

TABLE OF CONTENTS

Preface to the Fifth Edition	iii
Preface to the First Edition	v
Table of Cases	xi
Table of Statutes	xlvii
<i>1 HISTORICAL INTRODUCTION</i>	1
The Early History of Warranty	1
Nineteenth Century Developments	8
Negligence	10
<i>2 NEGLIGENCE</i>	12
Introduction	12
Persons Liable	14
(a) Manufacturers	14
(b) Importers, wholesalers, distributors and retailers	15
(c) Individual employee of business supplier	17
(d) Repairers and installers	19
(e) Inspectors and certifiers	20
(f) Occupiers' liability	24
(g) Users	26
The Nature of the Transaction	27
Persons Protected	28
Products	29
Economic Loss	31
Standard of Product	46
(a) Design defects	47
(b) Inherent risks	49
(c) Time of test of adequacy	53
(d) Recalls and post-sale warnings	54
(e) Misuse of product	55
(f) Sensitivity of plaintiff	58
(g) Warnings	59
(h) Intermediate examination	63
Proof of Defect	65
Causation	65
Proof of Negligence	69

Table of Contents

Punitive Damages 75

Class Actions 77

Defences 80

3 IMPLIED WARRANTIES 83

 Introduction 83

 Sale of Goods 87

 (a) Fitness for particular purpose 87

 (i) Particular purpose 87

 (ii) Making known the purpose to the seller 88

 (iii) Sale in the course of business 90

 (iv) Reasonable fitness 91

 (v) The patent or trade name exception 91

 (b) The condition of merchantability 92

 (i) The requirement of sale by description 92

 (ii) The requirement that the seller be a dealer in goods of the description 93

 (iii) Merchantable quality 93

 (iv) Effect of examination of the goods by the buyer 97

 (c) Overlap between the two implied warranties 98

 (d) Proof of defect 99

 (e) Strict liability 100

 (f) Second hand goods 104

 (g) Durability 105

 (h) The measure of damages: consequential losses 106

 (i) Privity of contract 112

 Non-sale Transactions 115

 (a) Business promotions and “free samples” 116

 (b) Goods supplied under a contract of sale 118

 (c) Contracts for services 119

 (d) Bailment 123

 (e) Real property transactions 126

 (f) Occupier’s liability 128

 Conclusion 129

4 BREACH OF STATUTE 133

 Statutory Standards 133

 The Effect of Violation 134

 Compliance with Statutory Standards 140

5 STRICT LIABILITY IN TORT 145

 Nuisance 146

Table of Contents

Rylands v. Fletcher 147

6 *LIABILITY FOR STATEMENTS* 151

 Introduction 151

 Fraud 151

 Negligence 152

 Warranties 154

7 *CONFLICT OF LAWS* 167

 Introduction 167

 Jurisdiction 167

 Choice of Law 174

 (a) Characterization 174

 (b) Contracts 174

 (c) Torts 175

 (d) The Effect of Legislation 178

 Enforcement of Foreign Judgments 179

8 *CONTRIBUTION AND INDEMNITY* 181

 Introduction 181

 Joint Tortfeasors 181

 Breach of Warranty 184

 Express Agreement 185

9 *PRODUCTS LIABILITY INSURANCE* 187

 Introduction 187

 Insuring Agreements 188

 Time Problems 190

 Exclusions 191

10 *STATUTES OF LIMITATIONS* 195

 Introduction 195

 The Period of Time 195

 The Time at which the Statute Starts to Run 196

11 *STRICT PRODUCTS LIABILITY* 199

 The Policy Considerations 199

 American Developments 206

 (a) Introduction 206

 (b) *Uniform Commercial Code*: the extended contractual right 209

 (c) Second Restatement of Torts: direct tortious liability 213

 (d) The Third Restatement 216

 (e) The Restatement and the U.C.C 216

 (f) Strict liability for statements 219

 (g) The American “insurance crisis” 221

Table of Contents

(h) Conclusion	222
European Developments	224
Canadian and Commonwealth Developments	225
(a) Introduction	225
(b) Judicial developments	226
(c) Legislative proposals and enactment	229
(i) United Kingdom	229
(ii) Australia	230
(iii) Ontario	230
(iv) Saskatchewan	233
(v) New Brunswick	234
(vi) Quebec	235
(d) Accident compensation schemes	238
<i>Appendix: Proposed Ontario Products Liability Act (1979)</i>	239
<i>Index</i>	245