

PRODUCT LIABILITY

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1

PRODUCT SAFETY

RISK CANNOT BE ZERO

CHANGING REASONABLE EXPECTATIONS

Who is LIABLE?

maker
seller

PRIVITY

What is an ERROR?

design
construction
label

goods v. service v. product

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2

What is an INJURY? U.C.C. §2-318 Options A, B, or C

person
corporation?

property
buyer v. guest

PRIVITY

PRE-INDUSTRIAL REVOLUTION PRODUCTS

simple products: INFORMATION EQUAL

equal control of risk: production (seller) = use

(consumer)

personal relationships: INFORMATION

equal size: MUST LOSE ONE ECONOMIC UNIT

encourage production
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3

POST-INDUSTRIAL REVOLUTION PRODUCTS

- complex products**
- aggregate information
 - consumer**
 - firm**
 - industry**
 - true market: CPSC
- unequal control of risks**
- access to information:**
 - reasonable inspection will not reveal
- risks**
- impersonal transaction**
 - mass marketing & advertising
- loss of consumer information**
- loss of privity and standing to sue**

4

unequal size: NEED NOT LOSE AN ECONOMIC UNIT

- ability to bear cost: deep pocket
- ability to spread cost: mass market
- depends on MES
- liability creates a natural monopoly?
- producer's incentives
- safety as source of profit (increase TR reduce TC)
- and
- reduce liability if give consumer information
- safety
- cost min. of safety yields profit max.

5

COMMON LAW OF PRODUCT LIABILITY

CONSUMERS' CAUSES OF ACTION

TORTS:

- duty of care
- breach of duty
- proximate (i.e., legal, not factual) cause
- :
- reasonably foreseeable injury
- defenses
- Negligence:
 - comparative = offset
 - contributory = bar
- assumption of risk
- knowing and
- voluntary

6

res ipsa loquitur

per se negligence: statutory standard of care
governmental facilitation

STRICT LIABILITY

not fault based: instead based on social risk
allocation

Restatement of Torts Section 402A
business sells defective product in
unreasonably dangerous condition which
reaches user without substantial change in
condition, and causes physical harm

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MARKET SHARE LIABILITY

deceit or fraud
intentional
knowing
misrepresentation of material fact
expert's opinion = fact
justifiable reliance
injury

CONSUMERS' CAUSES OF ACTION
CONTRACT
ADVERTISING
right of the listener, not right of
speaker

objective truth
content regulation

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deception = substantial government
interest

ad = offer?
not reasonably definite
puffing
invitation to offer

common law not effective, so statutory response

STATUTORY PRODUCT LIABILITY

STATES
UCC WARRANTIES
implied for ordinary purpose:
MERCHANTABILITY
implied for a particular purpose
seller knows of buyers

reliance

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express:
seller's affirmation of fact &
basis of the bargain
DISCLAIMERS
clear and conspicuous
NOT for personal consumer
injury 2-318

FEDERAL
define words used in warranty:
Full v. limited

Consumer Product Safety Act
Standards after gather
information

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10
