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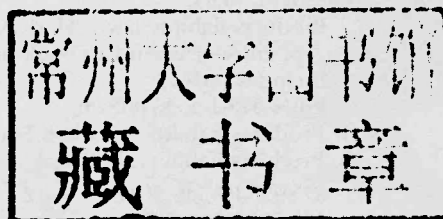
ASPEN CASEBOOK SERIES

# Products Liability Law

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*For my students*

## Preface

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In writing this book, I have tried to accomplish three different but closely related objectives:

- The primary objective of the book, of course, is to provide a solid grounding in the fundamentals of products liability law. Due to its far-reaching consequences within the economy, products liability is the most practically important field of tort law. The basic liability rules are covered in the casebooks on tort law, but that coverage is necessarily abbreviated. Indeed, this material is often not taught in the introductory torts class because of its complexity. Regardless of whether one has previously studied products liability in a torts class, there is plenty more to learn.
- In many respects, products liability is an ideal subject for the advanced study of tort law. Extended study of products liability reveals the extent to which it is both part of tort law and yet a distinctive field. By studying products liability, one necessarily learns a great deal about tort law more generally. Product cases also pose interesting questions about evidentiary problems, strategic lawyering choices, how liability rules are applied in the courtroom, and the relation between the tort system and other institutional mechanisms for regulating product risk and compensating physical injuries. These themes are developed in the book, providing the foundation for a deeper understanding of the practice and substantive content of tort law more generally.
- Finally, products liability is an ideal subject for studying the evolutionary processes of the common law. The rapid development of products liability has attracted the attention of many scholars interested in the nature of legal reasoning and the processes of the common law. *E.g.*, Martin P. Golding, *LEGAL REASONING* 112-25 (1983) (using the development of early products liability doctrine culminating in the rejection of the privity requirement by courts in the early twentieth century to illustrate the nature of common-law reasoning and noting that this “*line of cases . . .* has often been used to show the technique of case law development”); Edward H. Levi, *AN INTRODUCTION TO LEGAL REASONING* 1-19 (1949) (illustrating the nature of common-law reasoning with this same line of cases). To develop this theme, the book repeatedly shows how many doctrinal controversies in products liability can be attributed to the evolutionary processes of the common law. Unlike other areas of the common law, the rule of strict products liability largely originates from a common textual source adopted by virtually all the states — the rule of strict products liability in *Restatement (Second) of Torts* §402A (1965) and its accompanying commentary. This rule



has been developed differently by different jurisdictions for reasons that are highlighted throughout the book. Case-by-case litigation can frame issues in a manner that importantly influences doctrinal development within a jurisdiction, enabling one to understand why the appropriate interpretation of a legal rule often critically depends on its doctrinal lineage. This dynamic of the common law is hard to capture adequately in a casebook on tort law, but is essential for understanding products liability and the common law more generally.

In editing the cases and other secondary materials, my objective has been to simplify the exposition to the maximal extent possible. Product cases routinely involve a variety of complicated issues that require resolution by long, complicated judicial opinions. Rather than identify the omitted portions of the opinion, I have edited the material to provide a single, coherent opinion focused on the issues under study. Ellipses and so on do not ordinarily appear to acknowledge the omitted portions of the opinion. Similarly, most of the citations to cases and so on have been omitted unless acknowledgement provides useful information (either by full citation or an identification of the omission, denoted by [ ]). The few footnotes that remain have their original numbering.

References to the *Restatement (Second) of Torts* (1965) are simply to the *Restatement (Second)*. Likewise, references to the *Restatement (Third) of Torts: Products Liability* (1998) are simply to the *Restatement (Third)*. Each of these important sources is quoted extensively throughout the book, and I am grateful to the American Law Institute as copyright holder for its permission. I am also grateful for permission to reprint portions of Patrick M. Hanlon & Anne Smetak, *Asbestos Changes*, 62 N.Y.U. Ann. Surv. Am. L. 525 (2007); Robert L. Rabin, *Territorial Claims in the Domain of Accidental Harm: Conflicting Conceptions of Tort Preemption*, 74 Brook. L. Rev. 987 (2009); Robert L. Rabin, *A Sociolegal History of the Tobacco Tort Litigation*, 44 Stan. L. Rev. 853, 855 (1992); Larry S. Stewart, *Strict Liability for Defective Product Design: The Quest for a Well-Ordered Regime*, 74 Brook. L. Rev. 1039 (2009).

I would also like to thank my various research assistants over the past years for their superb research that has contributed to this book in myriad ways. Two of them, Jeremy Fischbach and Petro Kholokov, worked full-time on this project for months and accordingly merit special thanks. Financial support was provided by the Filomen D'Agostino and Max E. Greenberg Research Fund of the New York University School of Law.

My students over the years have been of invaluable help in developing this book. Although this is the first edition to appear in print, my students have already been exposed to multiple prior editions in draft form, with each subsequent iteration of the manuscript substantially benefitting from the lessons I learned in the classroom. As my students would tell you if asked, this casebook is independent of, but highly complementary to, my textbook *Principles of Products Liability* (2d ed. 2011). Each reinforces the other.

As always, Janette Sadik-Khan and our son Max have provided an amazing amount of encouragement and support. I could never thank them enough.

Mark A. Geistfeld  
New York City  
March 2012

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