

UNDERSTANDING PRODUCTS LIABILITY LAW

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UNDERSTANDING PRODUCTS LIABILITY LAW

Second Edition

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MATTHEW  BENDER

Dedication

To
Younghee Jin Ottley and Marianne Deagle

Introduction

The seven years that have passed since the completion of the First Edition of this book in October 2005 have not seen any let-up in products liability litigation or in the development of products liability law. Suits continue to be filed in federal and state courts alleging the traditional grounds of warranty, misrepresentation, and negligence. While the basic structure of strict liability law has been shaped by § 402A of the Restatement (Second) of Torts, it is impossible to overstate the growing influence of the approach to products liability taken in the 21 sections of the Restatement (Third) of Torts: Products Liability. While some courts have rejected individual sections of the Restatement (Third), more and more courts are citing and adopting specific sections of it.

The continuing debate over “tort reform” also has not diminished the number of products liability suits filed during the past seven years. These suits, many of which are brought as class actions, involve a full range of products: automobiles, chemicals, consumer electronics, food, medical devices, pharmaceuticals, and toys. As government agencies such as the Consumer Products Safety Commission (CPSC), Food and Drug Administration (FDA), and National Highway Traffic Safety Commission (NHTSC) have adopted regulations over many of these products, courts have been called upon to decide, with increasing frequency, whether statutes and agency regulations preempt individuals from bringing products liability lawsuits against the manufacturers of the products.

In order to provide an *understanding* of the products liability law that is the basis of litigation and the focus of debate, this book preserves the structure of the First Edition. First, Part I (Chapters 1–10) provides an overview of the complex body of products liability case law and statutory law. The chapters follow a functional approach and begin with the four theories that are the foundation of products liability law: warranty, misrepresentation, negligence, and strict liability. Separate chapters in Part I then examine the principle types of product defects (design, manufacturing, and failure to warn) and some of the problems involved with proving that the product was defective and that the defect was the cause of the injury. The last two chapters in Part I focus on the defenses available in a products liability action and the types of damages that a plaintiff may seek. These chapters contain references to recent statutes and cases as well as major revisions of the sections on federal preemption and punitive damages.

An *understanding* of products liability law also requires an examination of the issues involved in the prosecution or defense of a products liability case. Part II (Chapters 11–19) addresses a range of those issues, including: researching the case; drafting the complaint; interrogatories and requests to admit facts; requests for the production of documents; discovery and evidence depositions; protective orders; and discovery enforcement. These chapters also have been updated to reflect recent developments. It is hoped that this combination of the theory and the practice of products liability law will make the book useful not only to law students and law professors but also to those who are or may become involved in products liability cases, whether as judges, corporate counsel, plaintiffs’ or defendants’ counsel, or expert witnesses.

Unfortunately, the legal profession suffered a major loss since the publication of the First Edition. Professor Terrence F. Kiely, who coauthored the First Edition, died in July 2012. Fortunately, Professor Rogelio Lasso of The John Marshall Law School in Chicago

Introduction

has stepped in and revised the chapters originally written by Professor Kiely; however, the authors greatly miss Professor Kiely, and the Second Edition will not be the same without his hard work, insights, and wisdom from his many years teaching and litigating products liability cases.

As with any project of this size, this book is the product of the efforts of more than the coauthors. In particular, the authors want to acknowledge the excellent research of a number of DePaul University College of Law students in the preparation of the Second Edition: Jade Alston, Else Buss, Andrew Cunniff, Daniel Ember, Jennifer Fese, Thomas Flowers, Zeke Hacker, Robert Hunger, Stephen Jarvis, Mary Kane, Julie Kim, Jordan Klein, Nicholas Liadis, Greg Markwell, Kevin Mesteis, Joanne Moon, Kevin Pacini, Andrew Resor, Nicholas Rubino, Rachel Simcox, Z. Stein, Dan Sylvester, Jordan Treshansky, and Desalina Williams.

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