

INJURY

PRODUCTS-LIABILITY PUZZLER

Using the words listed on the last page, fill in the blanks to complete the sentences. The numbers in parentheses indicate the length of the word(s) for that blank. Fill in the blank, then find the word(s) in the puzzle and cross out each of the letters. The *unused* letters spell out the name of a 1916 case from which products-liability law has evolved, and the name of the judge who wrote the opinion (along with his first initial). The judge concluded that the general rule, that manufacturers were not liable for injuries caused by their products except to the person who bought the product directly from them, had to be abandoned. Instead, because the manufacturer placed its product on the market, and made money doing so, it ought to answer when its product causes injury.

A Brief Overview of Products-Liability Law

Products liability law varies from state to state. Some states apply the classic rule that manufacturers are _____(14) for defects in their products. Under a strict liability theory, the question is not whether the manufacturer is at fault, but whether the product is unreasonably dangerous. Other states allow plaintiffs to pursue the manufacturer for its _____ (10), which focuses attention on the manufacturer's wrongful conduct that caused the injury. Some states still apply the contract-based theory that when a product is sold, it gives rise to a contract, and that contract includes various warranties. Here the plaintiff proceeds on the theory that the manufacturer or seller has breached a _____ (8). Thus, products-liability cases combine principles of the law of _____ (5) and the law of contracts.

The classic strict liability example involves selling food that has gone bad. Before there was consistent refrigeration, people would get sick from eating _____ (11). Even today, when people eat hamburgers that have not been completely cooked, or eat unrefrigerated mayonnaise and dairy products, or food that has been cut on the same board as raw chicken, they may have claims for strict products liability if they become ill. Other classic examples of products judged by strict liability are hair dyes, cosmetics, and medicines that cause allergic reactions. The government has some authority over this area through the Food and Drug Administration (“_____” (3)).

A products-liability claim is usually based on three different factual situations: the product had a _____ (12) or a _____ (19), which is usually caused by some failure in the manufacturing process or a problem with raw materials, or it did not have an adequate _____ (7), so the user did not recognize the danger. These days, there are warnings on all sorts of things. One federal law relating to household poisons, the Federal Insecticide, Fungicide and Rodenticide Act (“_____” (5)), has particular

rules about warning labels that, if followed, relieve the manufacturer of liability. A product also must be designed so that it can withstand the possibility that it will be used for some purpose or in a manner that wasn't really intended. This is referred to as _____ (17).

One area in which products liability law has had a substantial impact is motor vehicle safety. In the 1960s, Ralph Nader wrote a book, _____ (16), which detailed product defects of the _____ (6), which was later withdrawn from the market. Nader asserted that, without safety devices, cars just were not safe for their intended use. Another vehicle that was the subject of great concern was the _____ (5), which allegedly could not withstand rear-end accidents. When the car was hit from behind, there was a _____ (6) that the impact would cause the gas tank to explode. An _____ (3) is another example of an unreasonably dangerous vehicle.

At that time, the idea was developing that cars should protect their occupants—or at least not directly cause or aggravate injuries. In other words, the vehicle should be _____ (11). Some say that this approach to motor-vehicle safety has inspired some of the _____ (13) we insist upon today. Examples include controlled-crush front ends, better structural protection around the passenger compartment and the gas tank, better _____ (6), and, of course, the _____ (6) to cushion the blow of a front-end impact. The single brake light in the middle of the back window of cars was brought to you by the federal government courtesy of Elizabeth _____ (4).

Other kinds of motor vehicles have also benefited from the focus on safety. A great danger with tractors, for example, is their tendency to roll over on hills. When a tractor rolls, the operator is in danger of being crushed, paralyzed, or killed. One way to protect the operator is to build the tractor with a _____ (8) *protection system* (a _____ (4)), which acts as a protective cage around the operator. The family _____ (4) can be a dangerous place to work. A tractor frequently provides power to the farm equipment it pulls. Power is transferred from the engine to the equipment through a drive shaft. The drive shaft, also called a *power take-off* (the _____ (3)), is sometimes left unguarded. Because the shaft rotates lengthwise at high speeds, a person can become entangled in it and be seriously injured.

Similarly, people using forklifts in warehouses are in danger of being hit from things falling from above. Some forklifts have a rigid roof over the cab to protect the operator. This safety device is referred to as a _____ (4), an acronym for *falling object protection system*. Another safety device for industrial equipment and some minivans and cars is a _____ (11). An operator of a riding lawn mower is now frequently protected by a _____ (13), which stops the blade from moving when the operator leaves the driver's seat. Another well-known example of a safety device is the special switch found on _____ (3) cigarette lighters, making it more difficult for children to set fires while playing with the lighter.

Other examples of safety devices and improved products include _____ (6) on machinery to protect hands and feet from moving parts, or from getting nipped in a _____ (10), a "_____ (7), which is used for pushing meat through a power meat grinder rather than using one's fingers, and the chemical _____ (7) to let you know if you have a gas leak in your house. Children's nightwear is now made from _____ (14) fabric; your

automatic garage door is probably equipped with a _____ (6) so that it stops if anything is in the path of the descending door. Finally, it is now common to see people using _____ (14) for activities as diverse as mowing the lawn, in-line skating, bicycling, or doing wood work.

Sometimes a dangerous product is so commonly used that millions of people can be injured by it. Examples of these widely used products include the insulating material _____ (8) and a particular brand of _____ (3). More recently, tobacco manufacturers were held liable for selling another commonly used dangerous product: the cigarette.

Even though the phrase “strict liability” is used, manufacturers can raise a variety of defenses. One of the most common defenses is that the plaintiff is also at fault. In most states, when a plaintiff is partially at fault, a _____ (16) statute will govern. Typically, the jury will be asked to determine each party’s percentage of fault in causing the accident or injury. If the jury concludes that the plaintiff’s conduct was a factor, the verdict will be reduced by that percentage. The procedure varies quite a bit from state to state, however.

Another common defense is that the danger was _____ (14). In this situation, the defendant takes the position, essentially, that anybody could see by looking at the product that it was dangerous. While this defense works well in a case based on negligence, it is not so logical when the case is based on strict liability, where the focus is on the product rather than the defendant’s conduct. Simply stated, when a product is unreasonably dangerous and poses an unreasonable _____ (4) of harm, it really doesn’t matter if the danger is obvious. But some products are considered to be *inherently dangerous*. That is, they probably cannot be made safe. Dynamite and _____ (6) are common examples of inherently dangerous products.

When people change the product after they buy it, and are then injured, manufacturers raise the _____ (20) defense. When a product has been altered after purchase, it no longer is the product the manufacturer designed or sold. Thus goes the argument.

Some state legislatures have passed statutes providing that even if a products-liability case is based on the product rather than the parties’ conduct, a defendant can still rely on the open and obvious defect defense. This sort of statute, along with many others restricting recoveries or imposing special rules on tort cases, is part of the _____ (10) movement. Debate about these statutes can be fierce: one side argues that they unfairly limit a plaintiff’s remedies, which are hard enough to obtain in the first place; the other side argues that products-liability cases and other tort suits are a drain on industry and the economy, and that they provide “windfalls” to plaintiffs. (It’s not clear why this is a bad thing for a severely injured person.)

Finally, the federal government has taken a lively interest in product safety. The Consumer Products Safety Commission (“_____” (4)) is a government watchdog that tests products, issues consumer alerts, and recommends that some products be recalled. When there is a _____ (6), manufacturers ask consumers to return the product or to take it to a service center so a safety device can be added. It is not clear whether a manufacturer can be required by court order to _____ (8) products manufactured years earlier.

And now,

THE PUZZLE

A M T A G U A R D S E C N E G I L G E N
I C L R E N P T O W Y S P S F H A E O M
R R U A L V I S L A H T P A O R D I H A
B D A E B T N N E R T O R N F A T V C N
A E F G A A C K R R R M B I N A U L T U
G E E E I I H S O A O P F G R I L R I F
O P V V L N P I S N W E E E T A A D W A
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A A R E C M T O R T R E F O R M A G M R
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D A P O R A T E T O E R F C O J O D A N
O E M R T T U E U T S E V I N K D E E G
B F O P S Q R D A G L I G H T S O F D D
V A C E E E O T N I P R O L L O V E R E
I S I S M A S B E S T O S B C A A C C F
O N B A C K U P A L A R M R D D O T P E
U U L Z O S E C I V E D Y T E F A S S C
S F O R E S E E A B L E M I S U S E C T

airbag
asbestos
ATV
back-up alarm
BIC
comparative fault
Corvair
CPSC
crashworthy

farm
FDA
FIFRA
flame retardant
FOPS
foreseeable misuse
guards
IUD
knives

open and obvious
pinch point
Pinto
protective gear
PTO
recall
retrofit
risk
rollover

stomper
strictly liable
subsequent alteration
tainted meat
tort reform
torts
Unsafe at Any Speed
warning
warranty

danger

deadman switch

design defect

Dole

lights

manufacturing defect

negligence

odorant

ROPS

safety devices

sensor

Answer for unused letters: *MacPherson v. Buick Motor Co.*

Judge Benjamin Cardozo