nullifying warnings with “overpromotion”
- § 9:21 —Form or “procedural” adequacy
- § 9:22 —Overwarning or “warnings pollution”
- § 9:23 Persons to be warned
- § 9:24 —Employees

- § 9:25 —Physicians, patients, and the learned intermediary doctrine
- § 9:26 —Bystanders
- § 9:27 —Allergic or idiosyncratic user
- § 9:28 —The professional or sophisticated user
- § 9:29 —Sales in bulk and of raw materials
- § 9:30 Causation

Volume 2

CHAPTER 10. LIMITATIONS ON DEFECTIVENESS

- § 10:1 Limitations on defectiveness
- § 10:2 Obvious dangers
- § 10:3 —The rise and fall of the patent-danger doctrine
- § 10:4 —Defining “obvious”
- § 10:5 —Theory of liability
- § 10:6 —Judge or jury
- § 10:7 Inherent product hazards
- § 10:8 —Judicial rejection of design liability for inherent hazards
- § 10:9 —Particular products
- § 10:10 —Reform legislation
- § 10:11 —Reflections on inherent product hazards
- § 10:12 State of the art
- § 10:13 —Definitions
- § 10:14 —Applicability to different types of claims
- § 10:15 —Procedural effect of state-of-the-art evidence
- § 10:16 —Unknowable dangers; common-law developments
- § 10:17 —Statutory reform
- § 10:18 —The *Products Liability Restatement*
- § 10:19 —Foreign law
- § 10:20 Prenatal harm
- § 10:21 Deterioration
- § 10:22 Disposal and salvage
- § 10:23 Post-sale duties to warn, repair, or recall
- § 10:24 —Post-sale duty to warn
- § 10:25 —Post-sale duty to retrofit or recall

PART IV. CAUSATION

CHAPTER 11. CAUSE IN FACT

- § 11:1 Cause in fact
- § 11:2 Tests of cause in fact; “but for” and “substantial factor”

TABLE OF CONTENTS

- § 11:3 Multiple causes
- § 11:4 —Concurrent causation
- § 11:5 Multiple defendants—Joint liability
- § 11:6 —Concert of action liability
- § 11:7 —Alternative liability
- § 11:8 —Enterprise liability
- § 11:9 —Market share liability
- § 11:10 —Variations and limitations on market share liability
- § 11:11 Establishing causation—Sufficiency of the evidence
- § 11:12 —Expert testimony
- § 11:13 Toxic substances causation
- § 11:14 —General causation
- § 11:15 —Agent Orange litigation
- § 11:16 —Bendectin and birth defects
- § 11:17 —Silicone gel breast implants litigation
- § 11:18 —Asbestos litigation
- § 11:19 —Proving specific causation
- § 11:20 The special problem of warnings and reliance

CHAPTER 12. PROXIMATE CAUSE

- § 12:1 Proximate cause
- § 12:2 Tests of proximate cause: foreseeability, directness, and the *Restatement Second, Torts*
- § 12:3 —Foreseeability as the dominant test
- § 12:4 —Directness test
- § 12:5 —The *Restatement Second, Torts*; legal cause
- § 12:6 —The law of bizarre consequences
- § 12:7 Intervening and superseding causes
- § 12:8 —Third party intervening acts
- § 12:9 —Intentional tortious or criminal actions
- § 12:10 —Substantial change to a product
- § 12:11 —Violation of statute or regulation as the proximate cause of injury

PART V. DEFENSES

CHAPTER 13. USER CONDUCT DEFENSES

- § 13:1 Traditional user conduct defenses
- § 13:2 —Reform legislation
- § 13:3 Contributory negligence
- § 13:4 —Warning cases
- § 13:5 —Children
- § 13:6 —Employees
- § 13:7 —As a defense to strict liability in tort
- § 13:8 —As the sole proximate cause of an accident

- § 13:9 Comparative fault
- § 13:10 —Types and examples of comparative fault
- § 13:11 —Strict liability in tort
- § 13:12 —Sole proximate cause
- § 13:13 Assumption of risk
- § 13:14 —Knowledge and appreciation
- § 13:15 —Voluntary encounter
- § 13:16 —As a defense to strict liability in tort
- § 13:17 —Reform
- § 13:18 —Express assumption of risk
- § 13:19 —Fireman’s rule
- § 13:20 Misuse
- § 13:21 —Development of the doctrine
- § 13:22 —Theory of liability
- § 13:23 —Whether misuse is a “defense”; burden of pleading and proof
- § 13:24 —The foreseeability limitation
- § 13:25 —Failure to follow warnings and instructions
- § 13:26 —Comparative fault
- § 13:27 Conduct defenses to warranty claims
- § 13:28 —Contributory negligence; assumption of risk
- § 13:29 —Misuse
- § 13:30 —UCC Article 2
- § 13:31 —Express warranty
- § 13:32 —Comparative fault
- § 13:33 Conduct defenses to misrepresentation claims
- § 13:34 —When is reliance justifiable?
- § 13:35 —Contributory and comparative negligence; assumption of risk; misuse

CHAPTER 14. SPECIAL DEFENSES

- § 14:1 Special defenses
- § 14:2 Contract specification defense
- § 14:3 Government contractor defense
- § 14:4 —The *Boyle* case
- § 14:5 —*Boyle* in the courts
- § 14:6 Regulatory compliance defense
- § 14:7 —Judicial rejection of government standards defense
- § 14:8 —Special situations where compliance with safety standards may be conclusive
- § 14:9 —State reform legislation
- § 14:10 Statutes of limitations and repose
- § 14:11 —Statutes of limitations
- § 14:12 —Statutes of repose generally
- § 14:13 —Types of repose statutes

CHAPTER 15. FEDERAL PREEMPTION

- § 15:1 Federal preemption

TABLE OF CONTENTS

- § 15:2 —The regulatory role of state safety standards
- § 15:3 —The presumption against preemption
- § 15:4 Express preemption—Generally
- § 15:5 —When does express preemption control?
- § 15:6 —Interpreting express preemption provisions
- § 15:7 —The effect of savings clauses
- § 15:8 —The effect of the presumption against preemption
- § 15:9 —Importance of agency position on express preemption
- § 15:10 Implied preemption—Generally
- § 15:11 —Occupation of the field preemption
- § 15:12 —Actual conflict preemption generally
- § 15:13 —Impossibility conflict preemption
- § 15:14 —Obstacle conflict preemption
- § 15:15 Preemption under specific regulatory schemes
- § 15:16 —Tobacco product labeling
- § 15:17 —Insecticide, fungicide, and rodenticide labeling; FIFRA
- § 15:18 —Motor vehicle safety
- § 15:19 —Food, drugs, and cosmetics
- § 15:20 —Medical devices
- § 15:21 —Miscellaneous
- § 15:22 Conclusion

PART VI. SPECIAL DEFENDANTS, TRANSACTIONS & PRODUCTS

CHAPTER 16. SPECIAL DEFENDANTS

- § 16:1 Special types of defendants
- § 16:2 Retailers and other non-manufacturing sellers
- § 16:3 —Negligence
- § 16:4 —Negligent entrustment
- § 16:5 —Tortious misrepresentation
- § 16:6 —Warranty
- § 16:7 —Strict liability in tort
- § 16:8 —Statutory reform
- § 16:9 —Wholesalers and other distributors
- § 16:10 Raw material and component part suppliers
- § 16:11 —Theories of liability
- § 16:12 —Liability principles
- § 16:13 Parent and apparent manufacturers; franchisers
- § 16:14 —Parent corporations; alter ego liability
- § 16:15 —Apparent manufacturers
- § 16:16 —Trademark licensors; franchisers
- § 16:17 Successor corporations

- § 16:18 —General rule of non-liability with specific exceptions
- § 16:19 —Product line and continuity of enterprise exceptions
- § 16:20 —Successor corporation’s duty to warn
- § 16:21 —Special considerations in asbestos litigation
- § 16:22 Employers as manufacturers
- § 16:23 —Employers as suppliers of dangerous equipment;
workers’ compensation acts
- § 16:24 —The “dual capacity” doctrine
- § 16:25 —Post-merger accidents
- § 16:26 —Intentional employer misconduct
- § 16:27 —Scope of exclusive remedy rule
- § 16:28 Miscellaneous marketing participants
- § 16:29 —Product certifiers and endorsers
- § 16:30 —Safety inspectors
- § 16:31 —Trade associations
- § 16:32 —Other marketing participants

CHAPTER 17. SPECIAL TRANSACTIONS AND PRODUCTS

- § 17:1 Special types of transactions and products
- § 17:2 Leases, bailments, and license transactions
- § 17:3 —Leases
- § 17:4 —Bailments
- § 17:5 —License transactions
- § 17:6 —Statutory reform
- § 17:7 Service transactions
- § 17:8 —The classic cases
- § 17:9 —General principles
- § 17:10 —Professional services
- § 17:11 —Non-professionals; product installers
- § 17:12 —Other services
- § 17:13 —Statutory reform
- § 17:14 Repaired, rebuilt, and reconditioned products
- § 17:15 —Repaired products
- § 17:16 —Refurbished, reconditioned, rebuilt, and
remanufactured products
- § 17:17 —Reform statutes
- § 17:18 Used products
- § 17:19 Electricity
- § 17:20 Real estate
- § 17:21 —Homes and related structures—Strict liability in
tort
- § 17:22 — —Implied warranty
- § 17:23 —Other structures
- § 17:24 —Landlords
- § 17:25 —Statutes of repose

TABLE OF CONTENTS

- § 17:26 Publications
- § 17:27 —Books, magazines, and print media
- § 17:28 —Games, music, video games, and websites
- § 17:29 —Navigational charts
- § 17:30 —Computer software
- § 17:31 —Products liability and freedom of expression
- § 17:32 Blood and human tissue
- § 17:33 Miscellaneous transactions and products
- § 17:34 —Casual sales
- § 17:35 —Animals
- § 17:36 —Toxic contaminants

CHAPTER 18. AUTOMOTIVE VEHICLES

- § 18:1 Automotive litigation
- § 18:2 Defects that cause accidents
- § 18:3 —Manufacturing defects
- § 18:4 —Design defects
- § 18:5 —Warning and instruction defects
- § 18:6 Crashworthiness—Generally
- § 18:7 —The crashworthiness duty
- § 18:8 —Ascertaining crashworthiness
- § 18:9 —Theories of liability and defect tests
- § 18:10 —Contexts
- § 18:11 Indivisible harm and damages apportionment
- § 18:12 Plaintiff fault
- § 18:13 —Plaintiff's intoxication
- § 18:14 —Failure to use seatbelts and other safety devices

CHAPTER 19. PHARMACOLOGICAL DRUGS, BLOOD, AND BIOLOGICAL PRODUCTS

- § 19:1 Liability for pharmacological products
- § 19:2 —Nature of the claims
- § 19:3 Theories of liability
- § 19:4 The *Restatements Second* and *Third, Torts*
- § 19:5 —*Restatement Second, Torts* § 402A, comment *k*—
Unavoidably unsafe products
- § 19:6 — —Blood or biological products
- § 19:7 —*Restatement Third, Torts: Products Liability* § 6
- § 19:8 Design defects
- § 19:9 Warnings and instructions—Generally
- § 19:10 —Over-promotion
- § 19:11 —Off-label promotion
- § 19:12 —To whom the warning must be given
- § 19:13 —The learned intermediary rule and exceptions

- § 19:14 —The adequacy of warnings and instructions
- § 19:15 —Causation
- § 19:16 Intergenerational harm
- § 19:17 Liability of pharmacists and pharmaceutical distributors
- § 19:18 Defenses—Generally
- § 19:19 —Physician or pharmacist negligence
- § 19:20 —Allergic or idiosyncratic reactions
- § 19:21 —Statutes of limitation

CHAPTER 20. MEDICAL DEVICES, INSTRUMENTS, AND EQUIPMENT

- § 20:1 Medical device litigation
- § 20:2 Federal regulation of medical devices
- § 20:3 Federal preemption; the surviving claims
- § 20:4 Theories of liability—Generally
- § 20:5 —Negligence
- § 20:6 —Breach of warranty
- § 20:7 —Strict liability
- § 20:8 *Restatement Second, Torts* and *Restatement Third, Torts: Products Liability* approaches
- § 20:9 The learned intermediary doctrine and the duty to warn
- § 20:10 Defenses—Patient misuse
- § 20:11 —Statutes of limitation

Volume 3

PART VII. MULTIPLE CASES, PARTIES & JURISDICTIONS

CHAPTER 21. MULTIPLE CASES— CONSOLIDATION

- § 21:1 Consolidation and aggregate litigation
- § 21:2 Consolidation under Fed. R. Civ. P. 42 and state equivalents
- § 21:3 —Criteria for consolidation
- § 21:4 —Management of consolidated actions
- § 21:5 Consolidation under the federal multi-district litigation statute
- § 21:6 —Pre-trial procedures in multi-district litigation
- § 21:7 Settlement of aggregate litigation

TABLE OF CONTENTS

**CHAPTER 22. MULTIPLE PLAINTIFFS—
CLASS ACTIONS**

- § 22:1 Multiple plaintiffs; class actions
- § 22:2 History of the mass tort class action
- § 22:3 Class Action Fairness Act of 2005
- § 22:4 Class actions under Fed. R. Civ. P. 23(a) and state equivalents
- § 22:5 Prerequisites under Fed. R. Civ. P. 23(a) and state equivalents
- § 22:6 —Numerosity
- § 22:7 —Commonality
- § 22:8 —Typicality
- § 22:9 —Adequacy of representation
- § 22:10 Class action categories under Fed. R. Civ. P. 23(b) and state equivalents—Mandatory class actions under Fed. R. Civ. P. 23(b)(1)(A) or (B)
- § 22:11 —Mandatory class actions for equitable relief under Fed. R. Civ. P. 23(b)(2)
- § 22:12 —Common questions opt-out class actions under Fed. R. Civ. P. 23(b)(3)
- § 22:13 Settlement class actions
- § 22:14 Jurisdiction and the requirement of notice under Fed. R. Civ. P. 23(c)
- § 22:15 Procedures under Fed. R. Civ. P. 23(c) and (d)
- § 22:16 Effects of a class action judgment
- § 22:17 Appellate review

**CHAPTER 23. MULTIPLE DEFENDANTS—
JOINT AND SEVERAL LIABILITY,
CONTRIBUTION, INDEMNITY, AND
APPORTIONMENT**

- § 23:1 Joint and several liability
- § 23:2 —Pure joint and several liability
- § 23:3 —Pure several liability
- § 23:4 —Joint and several liability with reallocation
- § 23:5 —Joint and several liability above threshold minimum
- § 23:6 —Joint and several liability for specified types of damages
- § 23:7 Contribution and indemnity generally
- § 23:8 Contribution
- § 23:9 Express and implied obligations of indemnity—Generally
- § 23:10 —Indemnification in negligence actions
- § 23:11 —Implied indemnity based on relationship

- § 23:12 —Implied indemnity based on active/passive negligence
- § 23:13 —Indemnification in warranty actions
- § 23:14 — —Vouching in
- § 23:15 —Indemnification in strict liability actions
- § 23:16 Impact of comparative fault; *Restatement Third, Torts: Apportionment of Liability*
- § 23:17 —Apportionment between plaintiffs and defendants
- § 23:18 —Apportionment among defendants and third parties
- § 23:19 —Effect of defendant’s inability to satisfy a judgment
- § 23:20 —Effect of third party’s immunity from judgment
- § 23:21 —Effect of settlement

CHAPTER 24. MULTIPLE JURISDICTIONS—CONFLICT OF LAWS

- § 24:1 Conflict of laws
- § 24:2 Choice of law: the traditional approach governing tort actions
- § 24:3 Modern approaches governing tort actions
- § 24:4 —“Most significant relationship” test of *Restatement Second, Conflict of Laws*
- § 24:5 —Governmental interest analysis
- § 24:6 —“Better rule of law” approach
- § 24:7 —Alternative theories
- § 24:8 —Substance versus procedure
- § 24:9 —Limitation of actions
- § 24:10 Modern approach governing warranty actions
- § 24:11 Constitutional limitations on choice of law
- § 24:12 Federal diversity jurisdiction and choice of law; *Erie Railroad v. Tompkins*
- § 24:13 —Substance versus procedure

PART VIII. DAMAGES

CHAPTER 25. COMPENSATORY DAMAGES

- § 25:1 Compensatory damages
- § 25:2 Personal physical injuries
- § 25:3 —Pain and suffering
- § 25:4 —Quality of life, or hedonic, damages
- § 25:5 —Loss of consortium
- § 25:6 —Medical care and rehabilitation
- § 25:7 —Increased risk of future illness
- § 25:8 —Medical monitoring
- § 25:9 Emotional distress
- § 25:10 —Fear of future illness

TABLE OF CONTENTS

- § 25:11 Wrongful death and survival
- § 25:12 Property damage
- § 25:13 —Measurement of damage
- § 25:14 Pure economic loss
- § 25:15 Limitations on damages
- § 25:16 —Joint and several liability reform statutes
- § 25:17 —Due process limitations
- § 25:18 —Modification of award

CHAPTER 26. PUNITIVE DAMAGES

- § 26:1 Nature and sources of punitive damages
- § 26:2 —Nature of punitive damages
- § 26:3 —History
- § 26:4 —Controversial nature of punitive damages
- § 26:5 —Use in products liability cases
- § 26:6 Functions of punitive damages
- § 26:7 —Retribution
- § 26:8 —Education
- § 26:9 —Deterrence
- § 26:10 —Compensation
- § 26:11 —Law enforcement
- § 26:12 Forms of manufacturer misconduct
- § 26:13 —Fraud
- § 26:14 —Knowingly violating safety standards
- § 26:15 —Failing to conduct adequate tests to uncover dangerous defects
- § 26:16 —Failing to design away known dangers
- § 26:17 —Failing to warn of known dangers
- § 26:18 —Failing to warn or recall post-sale
- § 26:19 Basis of liability
- § 26:20 —Basis of underlying claim
- § 26:21 —Basis of punitive damages claim
- § 26:22 Problems and recurring criticism
- § 26:23 —Confusion of tort and criminal law
- § 26:24 —Vicarious liability and the innocent shareholder
- § 26:25 —Punitive damages insurance as against public policy
- § 26:26 —Vagueness in liability standards for punitive damages
- § 26:27 —Amount of punitive damage awards
- § 26:28 Judicial and legislative reform
- § 26:29 —Refining the standards of liability and measurement
- § 26:30 —Prima facie case and other pretrial showings; evidentiary rulings
- § 26:31 —Judgments on the merits
- § 26:32 —Standard of proof

- § 26:33 —Compliance with government standards
- § 26:34 —Remittitur
- § 26:35 —Multipliers and other caps
- § 26:36 —Single award
- § 26:37 —Splitting awards with the state
- § 26:38 —Bifurcation
- § 26:39 —Judicial determination of amount of punitive damage awards
- § 26:40 —Written explanations
- § 26:41 Constitutional limitations
- § 26:42 —Applying constitutional doctrine to the products liability context

APPENDICES

- Appendix A. Restatement Second, Torts
- Appendix B. Restatement Third, Torts: Products Liability
- Appendix C. Uniform Commercial Code
- Appendix D. Magnuson Moss Warranty Act
- Appendix E. Consumer Product Safety Act; Consumer Product Safety Improvement Act of 2008
- Appendix F. National Traffic Motor Vehicle Safety Act—Selected Sections
- Appendix G. National Childhood Vaccine Act
- Appendix H. Model Uniform Product Liability Act
- Appendix I. State Products Liability Reform Statutes—General

Volume 4

- Appendix J. State Products Liability Reform Statutes—Particular Topics
- Appendix K. Biomaterials Access Assurance Act of 1998
- Appendix L. General Aviation Revitalization Act of 1994
- Appendix M. Product Liability Risk Retention Act
- Appendix N. Homeland Security Act of 2002—Selected Sections
- Appendix O. Protection of Lawful Commerce in Arms Act
- Appendix P. Class Action Fairness Act of 2005
- Appendix Q. Family Smoking Prevention and Tobacco Control Act—Selected Sections
- Appendix R. EEC Directive on Liability for Defective Products

TABLE OF CONTENTS

Table of Laws and Rules

Table of Cases

Index

