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PRODUCT LIABILITY: CANADIAN LAW & PRACTICE

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This unique resource serves as a legal reference and practical guide — offering insight into the tactics and strategies used to effectively bring and defend a product liability case. This vital text includes: a review of substantive law of product liability; an examination of procedural law as it relates to product liability actions; a discussion of tactical and strategic issues and considerations; and checklists and precedents.

What's New in this Update:

This release features valuable updates to chapters L3 — Failure to Warn or Instruct, L4 — Breach of Warranty and Representations and L5 —

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Target Defendants. It also updates the Words and Phrases tab and the Selected Legal Literature tab.

Words and Phrases Highlights

BUT FOR TEST

British Columbia

The legal test for causation is the "but for" test - the plaintiff must prove on a balance of probabilities that, but for the defendant's negligence, she would not have suffered her injuries. The defendant's negligence must have been a necessary cause of the injury.

Rabbani-Nejad v. Sharma (2020), 2020 BCSC 58, 2020 CarswellBC 102 (B.C. S.C.) at para. 71 Weatherill J.

CASE HIGHLIGHTS

Breach of Warranty and Representations — Warranties Implied by Statutes — The Warranty of Reasonable Fitness — Making the Particular Purpose Known to the Seller — Purchaser claimed loading dock equipment was defective. Court found seller had insufficient knowledge of the purchaser's proposed use of the equipment, noting that purchaser's representative admitted that he knew he was "taking a risk" and treated the order as a "guinea pig". The court stated that the purchaser may have been able to show reliance if the purchaser had he contacted the seller in advance to discuss this risk. *Pentalift Equipment Corporation v. 1371787 Ontario Inc.*, 2019 CarswellOnt 13142, 2019 ONSC 4804

Failure to Warn or Instruct — Learner Intermediary — Provided consumers can prove that they would not have used a product had they been warned, manufacturers that fail to warn the learned intermediary will be liable. However, if a manufacturer can prove that a consumer would have used the product even had the warning been given, the manufacturer will not be liable. For example, in *Gendron v. Thompson Fuels*, without explicitly referring to a learned intermediary, the court held that an oil tank manufacturer satisfied its duty to warn consumers of risks inherent in use of its oil tanks by providing oil tank distributors and installers with educational seminars and installation and maintenance guidelines, as they had direct contact with consumers. *Gendron v. Thompson Fuels*, (2017), 12 C.E.L.R. (4th) 237, 2017 CarswellOnt 10909 (Ont. S.C.J.), at paras. 277, 279, 290, additional reasons (2018), 2018 CarswellOnt 4970, 21 C.P.C. (8th) 321, 18 C.E.L.R. (4th) 178, affirmed 2019 ONCA 293