

TORTS

“The American Recipe”

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MAJOR TOPICS FOR DISCUSSION

STRICT LIABILITY

ANIMALS

ABNORMALLY DANGEROUS ACTIVITIES

VICARIOUS LIABILITY

PRODUCTS LIABILITY

INTRODUCTION TO FIELD

STRICT LIABILITY

PUBLIC POLICY

DETERRENCE

COMPENSATION

CORRECTIVE JUSTICE

ANIMALS

CATTLE

DOMESTIC

WILD

ABNORMALLY DANGEROUS ACTIVITIES

ORIGINAL THEORY: RYLANDS v. FLETCHER, Ct of Ex. (1866) – STRICT LIABILITY FOR KEEPING A NON-NATURAL HAZARDOUS CONDITION ON ONE'S LAND THAT CAUSES HARM TO NEIGHBOR WHEN IT ESCAPES.

RESTATEMENT of TORTS, 2d § 519: "ONE WHO CARRIES ON AN ABNORMALLY DANGEROUS ACTIVITY IS SUBJECT TO LIABILITY FOR HARM TO THE PERSON, LAND, OR CHATELS OF ANOTHER RESULTING FROM THE ACTIVITY, ALTHOUGH HE HAS EXERCISED THE UTMOST CARE TO PREVENT THE HARM. . . . THIS STRICT LIABILITY IS LIMITED TO THE KIND OF HARM, THE POSSIBILITY OF WHICH MAKES THE ACTIVITY ABNORMALLY DANGEROUS."

FACTORS IN DETERMINING WHETHER AN ACTIVITY IS ABNORMALLY DANGEROUS

SECTION 520:

- "a) EXISTENCE OF A HIGH DEGREE OF RISK OF SOME HARM TO THE PERSON, LAND, OR CHATTELS OF OTHERS;
- b) LIKELIHOOD THAT THE HARM THAT RESULTS FROM IT WILL BE GREAT;
- c) INABILITY TO ELIMINATE THE RISK BY THE EXERCISE OF REASONABLE CARE;
- d) EXTENT TO WHICH THE ACTIVITY IS NOT A MATTER OF COMMON USAGE;
- e) INAPPROPRIATENESS OF THE ACTIVITY TO THE PLACE WHERE IT IS CARRIED ON;
- f) EXTENT TO WHICH ITS VALUE TO THE COMMUNITY IS OUTWEIGHED BY ITS DANGEROUS ATTRIBUTES."

PRODUCTS LIABILITY

TRADITIONAL THEORIES IN SUPPORT OF PRODUCTS LIABILITY

1. NEGLIGENCE
2. STRICT LIABILITY
3. BREACH OF WARRANTY
4. MISREPRESENTATION

THREE KINDS OF PRODUCT DEFECTS

1. MANUFACTURING (ONE-OFF)
2. DESIGN
3. WARNING (INSTRUCTIONS)

NEGLIGENCE-BASED PRODUCTS LIABILITY

MacPherson v. Buick Motor Co. (NY 1916) – THE END OF “PRIVITY” IN NEGLIGENCE

“If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequence to be expected [proximate cause]. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser [duty to foreseeable PIs not in privity], and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully.”

WARRANTY-BASED PRODUCTS LIABILITY

UNIFORM COMMERCIAL CODE (UCC) ADOPTED IN EVERY STATE

WARRANTIES THAT ARISE IN THE SALE OF GOODS BY A MERCHANT:

1. EXPRESS WARRANTY
2. IMPLIED WARRANTY OF MERCHANTABILITY
3. IMPLIED WARRANTY OF FITNESS FOR A SPECIFIC PURPOSE

PRIVITY (VERTICLE & HORIZONTAL) WAS A PREREQUISITE

BUT LIABILITY FOR BREACH OF WARRANTY COULD BE SHIFTED UP
ONE STEP AT A TIME FROM CONSUMER TO MANUFACTURER

STRICT LIABILITY CREATED IN PRODUCTS LIABILITY

GREENMAN v. YUBA POWER PRODUCTS INC., (CA 1963): "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."

Restatement of Torts, 2d § 402A (1965): A product seller "who sells a product in a defective condition unreasonably dangerous to the user or consumer or his property is strictly liable."

"Defective Condition" – Manufacturing, (Design or Warning)

"Unreasonably Dangerous" – Whether the article sold is "Dangerous to an Extent Beyond That Which Would Be Contemplated By The Ordinary Consumer Who Purchases It, With The Ordinary Knowledge Common To The Community As To Its Characteristics."

TEST RE DESIGN & WARNINGS

Slightly Different Test Than For Manufacturing Defect:

More Like Negligence But With Focus on Product Instead of D's Conduct

“RISK/UTILITY” TEST: A Product is Defective Only Where the Magnitude of the Hazards Outweigh the Utility of the Product as Sold or the Broader Benefits of the Product.

Factors to Consider In Balancing Risks Against Utility and Cost:

1. Utility of the Product to Public & User
2. Nature of Product, i.e., Likelihood It Will Cause Injury
3. Availability of Safer Design or Adequate Warning
4. Whether Safer Design or Warning Would Permit Product to Remain Functional & Affordable
5. Ability of PI to Avoid Injury By Careful Use
6. Obviousness of Danger
7. Seller's Ability to Spread the Cost of Making the Product Safer