

s/l

1. abnormally dangerous activities: can it be done safely w/ exercise of due care? If no, then s/l if it's uncommon activity – Rst. 2nd

ex. Blasting, pesticide spraying, fireworks, transport of toxic/explosive substances

2. s/l for wild animals

3. products liability

Escola: rationale for s/l

Mftr puts on market – is in best position to prevent/know about/deal w/ risks and is benefiting

Mass production means consumer must rely on producer assurances, so fair to hold producers to those assurances

Judicial economy re suing up the chain and re internalizing costs

Effect will happen through price mechanism and cost spreading

Origins in res ipsa and also in contract law – warranties of sale and merchantability – but warranties have problems w/ damages, disclaimers, notice, privity so move from K to tort

Greenman v. Yuba power – extends to product design issues

Tort not warranties

P must show defect, causation, injury, used in foreseeable/normal way,

P unaware of existence of defect

Rstmt 402A

Covers sellers – anyone in the chain of sale is covered; not non-professional sellers

Physical harm only

3 types: 1) Manufacturing defects

2) Design defects

3) Warning defects

Mftring defects – “lemon” departs from mftrs own specs and departure is cause of injury

Can use circumstantial evidence to show departure from specs if injury wouldn't normally happen w/out defect

2) design defects: product malfunction vs trade-off cases

“crashworthiness” doctrine –enhanced injuries

Test 1: ordinary consumer expectations when product used in expected or rsbly foreseeable manner

How to prove? Advertising, market targeting, design of car itself seems to indicate roll-bar will protect, generally will not need experts except can use experts to explain what specialized consumers' ordinary expectations would be

Open and obvious defect – if consumer would expect defect, then no liability if it exists, ex. Lighters, motorcycles

Vs. risk-utility where can look at tradeoffs

Test 2: r/u

If magnitude of preventable danger outweighs utility of product, then design is defective

7 factors in Wade art. (p. 969-970)

Look at utility of specific feature not product as a whole

Not checklist, factors can go both ways

Which test to use?

c/e when consumers would have ordinary knowledge of how product feature is supposed to work – can't use experts to explain how defect works (but yes for other purposes)

r/u when not w/in ordinary knowledge of jury – must use experts – when have “trade-off” case rather than “malfunction” will use r/u

CA – shift in burden of proof – once P alleges defect/cause/injury, D must show why not defective

Focus on product not mftrs conduct

Subsequent remedial steps are admissible

P can sue everyone/anyone in chain of distribution

Foresight vs. hindsight – where it matters majority of courts use foresight analysis even if s/l – a minority says s/l should be different so D liable even if couldn’t know of risk

3rd rstmt – P needs to prove rsble alternative design (RAD)

Warning defects

Must be explicit, clear, conspicuous, right means used to warn from the perspective of ordinary consumer/user of the product – look at both the words and the placement/means

Heeding presumption – if warning had been adequate, P would have read and listened to warning

Bulk supplier/learned intermediary rule

State of the art – if risk is scientifically unknowable at the time of manufacture, then D not liable

Ca – shifts burden of proof to D on this point

CA – prescription drugs and medical devices – can't sue under s/l for design or warning defects, only mftring defect or under neg