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INTRODUCTION

The Honorable Alan M. Wilner†

Eighty-five years ago, Benjamin Cardozo, for the New York Court of Appeals, moved products liability law into the first half of the Twentieth Century by recognizing that "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," that "[i]ts nature gives warning to the consequences to be expected", and that "[i]f to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully."[1] The case, of course, was *MacPherson v. Buick Motor Co.*,[2] in which the court concluded that, when a manufacturer fails in that duty, it may be held liable to remote purchasers and users of its product and not to just its immediate customers in the marketing chain.

Though perhaps visionary in its time, *MacPherson* was nonetheless limiting, in that actions for injuries resulting from dangerous and defective products remained constrained by the prevailing concepts of

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1. *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 389, 111 N.E. 1050, 1053 (1916).
2. 217 N.Y. 382, 111 N.E. 1050 (1916).

negligence law—duty, foreseeability, breach, contributory negligence, assumption of risk. Nearly a half century later, in 1964, the American Law Institute paved the way for breaking free of those constraints when, as part of the *Restatement (Second) of Torts*, it adopted section 402A, which has been characterized, perhaps loosely, as establishing "strict liability." Whether anticipated by Professors Prosser and Wade, who, sequentially, acted as reporters for the project, section 402A has served as the engine that has moved products liability law both literally and figuratively into the space age. Virtually every kind of industrial and consumer product released into the stream of commerce—from all types of machinery, devices, substances, appliances, and vehicles to even human blood—has been held to be within its reach.

Even before Maryland decided to adopt the concept of "strict liability" as enunciated in section 402A, the *University of Baltimore Law Review* recognized the growing importance of this area of law and devoted its Fall, 1975 edition to a symposium on the subject. My friend and colleague, John C. Eldridge, now the senior judge on the Court of Appeals of Maryland, wrote the Introduction to that issue and noted that it provided an in-depth analysis of several of the complex areas.

Much, of course, has occurred since that last analysis twenty-five years ago. Maryland has adopted section 402A, and the addition of the "strict liability" concepts enunciated in that section to the arsenal of negligence and warranty law, coupled with the always-amazing ingenuity of lawyers, the technological revolution that has occurred, and the increased sophistication and complexity of our market economy, has produced a need for another objective evaluation of this area of law. The focal point for that evaluation is the American Law Institute's development of the *Restatement (Third) of Torts: Products Liability*, published in 1998. In the introduction to that work, the Institute noted that the thousands of judicial decisions rendered since the publication of *Restatement (Second)* had "fine-tuned the law of products liability in a manner hardly imaginable when *Restatement (Second)* was written" and that issues that had not occurred to the persons who drafted *Restatement (Second)* had "become points of serious contention and debate in the courts."[3] On "almost every page" of *Restatement (Third)*, the Institute said, it had responded to questions "that were not part of the landscape 35 years ago."[4]

As might be expected, the rules set forth in *Restatement (Third)* have attracted the attention of the Bar and the Bench, as well as the business and consumer protection communities. Much critical comment—some favorable, some unfavorable, some mixed—has been

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3. Restatement (third) of Torts: Products Liability at *Introduction*, p. 3 (1998).
4. *Id.*

received, and it is now in the hands of the nation's courts and legislatures whether to adopt, in whole or in part, the principles set forth in that work. The decision of the *University of Baltimore Law Review* to devote this issue to another symposium on the subject is to be applauded. The articles, which, as Judge Eldridge noted in his Introduction to the last symposium, can address only some of the swirling issues, will nonetheless help to focus the debate. The major articles are written by competent and experienced lawyers who have practiced or taught in this field, and they express views that are worthy of fair consideration.