

TABLE OF CONTENTS

PREFACE	V
ACKNOWLEDGMENTS	VII
TABLE OF CASES.....	XIX
TABLE OF STATUTES.....	XXXIX
TABLE OF REGULATIONS.....	XLIII
TABLE OF RULES.....	XLV
TABLE OF RESTATEMENTS.....	XLVII
Chapter 1. Introduction to Tort Liability.....	1
A. History	1
B. Negligence.....	4
MacPherson v. Buick Motor Co.	5
Notes and Questions	9
Hatch v. Ford Motor Co.	9
Notes and Questions	11
C. Misrepresentation	13
Hauter v. Zogarts	16
Notes and Questions	19
Chapter 2. Warranty	21
A. Introduction	21
B. Express Warranty	23
1. Affirmations of Fact.....	24
Notes and Questions	25
2. Interpreting the Language	26
Lane v. C. A. Swanson & Sons.....	26
Notes and Questions	29
3. Basis of the Bargain	30
Hauter v. Zogarts.....	30
Notes and Questions	31
C. Implied Warranty of Merchantability.....	33
Dewitt v. Eveready Battery Co.....	34
Notes and Questions	39
D. Implied Warranty of Fitness for Particular Purpose	42
Problem	43
E. Persons Who Are Protected: Privity of Contract	44
Compex International Co., Ltd. v. Taylor	46
Notes and Questions	49

F. Disclaimers of Warranties, Limited Warranties, and Limitations of Remedies.....	50
Henningsen v. Bloomfield Motors, Inc.....	50
Notes and Questions	55
Potomac Plaza Terraces, Inc. v. QSC Products, Inc.....	57
Notes and Questions	64
Problem	69
G. Notice	69
 Chapter 3. Emergence of Product Liability	 71
A. Adoption	71
Escola v. Coca Cola Bottling Co. of Fresno	71
Notes and Questions	76
Greenman v. Yuba Power Products, Inc.	76
Notes and Questions	80
B. Policies Underlying Products Liability	83
Richard Posner, Strict Liability: A Comment	83
Gary Schwartz, Contributory and Comparative Negligence: A Reappraisal	90
Steven Shavell, Strict Liability Versus Negligence	93
A. Mitchell Polinsky & Steven Shavell, The Uneasy Case for Product Liability	94
John C. P. Goldberg & Benjamin C. Zipursky, The Easy Case For Products Liability Law: A Response To Professors Polinsky and Shavell.....	104
 Chapter 4. Defect	 115
A. Introduction	115
B. Manufacturing Defects.....	116
Welge v. Planters Lifesavers Co.....	116
Notes and Questions	119
Hunt v. Ferguson-Paulus Enterprises	123
Notes and Questions	125
C. Proof of Non-Specific Defect Through Circumstantial Evidence	129
Smoot v. Mazda Motors of America, Inc.	129
Notes and Questions	133
D. Design Defects	137
1. Introduction	137
2. Consumer Expectations	138
Gray v. Manitowoc Co., Inc.....	138
Notes and Questions	142
Keller v. Welles Department Store of Racine	145
Notes and Questions	148
Bourne v. Gilman	148
Notes and Questions	154
3. Risk-Utility	160
Nelson v. Sunbeam Products, Inc.....	160

Notes and Questions	168
Fallon v. Clifford B. Hannay & Son, Inc.	171
Notes and Questions	174
4. Allowing Plaintiffs to Use Both Consumer Expectations and Risk-Utility	180
Barker v. Lull Engineering Co.	180
Notes and Questions	185
5. Special Issues Related to Design Defects.....	189
(a) The Foresight/Hindsight Distinction.....	189
(b) Product Misuse	193
Morgen v. Ford Motor Co.	194
Notes and Questions.....	200
(c) Changes in Technology.....	206
Boatland of Houston, Inc. v. Bailey	206
Notes and Questions.....	213
O'Brien v. Muskin Corp.....	217
Notes and Questions.....	222
(d) If There Are Multiple Participants in a Design Process, Who Should Be Deemed Responsible for the Product's Design?	227
Bexiga v. Havar Manufacturing Corp.	228
Notes and Questions.....	232
Mott v. Callahan AMS Machine Co.	237
Notes and Questions.....	242
(e) Special Problems with Medical Devices and Pharmaceuticals	249
Grundberg v. Upjohn Co.	249
Notes and Questions.....	264
E. Warning Defects	270
1. Duty to Warn	270
Hollister v. Dayton Hudson Corp.	270
Notes and Questions	277
(a) Foresight and Hindsight in Warning Cases	281
2. Adequacy of Warning	283
Spruill v. Boyle-Midway, Inc.	283
Notes and Questions	289
Edwards v. California Chemical Co.	292
Notes and Questions	296
Problem	298
Broussard v. Continental Oil Co.	298
Notes and Questions	304
3. Obvious or Known Dangers	313
Campos v. Firestone Tire & Rubber Co.	313
Notes and Questions	319
4. Who to Warn	324
(a) Users, Consumers, and Bystanders	324
Humble Sand & Gravel, Inc. v. Gomez	324

Notes and Questions.....	334
(b) Learned Intermediaries	337
Centocor, Inc. v. Hamilton	337
Notes and Questions.....	351
(1) Allergies and Idiosyncratic Reactions	356
(c) The Continuing Duty to Warn	358
Lovick v. Wil-Rich.....	358
Notes and Questions.....	364
Problem	369
Chapter 5. Causation in Fact.....	371
A. Tests for Determining Causation	371
Doull v. Foster	373
Notes and Questions	384
Problems on Causation	385
B. Proof of Causation	386
1. Reliance on Warnings	386
Burke v. Spartanics Ltd.....	386
Notes and Questions	391
Town of Bridport v. Sterling Clark Lurton Corp.....	393
Notes and Questions	396
2. Enhanced Injuries	401
Jahn v. Hyundai Motor Company	401
Notes and Questions	411
Problem	412
3. Linking the Defendant to the Product	413
In re Methyl Tertiary Butyl Ether (“MTBE”) Products Liability Litigation.....	413
Notes and Questions	424
Rutherford v. Owens-Illinois, Inc.....	425
Notes and Questions	438
Chapter 6. Admissibility of Evidence Bearing on Proof of Defect and Causation.....	445
A. Industry Standard and Custom	445
Kim v. Toyota Motor Corporation	445
Notes and Questions	455
Alevromagiros v. Hechinger Co.....	459
Notes and Questions	464
B. Post-Accident Remedial Measures	464
First Premier Bank v. Kolcraft Enterprises, Inc.....	464
Notes and Questions	468
C. Expert Witnesses.....	470
Daubert v. Merrell Dow Pharmaceuticals, Inc.....	470
1. Science and Causation in Toxic Tort Cases	478
Notes and Questions	494
General Electric Company v. Joiner	496

Notes and Questions	503
Kumho Tire Co., Ltd. v. Carmichael	504
Notes and Questions	511
Milanowicz v. The Raymond Corporation	512
Notes and Questions	522
Best v. Lowes Home Centers, Inc.	525
Notes and Questions	534
2. State Court Approaches to Admissibility.....	542
Chapter 7. Duty and Proximate Cause (Scope of Liability).....	551
A. Introduction	551
B. Duty, Foreseeability and Remoteness.....	557
Quisenberry v. Huntington Ingalls Inc.	558
Notes and Questions	567
Grover v. Eli Lilly & Co.	568
Notes and Questions	574
C. Intervening and Superseding Causes	576
Green Plains Otter Tail, LLC v. Pro-Environmental, Inc.	576
Notes and Questions	580
Barry v. Quality Steel Products, Inc.	581
Notes and Questions	588
D. The Special Problem of Product Alteration	592
Robinson v. Reed-Prentice Div. of Package Mach. Co.	592
Notes and Questions	600
Anderson v. Dreis & Krump Manufacturing Corporation	601
Notes and Questions	609
Southwire Co. v. Beloit Eastern Corp.	610
Notes and Questions	613
Chapter 8. The Effect of Statutes and Regulations.....	615
A. Introduction	615
B. The Role of Non-Compliance and Compliance with Safety Statutes....	617
Harned v. Dura Corporation.....	617
Notes and Questions	621
C. Regulation.....	626
Southland Mower Co. v. Consumer Product Safety Commission	627
Notes and Questions	642
D. Preemption.....	643
1. Express Preemption	644
Bates v. Dow Agrosciences LLC	644
Notes and Questions	655
2. Implied Preemption.....	659
BIC Pen Corporation v. Carter	659
Notes and Questions	666

Chapter 9. Damages	673
A. In General	673
B. Pecuniary Loss and Harm to Property	677
Alloway v. General Marine Industries.....	677
Notes and Questions	687
C. Emotional Distress	689
Gnirk v. Ford Motor Co.....	689
Notes and Questions	693
Burns v. Jaquays Mining Corp.....	695
Notes and Questions	702
D. Punitive Damages	705
Acosta v. Honda Motor Co., Ltd.	705
David Owen, Problems in Assessing Punitive Damages Against Manufacturers of Defective Products.....	710
Notes and Questions	712
Clark v. Chrysler Corp.....	716
Notes and Questions	726
Chapter 10. Apportionment of Liability Among Multiple Parties....	733
A. Consumer Conduct Defenses and Comparative Responsibility	733
1. The Movement to Comparative Responsibility	735
Daly v. General Motors Corp.	735
Notes and Questions	743
2. Assumption of the Risk	750
Krajewski v. Enderes Tool Co., Inc.	751
Notes and Questions	755
Problem	758
3. Product Misuse	759
B. Apportioning Liability Among Defendants and the Special Role of Employers: Contribution and Indemnity	759
1. Apportionment Within the Distributive Chain: Indemnity.....	762
Vandermark v. Ford Motor Co.....	763
Notes and Questions	764
Owens & Minor, Inc. v. Ansell Healthcare Products Inc.	765
Notes and Questions	772
2. Apportionment Outside The Distributive Chain: Contribution	775
3. Partial Settlements	779
4. The Special Case of Employers.....	783
Conwed Corp. v. Union Carbide Corp.	784
Notes and Questions	788
Chapter 11. Statutes of Limitation and Repose	791
Raymond v. Eli Lilly & Co.	791
Notes and Questions	797
Heath v. Sears, Roebuck & Co.	799
Notes and Questions	803

Daley v. A.W. Chesterton, Inc.	808
Notes and Questions	819
Chapter 12. Parties and Transactions Governed by Strict Liability..... 823	
A. Parties Who Can Be Sued.....	823
1. Retailers, Wholesalers, and Distributors.....	823
Hinton v. Sportsman's Guide, Inc.	824
Notes and Questions	830
2. Government Contractors.....	831
Boyle v. United Technologies Corp.	831
Notes and Questions	838
Problem	841
3. Successor Corporations	842
Savage Arms, Inc. v. Western Auto Supply Co.	842
Notes and Questions	848
B. Transactions Covered by Products Liability and Warranty.....	852
1. Leases and Bailments	853
Samuel Friedland Family Enterprises v. Amoroso	853
Notes and Questions	859
Monroe v. Savannah Electric and Power Company	860
Notes and Questions	863
2. Franchisors and Trademark Licensors	865
Kosters v. Seven-Up Co.	865
Notes and Questions	869
3. Facilitators.....	871
Erie Insurance Company v. Amazon.com, Inc.	871
Notes and Questions	879
4. Publications	883
Winter v. G.P. Putnam's Sons	883
Notes and Questions	887
5. Used Products	889
Allenberg v. Bentley Hedges Travel Serv. Inc.	889
Notes and Questions	893
6. Real Estate.....	897
Keck v. Dryvit Systems, Inc.	897
Notes and Questions	903
7. Services	907
Whitaker v. T.J. Snow Co.	909
Notes and Questions	913
Two Two v. Fujitec America, Inc.	914
Notes and Questions	918
Royer v. Catholic Medical Center.....	922
Notes and Questions	926

Chapter 13. Complex Litigation.....	929
A. Introduction	929
Notes and Questions	929
B. Multidistrict Litigation	930
In re Silicone Gel Breast Implants Products Liability Litigation.....	932
Notes and Questions	935
1. The Vioxx Settlement.....	938
C. Class Actions	945
Valentino v. Carter-Wallace, Inc.....	948
Notes and Questions	955
In re Rhone-Poulenc Rorer Inc.....	957
Notes and Questions	964
Amchem Products, Inc. v. Windsor	965
Notes and Questions	984
1. The Class Action Fairness Act of 2005.....	987
2. Mandatory Class Actions	988
Sullivan v. Saint-Gobain Performance Plastics Corporation	993
Notes and Questions	1004
D. The Bankruptcy Option	1004
In re Joint Eastern & Southern District Asbestos Litigation	1006
In re Asbestos Litigation.....	1008
Notes and Questions	1012
INDEX.....	1017