

SYLLABUS

Product Liability Seminar
University of Minnesota School of Law
Fall 2009

Monday, 3:35 – 6:30 p.m., Room xx

Professor Kenneth Ross

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www.productliabilityprevention.com

- Texts:** Henderson and Twerski, **PRODUCTS LIABILITY: Problems and Process (6th Edition) (Required); Restatement of the Law, Third: Products Liability, ALI (Buying is optional, but you will need to get readings off of Westlaw if don't buy)**
- CLASS 1:** **September 14, 2009: Overview of Class, Beginnings of Product Liability** – PL overview, HT (1-47*), When Products Harm (if time)
- CLASS 2:** **September 21, 2009: Design** – HT (167-197), Risk Assessment and Foreseeability articles, R3d (1, 2a, b, c, b, 3, and 7), KR presentation on risk assessment
- CLASS 3:** **September 28, 2009: Design** – HT (197-226), HT problems 14 and 15, Twerski video, R3d (2d, e, f, g, 4, and 5)
- CLASS 4:** **October 5, 2009: Design** – HT (254-292, 316-323, 531-540), MN Civil JIG on design (posted on TWEN); OEM/Component parts article (posted on TWEN) [Guest speaker: safety engineer to discuss risk assessment and techniques for designing safe products]
- CLASS 5:** **October 12, 2009: Warnings** – HT (323-361), Ayers and Spruill (posted on TWEN), KR warnings presentation, R3d (2i, j, k, l, m, n)
- CLASS 6:** **October 19, 2009: Warnings** – HT (361-384, 391-408), warnings exercise, Twerski video, MN Civil JIG on warnings (posted on TWEN), R3d (2o, q)
- CLASS 7:** **October 26, 2009: Medical Devices and Drugs** – HT (540-581, 312-314) and Breg case (posted on TWEN), R3d (6) [Guest speakers Professor Dave Prince of WMCL and John Sear of Bowman and Brooke LLP]
- CLASS 8:** **November 2, 2009: Special products and issues (used products, food, etc.) and preemption** – HT (581-602, 435-437, 449-454, 465-478), R3d

* Problems not included unless specified.

(2h, 8) [Guest speaker: Scott Smith and Sarah Brew of Hallelund Lewis to discuss food liability litigation, preemption and no-injury class actions]

CLASS 9: November 9, 2009: Post-sale duty to warn – (HT 384-391), Ross articles (posted on TWEN), MN Civil JIG on post-sale duties, KR presentation, R3d (10, 11, 13)

CLASS 10: November 16, 2009: Post-sale duty to warn – post-sale exercise [Guest speaker to talk about recall]

CLASS 11: November 23, 2009: Litigation [Guest speakers to discuss litigation – plaintiff and defense attorney and in-house lawyer]

CLASS 12: November 30, 2009: Class presentations, International (articles posted on TWEN)

CLASS 13: December 7, 2009: Class Presentations, Wrap-up

The final grade in this course will be based on the following:

- 60% 15 page paper (Times New Roman, 12 pt., double-spaced text, normal margins , footnotes included). **Topics must be approved by Professor by Class 8.**
- 20% Class presentation of paper
- 20% Class participation (includes attendance, class participation, News of the Week)

LIST OF POSSIBLE PAPER SUBJECTS

1. Jurisdiction in the U.S. courts over foreign manufacturers who sell defective products in U.S.
2. U.S. manufacturers being sued in foreign courts for accidents in foreign countries involving U.S. products (H.B. Fuller glue case).
3. Analysis of enacted state tort reform legislation with analysis of future impact.
4. Admissibility of evidence of post-sale remedial activities in product liability cases, such as recall letters.
5. Liability of successor corporations for their predecessor's products, including availability of punitive damages. Liability of intermediate successor when current successor is still viable.

6. Liability of predecessor corporations for acts of successor corporations, including punitive damages.
7. Federal preemption of tort actions in light of Riegel decision (medical devices, cars, pesticides, etc.).
8. Admissibility of government reports to prove defect (FDA, CPSC, NHTSA, OSHA).
9. Punitive damages. (Exxon Valdez, etc.)
10. Liability of component part manufacturers for the correct usage of the component part and for the design of the completed product.
11. Product liability for publishers of written material or computer software.
12. Status of the government contractor defense as it applies to product liability cases. Includes sales to military and to non-military government agencies.
13. Proximate cause in failure to warn cases. Read and heed presumption.
14. The sealed container defense or liability for nonmanufacturers (i.e., retailers, etc.).
15. The learned intermediary doctrine in drug and device cases.
16. The duty to recall or retrofit - common law and legislative enactment.
17. Admissibility and use of compliance with standards and state-of-the-art to defend product liability cases.
18. Analysis of government regulatory oversight of product safety (i.e. reporting responsibilities) with entities such as the Food and Drug Administration, Consumer Product Safety Commission, and NHTSA.
19. Admissibility of government fines, penalties or violations to prove negligence or defect.
20. An analysis of liability involving specific products such as machinery, consumer products, power tools all-terrain vehicles, swimming pools, medical devices, drugs, etc.
21. Defending adequacy of warning labels - readability and understanding.
22. Reasonable foreseeability.

23. International product liability and product safety legislation (Europe, Asia).
24. Multilingual warning labels. Warning illiterates.
25. Economic loss rule
26. Nuisance cases, especially lead paint
27. New CPSC legislation

TIPS FOR PRODUCT LIABILITY PAPERS

1. 15 pages of double-spaced Times New Roman, 12 pt. text (including footnotes).
2. Only footnotes accepted. Don't need to be extensive. Don't need string cites.
3. Use primary sources (e.g. cases) where appropriate. No citation to textbook. OK to cite from Restatement.
4. Can make it look like a mock memo to a client. Can use Question Asked, Answer, and Analysis format.
5. Incorporate Restatement if applicable.
6. NO TYPOS. I am looking for good organization, good transitions between paragraphs and sections (good flow). Simple writing that could be understood by a non-lawyer. Short and long sentences intermixed, active sentences, minimum of jargon.
7. Short introduction - tell me what you are going to tell me quickly and why I should care (other than I have to read it to give you a grade).

TIPS FOR CLASS PRESENTATIONS

1. Do not start by saying "I am going to tell you today about....." Sounds like show and tell and one of my pet peeves. Start right away into the substance of the talk.
2. 10 minutes of presentation. 5 minutes for Q&A and discussion.
3. Give us intro (1 minute*), substance (8 minutes*) and conclusion (1 minute*).

* Approximate times