

# PRODUCTS LIABILITY

CASES AND MATERIALS

Fourth Edition

David A. Fischer  
Michael Green  
William Powers, Jr.  
Joseph Sanders

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# PRODUCTS LIABILITY

## CASES AND MATERIALS

### Fourth Edition

By

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*D.A.F. to  
Elizabeth Fischer*

*and M.G. to  
Robert Green and Marion Ewald*

*and W.P. to  
Kim Heilbrun*

*and J.S. to  
Beth, Tom, and Rob Sanders*

\*

## Preface

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As with the prior editions of this book, we seek to focus on the major products liability issues that exist today. While we hope to provide a flavor of the history and development of products liability, there has been enormous change in the decades since the American Law Institute adopted § 402A in 1964. This book emphasizes the issues of the modern day, including the law that developed and is reflected in the Restatement (Third) of Torts: Products Liability, the trend toward comparative responsibility for apportionment of liability among all parties, reflected in the Restatement (Third) of Torts: Apportionment of Liability, the growth of toxic substances litigation, with its attendant scientific evidence and expert witness issues, and the procedural issues reflected in modern mass products liability litigation. Beyond providing students familiarity with these doctrinal developments, we hope to facilitate students' honing their legal reasoning skills.

The book is designed to be sufficiently flexible to meet differing course needs. The book is readily adaptable for either a two or three hour course. Depending on the coverage of products liability in the basic Torts class and an instructor's particular interests, the course can focus on the basics of products liability, contained in Chapters 1–4, 8, and 12, cover the application of first-year Torts principles to the products liability context in Chapters 5, 7, 9, and 10, or deal with advanced aspects of products liability, including scientific evidence and mass torts in Chapters 6, 11, and 13.

To facilitate coverage and avoid duplication of the products liability standards and the different types of defects, we provide a straightforward, streamlined, logical organization. Chapter 1 provides an introduction and review of basic tort principles, including negligence and misrepresentation. Chapter 2 addresses warranty issues in more depth because of its relative lack of coverage in first year Torts classes. The book proceeds with the elements of a products liability claim, including defect, cause in fact, proximate cause, damages, affirmative defenses, and contribution and indemnity, after a Chapter that covers the emergence of products liability and its policy bases. We also include separate Chapters on proof, the role of legislation and regulation, statutes of limitations, the boundaries of products liability, and complex litigation.

Most footnotes are omitted from the main cases and other quoted material without indication. We have renumbered the footnotes that are used. Citations are sometimes omitted without indication, and at other times are indicated by brackets. Editor's footnotes are indicated by an asterisk. All other omissions of textual material are indicated by asterisks.

Throughout the book we use the phrase “products liability” to describe the rules of modern products liability imposing liability on the basis of defect. Use of the older term “strict liability” to describe these rules is both outdated and misleading. Moreover the older term is confusing when we contrast products liability with “true” strict liability.

In a number of places we have cited to the current version of the Restatement (Third) of Torts: Liability for Physical Harm (Proposed Final Draft No. 1, 2005). That Draft received final approval in May, 2005, but will not be published for several years and then under a different name to reflect its expansion to cover emotional distress.

We would like to thank several dedicated people who were enormously helpful in preparing this edition of the book: Sandra Jackson at the University of Houston; Scott Walls at the University of Missouri; Kathy Bartsch at the University of Texas; and Arlene McClannon, John Vermit-sky, and Michael Schrader at Wake Forest University.

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MICHAEL D. GREEN  
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JOSEPH SANDERS

June 2006

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- American Law Institute, Restatement (Third) of Torts: Products Liability: §§ 2 and comments a, d, e, f, p, 4(a), 3, 5 and comments a and e, 6 and comments c and f, 7 and comment b, 8 and comments a, b, and k, 10 and comment b, 11 and comment c, 13, 14 and comment d, 16, and comment d, 18, 19 and comments c and e, 20 and comments c, d, and f. Copyright 1998 by The American Law Institute. Reprinted with permission.
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