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SYMPOSIUM ON GENERIC PRODUCTS LIABILITY

SYMPOSIUM EDITOR
Carl T. Bogus

THE THIRD REVOLUTION IN PRODUCTS LIABILITY

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In this Article, Professor Bogus introduces the reader to the concept of “generic liability,” which he defines as “strict liability that is imposed upon products that are unreasonably dangerous despite the best possible design, construction, and warnings.” Professor Bogus argues that generic liability represents a third revolution in products liability—a revolution that, although unexpected and poorly understood, is the inevitable product of what has come before.

CHILDREN’S LIVES, INDONESIANS’ LIVES, AND GENERIC LIABILITY

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In this Article, Professor Bell invites readers to think about generic liability from particularized perspectives. From one such set of perspectives, he suggests that products liability law should be comprised of rules that a loving parent would choose. Finding product safety to be clearly the most significant factor in such a method of rule selection and finding that generic liability would probably enhance safety while detracting little, if at all, from other goals important to a loving parent, Professor Bell concludes that tort law in the future should adopt a form of generic liability with an autonomy-enhancing safety valve.

LIABILITY FOR UNREASONABLY AND UNAVOIDABLY UNSAFE PRODUCTS: DOES NEGLIGENCE DOCTRINE HAVE A ROLE TO PLAY?

Joseph A. Page 87

The debate over whether courts should impose product-category liability has for the most part proceeded under the assumption that the tort theory best suited for these kinds of cases lies in strict or absolute liability. This Article argues that negligence may be a more appropriate theory, and assesses the advantages it might have over strict and absolute liability.
THE UNREASONABLY UNSAFE PRODUCT AND STRICT LIABILITY

Jerry J. Phillips

Professor Phillips demonstrates that the sharp distinctions between manufacturing, design, warning, and misrepresentation flaws which the Reporters for the Restatement (Third) of Torts: Products Liability seek to draw will not withstand scrutiny. The Reporters' most controversial position—a condition that the plaintiff generally be required to prove a reasonable alternative design in order to recover for design defectiveness—would place a very onerous burden on the plaintiff. This position does not reflect the majority rule today, since most courts use a risk-utility approach to design defectiveness which permits, but does not require, proof of a reasonable alternative design, and as an alternative basis, several other courts use the consumer expectation test for determining design defect without the necessity of proving a reasonable alternative design. Moreover, the Reporters would reject strict liability and substitute a standard of reasonableness of the manufacturer's conduct for determining design defectiveness. In view of these dramatic, conservative departures from existing law, the proposed Restatement (Third) is not likely to be widely followed by the courts.

IS THERE A DOCTRINAL ANSWER TO THE QUESTION OF GENERIC LIABILITY?

William Powers, Jr.

This Article explores the extent to which a traditional doctrinal analysis of the question of generic liability leads to a persuasive answer one way or the other. The Article concludes that it does not. Thus, a court facing the question could reach a legitimate decision one way or the other. Ultimately, a court must simply choose.

UNAVOIDABLY UNSAFE PRODUCTS: A MODEST PROPOSAL

Ellen Wertheimer

There are three categories of products which cause injuries for which manufacturers have traditionally not been held liable. Two of these categories involve products which cannot be made safe, but are reasonably dangerous because their utility outweighs their risks. Such products are nondefective but cause injury to a certain percentage of those who use them. If persons injured when competently using such products are not compensated, they will be left paying the price for the availability of the products involved, either to society as a whole, in the case of products like vaccines, or to a significant segment of society, in the case of products like ladders. This is unfair; the groups which benefit from the availability of reasonably dangerous products should pay their costs. The third category of products discussed by this Article involves products which are defective because their risks outweigh their utility, but for which there are no alternative feasible designs; these should simply be treated as the defective products they are.

THE KENNETH M. PIPER LECTURE

EMPLOYEE PRIVACY, AMERICAN VALUES, AND THE LAW

Matthew W. Finkin

Professor Finkin takes a close look at the law of employee privacy in the United States and compares it briefly to the law in the Federal Republic of Germany. He argues that American law often fails to protect the essentials of what the law ought to protect and that the law is discordant with American values as expressed historically and in common parlance. He argues that comparative law should play a role in fashioning a broader legal conception of employee privacy, as it did in the birth of the idea of a legal right to privacy a century ago.
PRIVACY IN THE WORKPLACE: HOW WELL DOES AMERICAN LAW REFLECT AMERICAN VALUES?  

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Professor Westin reviews the results of recent surveys concerning employee privacy in the workplace. Based upon the survey results, he concludes that the majority of the public is unconvinced that employee privacy is threatened by legitimate employer monitoring of work. Thus, he contends that existing laws regarding work monitoring strike the correct balance between employee privacy and other societal interests and that no new employee privacy legislation is necessary.

PRIVACY IN THE WORKPLACE  

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This Article examines the law of employee privacy in the electronic workplace from an employee perspective. Mr. Conlon claims that our current legal system fails to adequately protect worker privacy interests and therefore, argues for reform.

STUDENT NOTES AND COMMENTS

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This Note critiques the use of gender-specific data tables in determining lost future earning awards in tort cases, and uses the Federal Rules of Evidence as a basis for argument. Ms. Lamb examines the discriminatory impact of resorting to gender-specific statistics when there is no earning pattern on which to base an individualized determination of lost future earning potential. The Note concludes that the use of gender-neutral statistical data better reflects women’s increasing earning potential, while remaining consistent with the objectives of the Federal Rules of Evidence.