

# Index

## **ACCIDENT RECREATIONS**

Admissibility, § 10:11

## **ADEQUACY**

Defective warnings and instructions,  
§ 5:4

## **ADMISSIBILITY**

Evidence and Proof, this index

## **ADMISSIONS**

Discovery, requests for admissions,  
§ 13:7

## **AFFIDAVITS**

Motion for judgment, affidavit for,  
§ 15:3

## **AGENT AND PRINCIPAL**

Defendants, § 9:19

## **AGRICULTURE**

Statutes and case law, reference list  
of, § 14:1

## **AIRCRAFT**

Statutes and case law, reference list  
of, § 14:5

## **ALTERATION OF PRODUCT**

Causation, § 7:6  
Defenses, § 8:9

## **AMUSEMENT PARKS**

Statutes and case law, reference list  
of, § 14:41

## **ANIMALS**

Generally, reference list of statutes  
and case law, § 14:2  
Pelts, reference list of statutes and  
case law, § 14:31

## **ASBESTOS**

Statutes and case law, reference list  
of, § 14:3

## **ASSUMPTION OF RISK**

Defenses, § 8:5, 10:4  
Negligence per se doctrine, § 10:4

## **AUTOMOBILES, VEHICLES AND COMPONENT PARTS**

History of products liability,  
MacPherson v. Buick Motor  
Co., § 1:4

Statutes and case law, reference list  
of, § 14:4

## **AVIATION**

Statutes and case law, reference list  
of, § 14:5

## **BEDDING**

Statutes and case law, reference list  
of, § 14:6

## **BLOOD/HUMAN TISSUE**

Statutes and case law, reference list  
of, § 14:7

## **BOATS**

Statutes and case law, reference list  
of, § 14:8

## **BOYLE TEST**

Government contractor defense,  
§ 8:14

## **BREACH**

Causes of Action, this index  
Defective warnings and instructions,  
§ 5:1  
Defenses, notice of breach of war-  
ranty, § 8:11  
History of products liability, breach  
of implied warranty, § 1:5  
Manufacturing defect, breach of  
implied warranty, § 4:2

## **BYSTANDERS**

Plaintiffs, § 9:3

**CASE LAW**

Statutes and Case Law, this index

**CAUSATION**

Generally, § 7:1 to 7:6  
 Alteration of product, § 7:6  
 Cause in fact, § 7:4  
 Danger, open and obvious, § 7:6  
 Defect as element of proof, issue of, § 7:2  
 Defective warnings and instructions, § 5:4  
 Defining legal causation, § 7:3  
 Duty, issue of, § 7:2  
 Elements of proof, relation to other, § 7:2  
 Expert testimony, § 7:5  
 In-fact cause, § 7:4  
 Instructions, defective, § 5:4  
 Intervening and Supervening Causes, this index  
 Legal causation, defined, § 7:3  
 Manufacturing defect, § 4:4  
 Misuse of product, § 7:6  
 Obvious and open danger, § 7:6  
 Product alteration, § 7:6  
 Product misuse, § 7:6  
 Proximate cause, § 7:5  
 Relation to other elements of proof, § 7:2  
 Supervening causes, § 7:6  
 Theory of products liability, requirements, § 2:1  
 Warnings, defective, § 5:4

**CAUSE IN FACT**

Causation, § 7:4

**CAUSES OF ACTION**

Generally, § 6:1 to 6:10  
 Breach  
     implied warranties, § 6:4  
     statutory duty, § 6:6  
     warranty, § 6:4  
 Commercial Code on leases, Va. Code Ann. Title 8.2A, § 6:6  
 Common law warranties, § 6:4  
 Contribution and indemnity, § 6:8  
 Design, negligent design, § 6:3

**CAUSES OF ACTION—Cont'd**

Elements of misrepresentation or fraud action, § 6:7  
 Equitable relief, § 6:9  
 Express warranties, breach of, § 6:4  
 Fraud or misrepresentation, § 6:7  
 Implied warranty of fitness for particular purpose, § 6:4, 6:6  
 Implied warranty of merchantability, § 6:4, 6:6  
 Indemnity and contribution, § 6:8  
 Injunctions, § 6:9  
 Joinder of claims, § 6:2  
 Judicially imposed recalls, § 6:9  
 Leases, Va. Code Ann. Title 8.2A, Commercial Code, § 6:6  
 Magnuson-Moss Warranty Act, breach of statutory duty, § 6:6  
 Medical monitoring, § 6:10  
 Misjoinder, § 6:2  
 Misrepresentation or fraud, § 6:7  
 Negligence and warranty, pleading and procedure, § 6:2  
 Negligence causes of actions, § 6:3  
 Negligent design, § 6:3  
 Negligent failure to recall, § 6:9  
 Negligent failure to warn, § 6:3  
 Negligent manufacture, § 6:3  
 Pleading and procedure, § 6:2  
 Pleading the cause of action, § 6:2  
 Recalls, § 6:9  
 Res judicata doctrine, § 6:2  
 Reverse implied warranty theory, § 6:4  
 Standard of proof, misrepresentation or fraud, § 6:7  
 Strict liability, § 6:5  
 Va. Code Ann. Title 8.2A, Commercial Code, leases, § 6:6  
 Virginia Consumer Protection Act, § 6:6  
 Warning, negligent failure to warn, § 6:3  
 Warranties  
     express warranties, breach of, § 6:4  
     implied warranties, breach of, § 6:4, 6:6

## INDEX

### **CAUSES OF ACTION—Cont'd**

- Warranties—Cont'd
  - Magnuson-Moss Warranty Act,  
breach of statutory duty, § 6:6
  - negligence, pleading and procedure, § 6:2

### **CHEMICALS**

- Statutes and case law, reference list  
of, § 14:9

### **CHOICE OF LAW**

- Generally, § 12:8

### **CLASS ACTIONS**

- Generally, § 12:7

### **COAL**

- Statutes and case law, reference list  
of, § 14:10

### **COLLATERAL ESTOPPEL**

- Jurisdiction and procedure, § 12:9

### **COMMERCIAL CODE**

- Leases, Va. Code Ann. Title 8.2A,  
§ 6:6

### **COMMERCIAL MACHINES AND EQUIPMENT**

- Statutes and case law, reference list  
of, § 14:11

### **COMMON LAW PRIVITY**

- History of products liability, § 1:2

### **COMMON LAW WARRANTIES**

- Causes of action, § 6:4

### **COMPARATIVE NEGLIGENCE**

- Defenses, § 8:4

### **COMPONENT PARTS**

- Manufacturer as defendant, § 9:8
- Statutes and case law, reference list  
of, § 14:4

### **COMPUTERS**

- Statutes and case law, reference list  
of, § 14:12

### **CONCEALMENT**

- Defenses, statutes of limitation,  
§ 8:15

### **CONCERT OF ACTION**

- History of products liability, § 1:8

### **CONDOMINIUMS**

- Statutes and case law, reference list  
of, § 14:13

### **CONFLICT OF LAWS**

- Generally, § 12:8

### **CONSENT TO REMOVAL**

- Pleadings, § 15:8

### **CONSOLIDATION**

- Jurisdiction and procedure,  
consolidation of products  
liability cases, § 12:6

### **CONSTITUTIONAL LIMITS**

- Personal jurisdiction, § 12:1

### **CONSTRUCTION MATERIALS**

- Statutes and case law, reference list  
of, § 14:14

### **CONSUMER EXPECTATION TEST**

- Design defect, § 3:2

### **CONSUMER PRODUCTS**

- Statutes and case law, reference list  
of, § 14:15

### **CONSUMER PROTECTION ACT**

- Causes of action, § 6:6

### **CONTAINERS**

- Statutes and case law, reference list  
of, § 14:16

### **CONTENT OF WARNING**

- Defective warnings and instructions,  
§ 5:4

### **CONTRACTORS**

- Defendants, § 9:14

### **CONTRIBUTION AND INDEMNITY**

- Causes of action, § 6:8

### **CONTRIBUTORY NEGLIGENCE**

- Defense, § 8:3, 10:4

### **COSMETICS**

- Statutes and case law, reference list  
of, § 14:17

**CROSS-CLAIM**

Generally, § 15:11

**CUSTOMS OF INDUSTRY**

Evidence, § 10:5

**DAMAGES**

Generally, § 11:1 to 11:6

Defenses, disclaimers of liability and limitations on damages, § 8:12

Economic loss, § 11:5

Emotional distress, § 11:3

Magnuson-Moss Warranty Act, disclaimers of liability and limitations on damages, § 8:12

Personal injury, § 11:2

Property damage, § 11:4

Punitive damages, § 11:6

Underpleading, § 12:2

**DAMAGE TO PROPERTY**

Property Damage, this index

**DAUBERT STANDARD**

Evidence and proof, § 10:12

**DEFECTIVE WARNINGS AND INSTRUCTIONS**

Generally, § 5:1 to 5:4

Adequacy, § 5:4

Breach of warranty, § 5:1

Causation, § 5:4

Comparison of negligence and breach of warranty, § 5:1

Content of warning, § 5:4

Defenses, specifications defenses, § 5:3

Design defect, manufacturing defect claims and failure to warn, relationship between, § 5:1

Duty, scope of, § 5:2

Form of warning, § 5:4

Knowledgeable user, obvious dangers, § 5:3

Manufacturing defect claims, design defect and failure to warn, relationship between, § 5:1

Negligence, § 5:1

Obvious dangers, § 5:3

Products liability theory, § 2:3

Scope of duty, § 5:2

**DEFECTIVE WARNINGS AND INSTRUCTIONS—Cont'd**

Specifications defenses, § 5:3

Who must warn and who must be warned, scope of duty, § 5:2

**DEFECTS IN DESIGN**

Design Defect, this index

**DEFECTS IN MANUFACTURING**

Manufacturing Defect, this index

**DEFENDANTS**

Generally, § 9:7 to 9:20

Component parts manufacturers, § 9:8

Contractors, § 9:14

Distributors, § 9:9

Employers, § 9:18

Expanded mere continuation exception for successor liability, § 9:20

Franchisors, § 9:12

Industry members, § 9:15

Lessors, § 9:16

Licensees, § 9:13

Manufacturers, § 9:7

Municipal liability, § 9:17

Principal and agent, § 9:19

Product line exception for successor liability, § 9:20

Repairers, § 9:11

Retailers, § 9:10

State and municipal liability, § 9:17

Successor corporations, § 9:20

Wholesalers and distributors, § 9:9

**DEFENSES**

Generally, § 8:1 to 8:17

Alteration of product, § 8:9

Assumption of risk, implied, § 8:5

Boyle test, § 8:14

Breach of warranty, notice of, § 8:11

Comparative negligence, § 8:4

Concealment, statutes of limitation, § 8:15

Contributory negligence, § 8:3, 10:4

Damages, disclaimers of liability and limitations on, § 8:12

Dangers, open and obvious, § 8:7

## INDEX

### DEFENSES—Cont'd

- Defective warnings and instructions, § 5:3
- Disclaimers of liability and limitations on damages, § 8:12
- Economic loss from product failure, statutes of limitation, § 8:15
- Equitable estoppel, statutes of limitation, § 8:15
- Equitable tolling, statutes of limitation, § 8:15
- Evidence and proof, defenses to negligence per se doctrine, § 10:4
- Federal preemption of state law claims, § 8:17
- Five-year limitations, property damages actions, § 8:15
- Four-year limitations, economic loss from product failure, § 8:15
- Fraudulent concealment, statutes of limitation, § 8:15
- Government contractor defense, § 8:14
- Grounds for defense
  - Jones, pleadings, § 15:5
  - Smith Manufacturing Company to cross-claim of Jones Retail Company, § 15:4, 15:15
- Implied assumption of the risk, § 8:5
- Improvements to real property, statute of repose for, § 8:15
- Intermediary, learned, § 8:8
- Intervening cause, § 8:10
- Knowledgeable user, § 5:3, 8:6
- Learned intermediary defense, § 8:8
- Liability disclaimers and limitations on damages, § 8:12
- Magnuson-Moss Warranty Act, disclaimers of liability and limitations on damages, § 8:12
- Misuse, § 8:2
- Negligence
  - comparative negligence, § 8:4
  - contributory negligence, § 8:3, 10:4
  - per se negligence doctrine, § 10:4
- Notice of breach of warranty, § 8:11
- Open and obvious dangers, § 8:7

### DEFENSES—Cont'd

- Optional safety devices, purchaser's refusal of, § 8:13
- Personal injury, statutes of limitation, § 8:15
- Plans and specifications, manufacture according to, § 8:13
- Product alteration, § 8:9
- Product failure, statutes of limitations of economic loss from, § 8:15
- Property damage, statute of limitation of products liability actions, § 8:15
- Purchaser's refusal of optional safety devices, § 8:13
- Real property improvements, statutes of limitation of statute of repose for, § 8:15
- Replacement parts, injury caused by, § 8:16
- Repose statute for improvements to real property, § 8:15
- Risk, implied assumption of, § 8:5
- Safety devices, purchaser's refusal of optional, § 8:13
- Specifications, manufacture according to, § 8:13
- State law claims, federal preemption of, § 8:17
- Statute of repose for improvements to real property, § 8:15
- Statutes of limitation, § 8:15
- Tolling of limitation period, § 8:15
- Two-year limitations, personal injury actions, § 8:15
- Warnings, defective warnings and instructions, § 5:3
- Warranty, notice of breach of, § 8:11
- Widespread violation by others, defenses to negligence per se doctrine, § 10:4

### DEFINITIONS

- Defect, § 2:2, 2:4
- Legal causation, § 7:3

### DEMURRER

- Pleadings, § 15:10

### DEPOSITIONS

- Generally, § 13:8

## **DESIGN**

Negligent design, causes of action,  
§ 6:3

## **DESIGN DEFECT**

Generally, § 3:1 to 3:8

Alternative design, burden of precautions to avoid harm, § 3:6

Balancing process, application under Virginia law, § 3:4

Burden of precautions to avoid harm,  
§ 3:6

Consumer expectation test, § 3:2

Dreisonstok v. Volkswagenwerk,  
§ 3:4 to 3:6

Factors, application of, § 3:7

Gravity of harm, § 3:5

Harm

burden of precautions to avoid harm, § 3:6

likelihood and gravity of harm,  
§ 3:5

Intended use and misuse, likelihood and gravity of harm, § 3:5

Likelihood and gravity of harm, § 3:5

Medical devices design standards, Restatement (Third) of Torts,  
§ 3:8

Misuse factor, § 3:5

Obviousness of danger, likelihood and gravity of harm, § 3:5

Pharmaceutical devices design standards, Restatement (Third) of Torts: Products Liability, § 3:8

Precautions to avoid harm, burden of,  
§ 3:6

Product life, likelihood and gravity of harm, § 3:5

Product standards, custom and usage, burden of precautions to avoid harm, § 3:6

Reasonably safe/unreasonably dangerous standard, § 3:4

Relationship between design defect, manufacturing defect claims and failure to warn, § 5:1

Restatement (Third) of Torts, § 3:8

Risk-utility factors and analysis,  
§ 3:2, 3:3

## **DESIGN DEFECT—Cont'd**

Safety devices, burden of precautions to avoid harm, § 3:6

Standard for design defect, Restatement (Third) of Torts, § 3:8

State of the art, burden of precautions to avoid harm, § 3:6

Tests, consumer expectation test,  
§ 3:2

Theory of products liability, § 2:3

Utility and purpose, burden of precautions to avoid harm, § 3:6

## **DESTRUCTION OF THE PRODUCT**

Evidence and proof, § 10:2

## **DISCLAIMERS**

Defenses, liability disclaimers and limitations on damages, § 8:12

## **DISCLOSURE**

Mandatory disclosures in federal court, § 13:3

## **DISCOVERY**

Generally, § 13:1 to 13:9

Admissions, requests for, § 13:7

Depositions, § 13:8

Disclosure, mandatory disclosures in federal court, § 13:3

Document requests, § 13:5

Experts, discovery of, § 13:9

Federal court, mandatory disclosures in, § 13:3

Informal discovery, § 13:2

Inspection of product, property and things, § 13:6

Interrogatories, § 13:4

Mandatory disclosures in federal court, § 13:3

Requests for admissions, § 13:7

## **DISTRIBUTORS**

Defendants, § 9:9

## **DOCUMENT REQUESTS**

Discovery, § 13:5

## **DRUGS**

Pharmaceuticals, this index

## INDEX

### **ECONOMIC LOSS**

- Damages, § 11:5
- Statutes of limitation, economic loss from product failure, § 8:15

### **ELECTRICITY**

- Statutes and case law, reference list of, § 14:19

### **EMOTIONAL DISTRESS**

- Damages, § 11:3

### **EMPLOYEES**

- Plaintiffs, § 9:4

### **EMPLOYERS**

- Defendants, § 9:18

### **ENTERPRISE LIABILITY**

- History of products liability, § 1:8

### **EQUITABLE ESTOPPEL**

- Defenses, statutes of limitation, § 8:15

### **EQUITABLE RELIEF**

- Causes of action, § 6:9

### **EQUITABLE TOLLING**

- Defenses, statutes of limitation, § 8:15

### **ESTOPPEL**

- Collateral estoppel, § 12:9
- Equitable estoppel, statutes of limitation, § 8:15

### **EVIDENCE AND PROOF**

- Generally, § 10:1 to 10:14
- Absence
  - other accidents, evidence of absence of, § 10:10
  - product, absence or destruction of, § 10:2
- Accident recreations, admissibility of, § 10:11
- Admissibility
  - compliance with law, § 10:4
  - public records and reports, § 10:13
  - tests or videotaped accident recreations, § 10:11
- Assumption of the risk, § 10:4

### **EVIDENCE AND PROOF—Cont'd**

- Causation, relation to other elements of proof, § 7:2
- Compliance with law, admissibility, § 10:4
- Contributory negligence and assumption of the risk, § 10:4
- Daubert standard, § 10:12
- Defenses to negligence per se doctrine, § 10:4
- Destruction of the product, § 10:2
- Expert Testimony, this index
- Federal court, expert testimony in, § 10:12
- Industry standards and customs, evidence of, § 10:5
- Manufacturing defect, proof of defect and causation, § 4:4
- Negligence per se, defenses, § 10:4
- Number of products previously sold, § 10:14
- Other accidents, evidence of, § 10:9, 10:10
- Per se negligence, violation of statutes and regulations as, § 10:4
- Public records and reports, admissibility, § 10:13
- Reasonable excuses for violation, defenses to negligence per se doctrine, § 10:4
- Recall, evidence of, § 10:8
- Recreation of accident, admissibility, § 10:11
- Repair or modification, evidence of subsequent, § 10:7
- Reports, admissibility of public, § 10:13
- Res ipsa loquitur, § 10:3
- Spoliation of evidence, § 10:2
- State court, expert testimony in, § 10:12
- State of the art, § 10:6
- Statutes and regulations, violation or compliance with, § 10:4
- Subsequent repair or modification, evidence of, § 10:7
- Substantial similarity test, evidence of other accidents, § 10:9



**EVIDENCE AND PROOF—Cont'd**

- Tests, admissibility of, § 10:11
- Third party, violation of statute by, § 10:4
- Videotaped accident recreations, admissibility, § 10:11
- Violation or compliance with statutes and regulations, § 10:4
- Widespread violation by others, defenses to negligence per se doctrine, § 10:4

**EXEMPLARY DAMAGES**

- Generally, § 11:6

**EXPERT TESTIMONY**

- Generally, § 10:12
- Causation, § 7:5
- Discovery of experts, § 13:9

**EXPLOSIVES**

- Statutes and case law, reference list of, § 14:20

**EXPRESS WARRANTIES**

- Causes of action for breach of express warranties, § 6:4

**FABRICS**

- Statutes and case law, reference list of, § 14:21

**FEDERAL COURT**

- Consolidation of products liability cases, § 12:6
- Expert testimony, § 10:12
- Mandatory disclosures, § 13:3

**FEDERAL PREEMPTION**

- Defenses, federal preemption of state law claims, § 8:17

**FIREARMS**

- Statutes and case law, reference list of, § 14:22

**FIREFIGHTERS**

- Plaintiffs, § 9:6

**FIREWORKS**

- Statutes and case law, reference list of, § 14:34

**FISH**

- Reference list of statutes and case law, marine harvests, § 14:32

**FOODS**

- History of products liability, food v. nonfood products, § 1:9
- Statutes and case law, reference list of, § 14:23

**FORUM NON CONVENIENS**

- Jurisdiction and procedure, § 12:5

**FRANCHISORS**

- Defendants, § 9:12

**FRAUD OR**

**MISREPRESENTATION**

- Causes of action, § 6:7
- Concealment, statutes of limitation, § 8:15
- Removal and remand, § 12:2

**FRAUDULENT CONCEALMENT**

- Defenses, statutes of limitation, § 8:15

**FRAUDULENT JOINDER**

- Jurisdiction and procedure, § 12:2

**GARDEN**

- Statutes and case law, reference list of, § 14:30

**GAS**

- Statutes and case law, reference list of, natural gas, § 14:35

**GASOLINE**

- Statutes and case law, reference list of, § 14:24

**GLAZING**

- Statutes and case law, reference list of, § 14:25

**GOVERNING LAW**

- Generally, § 12:8

**GOVERNMENT CONTRACTOR  
DEFENSE**

- Generally, § 8:14

**GRAVITY OF HARM**

- Design defect, § 3:5



## INDEX

### **GULF OIL CORP. v. GILBERT FACTORS**

Jurisdiction and procedure, § 12:5

### **HISTORY OF PRODUCTS LIABILITY**

Generally, § 1:1 to 1:19

Alternative theories of recovery,  
§ 1:8

Breach of implied warranty, § 1:5  
Common law privity requirement,  
§ 1:2

Concert of action, § 1:8

Defective products, invitations to use,  
§ 1:3

Development of Virginia products  
liability law, § 1:9

Enterprise liability, § 1:8

Food v. nonfood products, § 1:9

Imminently dangerous products, fail-  
ure to warn, § 1:3

Implied warranty, breach of, § 1:5

Industry-wide liability, § 1:8

Inherently dangerous products, fail-  
ure to warn, § 1:3

Invitations to use defective products,  
§ 1:3

MacPherson v. Buick Motor Co.,  
§ 1:4

Market share, § 1:8

Post-sale failure to warn, § 1:8

Privity requirement, erosion of, § 1:3

Recovery, § 1:8

Restatement (Third) of Torts, § 1:7

Strict liability, § 1:6

Torts, Restatement (Third) of Torts,  
§ 1:7

Warning of imminently dangerous  
products, § 1:3

### **HOMES**

Statutes and case law, reference list  
of, § 14:26

### **HOUSEHOLD APPLIANCES**

Statutes and case law, reference list  
of, § 14:27

### **HOUSEHOLD ITEMS**

Statutes and case law, reference list  
of, § 14:28

### **HUMAN TISSUE**

Statutes and case law, reference list  
of, § 14:7

### **IMMINENTLY DANGEROUS PRODUCTS**

History of products liability, failure  
to warn, § 1:3

### **IMPLIED ASSUMPTION OF RISK**

Defenses, § 8:5

### **IMPLIED WARRANTIES**

Fitness for particular purpose, § 6:4

History of products liability, breach  
of implied warranty, § 1:5

Manufacturing defect, breach of  
implied warranty, § 4:2

Merchantability, § 6:4, 6:6, 10:14

### **IMPROVEMENTS**

Defenses, statutes of limitation of  
statute of repose for improve-  
ments to real property, § 8:15

### **INDEMNITY AND CONTRIBUTION**

Causes of action, § 6:8

### **INDUSTRIAL MACHINES AND EQUIPMENT**

Statutes and case law, reference list  
of, § 14:11

### **INDUSTRY MEMBERS**

Defendants, § 9:15

### **INDUSTRY STANDARDS AND CUSTOMS**

Evidence, § 10:5

### **INDUSTRY-WIDE LIABILITY**

History of products liability, § 1:8

### **IN-FACT CAUSE**

Causation, § 7:4

### **“INHERENTLY OR IMMINENTLY DANGEROUS” PRODUCTS**

History of products liability, § 1:3

### **INJUNCTIONS**

Causes of action, § 6:9

**INSPECTION**

Discovery, inspection of product,  
property and things, § 13:6

**INSTRUCTIONS**

Defective Warnings and Instructions,  
this index

**INTENDED USE AND MISUSE**

Design defect, likelihood and gravity  
of harm, § 3:5

**INTERROGATORIES**

Generally, § 13:4

**INTERVENING AND  
SUPERVENING CAUSES**

Generally, § 7:6  
Defenses, § 8:10

**INVITATIONS TO USE  
DEFECTIVE PRODUCTS**

History of products liability, § 1:3

**JOINDER**

Causes of action, § 6:2

**JONES RETAIL COMPANY**

Cross-claim of Jones Retail  
Company, grounds of defense of  
Smith Manufacturing Company  
to, § 15:15  
Pleadings, grounds for defense,  
§ 15:5

**JUDICIALLY IMPOSED RECALLS**

Causes of action, § 6:9

**JURISDICTION AND  
PROCEDURE**

Generally, § 12:1 to 12:9  
Alternative forum, availability of,  
§ 12:5  
Breach of warranty causing injury,  
personal jurisdiction under Va.  
long arm statute, § 12:1  
Causes of action, § 6:2  
Choice of laws, § 12:8  
Class actions, § 12:7  
Collateral estoppel, § 12:9  
Consolidation of products liability  
cases, § 12:6

**JURISDICTION AND  
PROCEDURE—Cont'd**

Constitutional limits of personal  
jurisdiction, § 12:1  
Contracting to supply services in the  
state, personal jurisdiction under  
Va. long arm statute, § 12:1  
Federal court, consolidation of  
products liability cases, § 12:6  
Federal Rules of Civil Procedure  
Rule 23, class actions, § 12:7  
Forum non conveniens, § 12:5  
Gulf Oil Corp. v. Gilbert factors,  
§ 12:5  
Offensive collateral estoppel, § 12:9  
Personal jurisdiction, § 12:1  
Private interest factors, Gulf Oil  
Corp. v. Gilbert factors, § 12:5  
Public interest factors, Gulf Oil Corp.  
v. Gilbert factors, § 12:5  
Remand, § 12:2  
Removal, § 12:2  
State court, consolidation of products  
liability cases, § 12:6  
Stream of commerce theory, § 12:1  
Tortious injury caused by act,  
personal jurisdiction under Va.  
long arm statute, § 12:1  
Transacting business in the state,  
personal jurisdiction under Va.  
long arm statute, § 12:1  
Transfer of venue, § 12:4, 15:9  
Venue, § 12:3  
Virginia long arm statute, personal  
jurisdiction under and beyond,  
§ 12:1

**KNOWLEDGEABLE USER**

Defective warnings and instructions,  
§ 5:3  
Defenses, § 5:3, 8:6

**LADDERS**

Statutes and case law, reference list  
of, § 14:29

**LAWN AND GARDEN**

Statutes and case law, reference list  
of, § 14:30

## INDEX

### **LEARNED INTERMEDIARY**

Defenses, § 8:8

### **LEASES**

Causes of action, Va. Code Ann. Title 8.2A, Commercial Code, § 6:6

### **LEATHER/PELTS**

Statutes and case law, reference list of, § 14:31

### **LEGAL CAUSATION**

Defined, § 7:3

### **LESSORS**

Defendants, § 9:16

### **LIABILITY DISCLAIMERS**

Defenses, liability disclaimers and limitations on damages, § 8:12

### **LICENSEES**

Defendants, § 9:13

### **LIMITATION OF ACTIONS**

Statute of Limitations, this index

### **LIMITATIONS ON DAMAGES**

Defenses, § 8:12

### **LONG ARM STATUTE**

Personal jurisdiction under statute, § 12:1

### **MACPHERSON v. BUICK MOTOR CO.**

History of products liability, § 1:4

### **MAGNUSON-MOSS WARRANTY ACT**

Causes of action, breach of statutory duty, § 6:6

Defenses, disclaimers of liability and limitations on damages, § 8:12

### **MANDATORY DISCLOSURE**

Federal court, mandatory disclosures in, § 13:3

### **MANUFACTURERS AND MANUFACTURING**

Defects. Manufacturing Defect, this index

Defendants, § 9:7, 9:8

### **MANUFACTURERS AND**

#### **MANUFACTURING—Cont'd**

Plans and specifications, manufacture according to, § 8:13

### **MANUFACTURING DEFECT**

Generally, § 4:1 to 4:4

Breach of implied warranty, § 4:2

Causation, proof of defect and, § 4:4

Defective warnings and instructions, relationship between manufacturing defect claims, design defect and failure to warn, § 5:1

Implied warranty, breach of, § 4:2

Negligence, § 4:3

Products liability theory, § 2:3

Proof of defect and causation, § 4:4

### **MARINE HARVESTS**

Statutes and case law, reference list of, § 14:32

### **MARKET SHARE**

History of products liability, § 1:8

### **MEDICAL DEVICES AND ACCESSORIES**

Causes of action, medical monitoring, § 6:10

Design defect, Restatement (Third) of Torts, § 3:8

Statutes and case law, reference list of, § 14:33

### **MEDICAL RECORDS**

Statutes and case law, reference list of, § 14:34

### **MISJOINDER**

Causes of action, § 6:2

### **MISREPRESENTATION**

Fraud or Misrepresentation, this index

### **MISUSE OF PRODUCT**

Causation, § 7:6

Defenses, § 8:2

Design defect, likelihood and gravity of harm, § 3:5

**MOTION FOR JUDGMENT**

Pleadings, this index

**MOTOR VEHICLES AND  
COMPONENT PARTS**

Statutes and case law, reference list  
of, § 14:4

**MUNICIPAL LIABILITY**

Defendants, § 9:17

**NATURAL GAS**

Statutes and case law, reference list  
of, § 14:35

**NEGLIGENCE**

Causes of Action, this index, § 6:2  
Comparative negligence, § 8:4  
Contributory negligence, § 8:3, 10:4  
Defective warnings and instructions,  
§ 5:1  
Defenses, this index  
Manufacturing defect, § 4:3

**NEGLIGENCE PER SE**

Evidence and proof, § 10:4

**NON CONVENIENS FORUM**

Jurisdiction and procedure, § 12:5

**NOTICE**

Defenses, notice of breach of war-  
ranty, § 8:11  
Pleadings, notice of removal, § 15:7

**NUMBER OF PRODUCTS SOLD**

Evidence, § 10:14

**OBJECTIONS**

Pleadings, objection to venue and  
motion to transfer, § 15:9

**OBVIOUSNESS OF DANGER**

Causation, § 7:6  
Defective warnings and instructions,  
§ 5:3  
Defenses, § 8:7  
Design defect, likelihood and gravity  
of harm, § 3:5

**OFFENSIVE COLLATERAL  
ESTOPPEL**

Jurisdiction and procedure, § 12:9

**OIL SPILLS**

Statutes and case law, reference list  
of, § 14:36

**OPEN AND OBVIOUS DANGERS**

Obviousness of Danger, this index

**OPTIONAL SAFETY DEVICES**

Defenses, purchaser's refusal of  
optional safety devices, § 8:13

**OTHER ACCIDENTS**

Evidence or proof, § 10:9, 10:10

**PAINTS**

Statutes and case law, reference list  
of, § 14:37

**PARTIES**

Defendants, this index  
Plaintiffs, this index

**PELTS**

Statutes and case law, reference list  
of, § 14:31

**PERSONAL INJURY**

Damages, § 11:2  
Defenses, statutes of limitation on  
products liability actions, § 8:15  
Theory of products liability, § 2:1

**PERSONAL JURISDICTION**

Generally, § 12:1

**PHARMACEUTICALS**

Concert of action, § 1:8  
Design defect, Restatement (Third) of  
Torts, § 3:8  
Statutes and case law, reference list  
of on drugs, § 14:18

**PHOTOCOPIER**

Statutes and case law, reference list  
of, § 14:38

**PLAINTIFFS**

Generally, § 9:1 to 9:6  
Bystanders, § 9:3  
Employees, § 9:4  
Firefighters, § 9:6  
High risk activities, public officials  
in, § 9:6  
Purchasers, § 9:1

## INDEX

### **PLAINTIFFS—Cont'd**

Trespassers and thieves, § 9:5

Users, § 9:2

### **PLEADINGS**

Generally, § 15:1 to 15:16

Affidavit for motion for judgment,  
§ 15:3

Causes of action, § 6:2

Consent to removal, § 15:8

Cross-claim, § 15:11

Demurrer, § 15:10

Grounds for defense

cross-claim of Jones Retail  
Company, Smith Manufac-  
turing Company to, § 15:15

Jones, § 15:5, 15:15

Smith, § 15:4

Jones Retail Company, grounds of  
defense of Smith Manufacturing  
Company to cross-claim of,  
§ 15:15

Motion for judgment

generally, § 15:2

affidavit, § 15:3

Notice of removal, § 15:7

Objection to venue and motion to  
transfer, § 15:9

Plea of statute of limitations, § 15:6

Protective order, § 15:16

Removal, notice of, § 15:7

Smith Manufacturing Company to  
cross-claim of Jones Retail  
Company, grounds of defense  
of, § 15:15

Third-party grounds of defense

Acme, § 15:14

Garfield, § 15:13

Third-party motion for judgment,  
§ 15:12

Transfer, motion to, § 15:9

Venue, objection to, § 15:9

### **PLEAS**

Statute of limitations, § 15:6

### **POISONS**

Statutes and case law, reference list  
of, § 14:39

### **POOLS**

Statutes and case law, reference list  
of, § 14:42

### **POST-SALE FAILURE TO WARN**

Generally, § 1:8, 6:3

### **PRECIOUS METALS**

Statutes and case law, reference list  
of, § 14:40

### **PREEMPTION**

Defenses, federal preemption of state  
law claims, § 8:17

### **PRINCIPAL AND AGENT**

Defendants, § 9:19

### **PRIVITY REQUIREMENT**

History of products liability, § 1:3

### **PROCEDURE**

Jurisdiction and Procedure, this index

### **PRODUCT ALTERATION**

Alteration of Product, this index

### **PRODUCTION OF DOCUMENTS**

Discovery, § 13:5

### **PROOF**

Evidence and Proof, this index

### **PROPERTY DAMAGE**

Damages, § 11:4

Defenses, statute of limitation of  
products liability actions, § 8:15

Theory of products liability, § 2:1

### **PROTECTIVE ORDER**

Pleadings, § 15:16

### **PROXIMATE CAUSE**

Generally, § 7:5

### **PUBLIC OFFICIALS**

Plaintiffs, public officials in high risk  
activities, § 9:6

### **PUBLIC RECORDS AND REPORTS**

Admissibility, § 10:13

### **PUNITIVE DAMAGES**

Generally, § 11:6

**PURCHASERS**

Plaintiffs, § 9:1

**REAL PROPERTY**

Statute of repose for real property improvements, statutes of limitation, § 8:15

**RECALL**

Causes of action, § 6:9  
Evidence, § 10:8  
Third Restatement of Torts, post-sale failure to recall product, § 1:8

**RECOVERY**

History of products liability, § 1:8

**RECREATION AND AMUSEMENT PARKS**

Statutes and case law, reference list of, § 14:41

**RECREATION OF ACCIDENT**

Admissibility, § 10:11

**REMAND**

Jurisdiction and procedure, § 12:2

**REMOVAL**

Jurisdiction and procedure, § 12:2  
Pleadings, § 15:7, 15:8

**REPAIRERS**

Defendants, § 9:11

**REPAIR OR MODIFICATION**

Evidence of subsequent repair or modification, § 10:7

**REPLACEMENT PARTS**

Defenses, injury caused by replacement parts, § 8:16

**REPORTS**

Evidence and proof, admissibility of public reports, § 10:13

**REPOSE**

Defenses, statute of repose for improvements to real property, § 8:15

**RES IPSA LOQUITUR**

Evidence and proof, § 10:3

**RES JUDICATA DOCTRINE**

Causes of action, § 6:2

**RESTATEMENT (THIRD) OF TORTS**

Design defect, § 3:8  
History of products liability, § 1:7

**RETAILERS**

Defendants, § 9:10

**REVERSE IMPLIED WARRANTY THEORY**

Causes of action, § 6:4

**RISK**

Assumption of Risk, this index

**RISK/UTILITY ANALYSIS**

Design defect, § 3:3

**SAFETY DEVICES**

Defenses, purchaser's refusal of optional safety devices, § 8:13  
Design defect, burden of precautions to avoid harm, § 3:6

**SMITH MANUFACTURING COMPANY**

Jones Retail Company, grounds of defense of Smith Manufacturing Company to cross-claim of, § 15:15  
Pleadings, grounds for defense, § 15:4

**SPECIFICATIONS**

Defective warnings and instructions, § 5:3  
Manufacture according to specifications, § 8:13

**STANDARD OF PROOF**

Causes of action, misrepresentation or fraud, § 6:7

**STANDARDS AND CUSTOMS OF INDUSTRY**

Evidence, § 10:5

**STATE AND MUNICIPAL LIABILITY**

Defendants, § 9:17

## INDEX

### STATE COURT

- Consolidation of products liability cases, § 12:6
- Evidence and proof, expert testimony in state court, § 10:12

### STATE LAW CLAIMS

- Defenses, federal preemption of state law claims, § 8:17

### STATE OF THE ART

- Design defect, burden of precautions to avoid harm, § 3:6
- Evidence and proof, § 10:6

### STATUTE OF LIMITATIONS

- Generally, § 8:15
- Pleas, § 15:6

### STATUTE OF REPOSE

- Statutes of limitation, statute of repose for improvements to real property, § 8:15

### STATUTES AND CASE LAW

- Agriculture, § 14:1
- Animals, § 14:2
- Asbestos, § 14:3
- Automobiles, vehicles and component parts, § 14:4
- Aviation, aircraft, and equipment, § 14:5
- Bedding, § 14:6
- Blood/human tissue, § 14:7
- Boats, § 14:8
- Chemicals, § 14:9
- Coal, § 14:10
- Commercial and industrial machines and equipment, § 14:11
- Computers, § 14:12
- Condominiums, § 14:13
- Construction materials, § 14:14
- Consumer products, § 14:15
- Containers, § 14:16
- Cosmetics, § 14:17
- Drugs, § 14:18
- Electricity, § 14:19
- Evidence and proof, violation or compliance with statutes and regulations, § 10:4
- Explosives, § 14:20

### STATUTES AND CASE LAW

#### —Cont'd

- Fabrics, § 14:21
- Firearms, § 14:22
- Foods, § 14:23
- Gasoline, § 14:24
- Glazing, § 14:25
- Homes, § 14:26
- Household appliances, § 14:27
- Household items, § 14:28
- Human tissue, § 14:7
- Industrial machines and equipment, § 14:11
- Ladders, § 14:29
- Lawn and garden, § 14:30
- Leather/pelts, § 14:31
- Marine harvests, § 14:32
- Medical devices and accessories, § 14:33
- Motor vehicles, § 14:4
- Natural gas, § 14:35
- Oil spills, § 14:36
- Paints, § 14:37
- Pelts, § 14:31
- Photocopier, § 14:38
- Poisons, § 14:39
- Precious metals, § 14:40
- Recreation and amusement parks, § 14:41
- Swimming pool, § 14:42
- Tobacco, § 14:43
- Warranties, § 14:44

### STREAM OF COMMERCE THEORY

- Jurisdiction and procedure, § 12:1

### STRICT LIABILITY

- Causes of action, § 6:5
- History of products liability, § 1:6

### SUBSEQUENT REPAIR OR MODIFICATION

- Evidence, § 10:7

### SUCCESSOR CORPORATIONS

- Defendants, § 9:20

### SUPERVENING CAUSES

- Intervening and Supervening Causes, this index



**SWIMMING POOL**

Statutes and case law, reference list of, § 14:42

**TESTS**

Admissibility of tests, § 10:11  
Boyle test, defenses, § 8:14  
Design defect, consumer expectation test, § 3:2  
Substantial similarity test, evidence of other accidents, § 10:9

**THEORY OF PRODUCTS LIABILITY**

Generally, § 2:1 to 2:4  
Causation as requirement, § 2:1  
Defect as requirement, § 2:1  
Defective warnings or instructions, § 2:3  
Definition of “defect,” § 2:2, 2:4  
Design defect, § 2:3  
Manufacturing defect, § 2:3  
Marketed product as requirement, § 2:1  
Personal injury/property damage requirement, § 2:1  
Requirements, § 2:1  
Standard of reasonableness, § 2:4  
Types of defects, § 2:3  
Underlying concepts of defect, § 2:2

**THIEVES**

Plaintiffs, § 9:5

**THIRD PARTIES**

Evidence and proof, violation of statute by third party, § 10:4  
Pleadings, this index

**TOBACCO**

Statutes and case law, reference list of, § 14:43

**TOLLING**

Defenses, § 8:15

**TORTS**

Restatement (Third) of Torts, history of products liability, § 1:7

**TRANSFER OF VENUE**

Generally, § 12:4, 15:9

**TRESPASSERS**

Plaintiffs, § 9:5

**UTILITY AND PURPOSE**

Design defect, burden of precautions to avoid harm, § 3:6

**VEHICLES AND COMPONENT PARTS**

Statutes and case law, reference list of, § 14:4

**VENUE**

Generally, § 12:3, 12:4  
Pleadings, objection to venue, § 15:9

**VIDEOTAPED ACCIDENT RECREATIONS**

Admissibility, § 10:11

**VIRGINIA CONSUMER PROTECTION ACT**

Causes of action, § 6:6

**VIRGINIA LONG ARM STATUTE**

Personal jurisdiction under statute, § 12:1

**WARNINGS**

Causes of action, negligent failure to warn, § 6:3  
Cleaners plastic bags, § 14:34  
Defective Warnings and Instructions, this index  
Imminent danger, failure to warn concerning products known to be imminently dangerous, § 1:3  
Post-sale failure to warn, § 1:8, 6:3

**WARRANTIES**

Causes of Action, this index  
Defenses, notice of breach of warranty, § 8:11  
Implied Warranties, this index  
Magnuson-Moss Warranty Act, this index  
Statutes and case law, reference list of, § 14:44

**WEAPONS**

Statutes and case law, reference list of, § 14:22

INDEX

**WHOLESALE AND  
DISTRIBUTORS**

Defendants, § 9:9