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Chapter 1 : SELECTED TOPICS ON THE LAW OF TORTS - Prosser, William 1st Edition 1st Printing | eBa

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After each ship was completed, it was chartered to one of the petitioners. When the ships were put into service, the turbines on all four ships malfunctioned due to design and manufacturing defects. Only the products themselves were damaged. Petitioners filed a five-count admiralty complaint in Federal District Court against respondent, alleging tortious conduct based on a products liability theory and seeking damages for the cost of repairing the ships and for income lost while they were out of service. The District Court granted summary judgment for respondent. The fourth count should have been dismissed on the ground that the petitioner who chartered the ship referred to in that count lacked standing to bring the claim. The torts alleged in the other counts clearly fall within admiralty jurisdiction. Admiralty law, which already recognizes a general theory of liability for negligence, also incorporates principles of products liability, including strict liability. But whether stated in negligence or strict liability, no products liability claim lies in admiralty when a commercial party alleges injury only to the product itself resulting in purely economic loss. Such a claim is most naturally understood as a warranty claim. In this admiralty case, we must decide whether a cause of action in tort is stated when a defective product purchased in a commercial transaction malfunctions, injuring only the product itself and causing purely economic loss. The case requires us to consider preliminarily whether admiralty law, which already recognizes a general theory of liability for negligence, also incorporates principles of products liability, including strict liability. Then, charting a course between products liability and contract law, we must determine whether injury to a product itself is the kind of harm that should be protected by products liability or left entirely to the law of contracts. I In , Seatrain Shipbuilding Corp. Shipbuilding , a wholly owned subsidiary of Seatrain Lines, Inc. Seatrain , announced it would build the four oil-transporting supertankers in issue -- the T. Each tanker was constructed pursuant to a contract in which a separate wholly owned subsidiary of Seatrain engaged Shipbuilding. Shipbuilding in turn contracted with respondent, now known as Transamerica Delaval Inc. When each ship was completed, its title was transferred from the contracting subsidiary to a trust company as trustee for Page U. Each petitioner operated under a bareboat charter, by which it took full control of the ship for 20 or 22 years as though it owned it, with the obligation afterwards to return the ship to the real owner. Each charterer assumed responsibility for the cost of any repairs to the ships. The Stuyvesant sailed on its maiden voyage in late July, On December 11 of that year, as the ship was about to enter the Port of Valdez, Alaska, steam began to escape from the casing of the high-pressure turbine. That problem was temporarily resolved by repairs, but before long, while the ship was encountering a severe storm in the Gulf of Alaska, the high-pressure turbine malfunctioned. The ship, though lacking its normal power, was able to continue on its journey to Panama and then San Francisco. In January, , an examination of the high-pressure turbine revealed that the first-stage steam reversing ring virtually had disintegrated, and had caused additional damage to other parts of the turbine. The damaged part was replaced with a part from the Bay Ridge, which was then under construction. In April, , the ship again was repaired, this time with a part from the Brooklyn. Finally, in August, the ship was permanently and satisfactorily repaired with a ring newly designed and manufactured by Delaval. The Brooklyn and the Williamsburgh were put into service in late and late , respectively. Those inspections revealed similar turbine damage. Temporary repairs were made, and newly designed parts were installed as permanent repairs that summer. In addition, the Bay Ridge experienced a unique problem. In , when the ship was on its maiden voyage, the engine began to vibrate with a frequency that increased even after speed was reduced. It turned out that the astern guardian valve, located between the high-pressure and low-pressure turbines, had been installed backwards. Because of that error, steam entered the low-pressure turbine and damaged it. After repairs, the Bay Ridge resumed its travels. The first four counts, read liberally, allege that Delaval is strictly liable for the design defects in the

high-pressure turbines of the Stuyvesant, the Williamsburgh, the Brooklyn, and the Bay Ridge, respectively. The fifth count alleges that Delaval, as part of the manufacturing process, negligently supervised the installation of the astern guardian valve on the Bay Ridge. The initial complaint also had listed Seatrain and Shipbuilding as plaintiffs, and had alleged breach of contract and warranty, as well as tort claims. But after Delaval interposed a statute of limitations defense, the complaint was amended and the charterers alone brought the suit in tort. The nonrenewed claims were dismissed with prejudice by the District Court. Delaval then moved Page U. The Court of Appeals held that damage solely to a defective product is actionable in tort if the defect creates an unreasonable risk of harm to persons or property other than the product itself, and harm materializes. The charterers were dissatisfied with product quality: See Pennsylvania Glass Sand Corp. Therefore, neither the negligence claim nor the strict liability claim was cognizable. Judge Garth concurred on "grounds somewhat different," F. He felt that the first count, concerning the Stuyvesant, stated a cause of action in tort. The exposure of the ship to a severe storm when the ship was unable to operate at full power due to the defective part created an unreasonable risk of harm. We granted certiorari to resolve a conflict among the Courts of Appeals sitting in admiralty. The ring was installed in the Stuyvesant, where it remained until April, , when it was removed due to disintegration. Richmond did not charter the Bay Ridge until May, , after the ship was completed with a newly designed, nondefective, high-pressure turbine. Richmond therefore can allege no cognizable injury. Richmond, of course, has standing to bring the claim raised in the fifth count, as the damage from the reverse installation of the astern guardian valve allegedly occurred after Richmond chartered the Bay Ridge. B The torts alleged in the first, second, third, and fifth counts clearly fall within the admiralty jurisdiction. The claims satisfy the traditional "locality" requirement -- that the wrong Page U. The damage to the Williamsburgh and the Brooklyn, alleged in the second and third counts, occurred at sea, and was discovered in port, also a maritime locale. When torts have occurred on navigable waters within the United States, the Court has imposed an additional requirement of a "maritime nexus" -- that the wrong must bear "a significant relationship to traditional maritime activity. We need not reach the question whether a maritime nexus also must be established when a tort occurs on the high seas. Were there such a requirement, it clearly was met here, for these ships were engaged in maritime commerce, a primary concern of admiralty law. C With admiralty jurisdiction comes the application of substantive admiralty law. See Executive Jet Aviation, U. Absent a relevant statute, the general maritime law, as developed by the judiciary, applies. Drawn from state [Footnote 2] and federal sources, the general Page U. Compagnie Generale Transatlantique, U. International Terminal Operating Co. This Court has developed a body of maritime tort principles, see, e. The Courts of Appeals sitting in admiralty overwhelmingly have adopted concepts of products liability, based both on negligence, Sieracki v. Indeed, the Court of Appeals for the Third Circuit previously had stated that the question whether principles of strict products liability are part of maritime law "is no longer seriously contested. Hess Oil Virgin Islands Corp. We join the Courts of Appeals in recognizing products liability, including strict liability, as part of the general maritime law. See Seas Shipping Co. Compare Sieracki, U. Coca Cola Bottling Co. And to the extent that products actions are based on negligence, they are grounded in principles already incorporated into the general maritime law. Our incorporation of products liability into maritime law, however, is only the threshold determination to the main issue in this case. IV Products liability grew out of a public policy judgment that people need more protection from dangerous products than is afforded by the law of warranty. It is clear, however, that, if this development were allowed to progress too far, contract law would drown in a sea of tort. Gilmore, The Death of Contract We must determine whether a commercial product injuring itself is the kind of harm against which public policy requires manufacturers to protect, independent of any contractual obligation. A The paradigmatic products liability action is one where a product "reasonably certain to place life and limb in peril," distributed without reinspection, causes bodily injury. The manufacturer is liable whether or not it is negligent, because "public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards to life and health inherent in defective products that reach the market. Coca Cola Bottling Page U. See Marsh Wood Products Co. Such

damage is considered so akin to personal injury that the two are treated alike. In the traditional "property damage" cases, the defective product damages other property. In this case, there was no damage to "other" property. Since each turbine was supplied by Delaval as an integrated package, see App. Such a holding would eliminate the distinction between warranty and strict products liability. The fifth count also alleges injury to the product itself. Before the high-pressure and low-pressure turbines could become an operational propulsion system, they were connected to piping and valves under the supervision of Delaval personnel. Obviously, damage to a product itself Page U. But the injury suffered -- the failure of the product to function properly -- is the essence of a warranty action, through which a contracting party can seek to recoup the benefit of its bargain. B The intriguing question whether injury to a product itself may be brought in tort has spawned a variety of answers. At the other end of the spectrum is the minority land-based approach, whose progenitor, Santor v. The courts adopting this approach, including the majority of the Courts of Appeals sitting in admiralty that have considered the issue, [Footnote 5] e. Alaskan Enterprise, F. These courts reject the Seely approach, because they find it arbitrary that economic losses are recoverable if a plaintiff suffers bodily injury or property damage, but not if a product injures itself.

Chapter 2 : East River S.S. Corp. v. Transamerica :: U.S. () :: Justia US Supreme Court Center

Selected Topics on the Law of Torts. The Thomas M. Cooley Lectures, Fourth Series (Book Review)) "Selected Topics on the Law of Torts. The Thomas M. Cooley.

Dyer, Circuit Court Judge. It is established law in Wisconsin that the economic loss doctrine bars tort recovery for economic loss suffered by commercial entities. This case requires us to determine whether the economic loss doctrine also applies to consumer transactions. The circuit court concluded that the economic loss doctrine bars tort damages for purely economic losses in consumer transactions. For purposes of this appeal, the facts are not in dispute. Along with the vehicle, Renberg purchased an extended service warranty from Ford for the vehicle. Renberg also insured the vehicle with State Farm. On July 31, , Renberg drove his Ford Bronco to work. At the end of his shift, Renberg approached his vehicle to find that a fire had occurred within the vehicle although the vehicle was still locked and the windows were rolled up. Unfortunately for Renberg, his extended service warranty had expired. Renberg filed a claim with his insurance company, State Farm. In September , Renberg received a recall notice from Ford stating that through model Bronco and F-series trucks could develop a short circuit in the ignition switch, causing overheating, smoke and possibly fire in the steering column. The recall notice stated that the short circuit could develop when the vehicle was in use or unattended. State Farm was notified of this recall notice and thereafter initiated this subrogation action against Ford to recover money it had paid to its insured, Renberg. State Farm based its action on theories of negligence, strict liability and breach of contractual duties including express and implied warranties. Ford also moved for summary judgment. The court of appeals certified the appeal to this court pursuant to Wis. The issue presented by this case, and as certified by the court of appeals, is whether the economic loss doctrine applies to consumer transactions to bar tort recovery for purely economic loss. In other words, we must determine whether State Farm may rely on tort theories to recover damages resulting from a defect that causes harm only to the product itself. We conclude that the economic loss doctrine applies to consumer transactions. The question of whether the economic loss doctrine applies to consumer transactions, given the undisputed facts presented by this case, is a question of law that this court reviews de novo. See also Daanen, Wis. See Sunnyslope, Wis. Three policies support applying the economic loss doctrine to commercial transactions: Our review of these policies convinces us that each policy applies with equal force to consumer transactions. The first and most compelling policy supporting application of the economic loss doctrine to commercial transactions is that it maintains the distinction between tort and contract law. It is important to maintain this distinction because the two theories serve very different purposes. Transamerica Delaval, U. See also Northridge, Wis. Tort law was designed to protect people from unexpected losses that amount to an overwhelming misfortune that a person may be unprepared to meet. East River, U. Coca Cola Bottling Co. Tort extends to all reasonably foreseeable parties; it may encompass unforeseen damages as well as those reasonably contemplated because it is circumscribed only by proximate cause. Tort law provides redress for safety hazards, Northridge, Wis. Contract law, on the other hand, is based on obligations imposed by bargain, and it allows parties to protect themselves through bargaining. Gaebler, Negligence, Economic Loss, and the U. Gilmore, The Death of Contract ; S. A party to a contract voluntarily assumes a duty to perform a promise. The law of contracts seeks to hold parties to their promises, ensuring that each party receives the benefit of his or her bargain. Recovery under contract is limited to the parties to the contract or those for whose benefit the contract was made. Damages are limited to those reasonably contemplated by the parties when the contract was made. Contract law provides redress for defects in suitability and quality of a product. Throughout legal history, courts have struggled to find the appropriate boundary between tort and contract. This boundary has fluctuated with societal pressures. However, there were occasions where the gravamen of the action prevailed over the form of the action. As society became more industrial, it needed to address the influx of mass-produced products reaching the market place, some of which were defective. Courts protected

manufacturers from liability by requiring privity of contract between the manufacturer and ultimate purchaser. Protecting the development of industry took precedence over protecting injured plaintiffs. Thus the boundary between tort and contract law began to move in the direction of protecting purchasers. Strict liability developed as a totally separate area of recovery for such injured purchasers, aimed at recovery for physical injury to both person and other property. White Motor Company, P. Products liability law was designed to govern the distinct problem of physical injuries resulting from a defective product; it was not designed to undermine contract law or the warranty provisions of the Uniform Commercial Code U. The law of contract and warranty has its own function. The rules of warranty determine the quality of the product promised by the manufacturer and the quality it must deliver. When a product does not function as warranted by the manufacturer, that is the manufacturer fails in its end of the bargain, the purchaser may recover contract damages. With the acceptance of products liability law, commercial plaintiffs, appreciating the advantages provided by tort law, continued to push the boundary between tort and contract law by filing claims under tort theories of products liability and negligence where their only damages were economic loss; that is, where the defective product caused no personal injury or damage to other property but only damage to itself. Gilmore, The Death of Contract It was perceived that plaintiffs were attempting to move the boundary between tort and contract too far. Thus, the dawn of the economic loss doctrine. The economic loss doctrine was developed and applied largely as a response to attempts to extend products liability law too far and into the unintended realm of economic loss. The economic loss doctrine maintains the distinction between tort and contract. Rather, the specific functions of a product are a matter of contract. Contract law permits the parties to specify the terms of their bargain and to protect themselves from commercial risk. The United States Supreme Court, along with a majority of other courts readily adopted the economic loss doctrine for commercial transactions to bar tort recovery for purely economic loss. See East River, U. Wisconsin has similarly followed East River and the majority of courts across the country in applying the economic loss doctrine to commercial transactions and barring tort recovery for purely economic loss in commercial transactions. See Daanen, Wis. Smith Harvestore, Wis. Recovery for economic loss is intended to protect purchasers from losses suffered because a product failed in its intended [or expected] use. Recovery for economic loss necessarily focuses on the bargain struck between the parties; warranty law is premised on protection of the bargain. Economic loss is defined, as we stated previously, as damages for inadequate value, because the product is inferior and does not work for the general purpose for which it was manufactured or sold. Prosser and Keeton on Torts, secs. See also Sunnyslope, Wis. We conclude that the policy of maintaining the distinction between tort and contract applies with equal force to consumer transactions. As discussed above, it is well-established that a manufacturer has no duty to another commercial entity to prevent a product from injuring itself. See also East River, U. However, there is no principled reason to hold that same manufacturer to a different standard when it sells its product to an individual consumer. Whether the purchase is a commercial or consumer transaction, the specific functions of the product are a matter of contract. Just as contract law allows commercial parties to bargain and protect themselves from risk, so too does contract law allow consumer parties to protect themselves. Contract law most appropriately enforces the duties that the parties imposed upon themselves by entering into contracts. Whether in a commercial or consumer context, the distinction between tort and contract should not be eroded. Ford did not warrant that it would be free from defects, such as a faulty ignition switch. Renberg also purchased an extended service warranty which provided certain protections for a certain price. Ford would be liable though it did not agree that the Bronco would perform as Renberg expected or wished, and though the service warranty had expired. However, whether a consumer or commercial plaintiff, if tort law were allowed to provide tort relief for purely economic loss, contract law would drown in a sea of tort. Because tort and contract serve entirely different purposes, maintaining the distinction between the two theories is important, whether in commercial or consumer transactions. As we stated earlier, economic loss is loss suffered in the value of a product because it is defective; that is, it is of inferior quality and it does not work for the purposes for which it was manufactured and sold. Economic risk is the risk that such a loss might

occur. Parties can set the terms of their agreements, East River, U. For example, consequential damages such as lost profits, must be a foreseeable result of a breach of the contract. This is particularly true when the purchaser does not inform the manufacturer of his or her specific expectations. See Seely, P. Although a manufacturer cannot predict failures as its product is used by a purchaser, it is able to limit risk by contract. Allowing tort recovery for economic loss would render contractual protections a nullity and destroy any freedom to allocate economic risk by contract. Purchasers would essentially receive full warranty protections against economic risk without ever having to negotiate or pay for such warranty. Purchasers would gain much more than that for which they bargained or paid in the purchase price. If tort damages were allowed for economic loss the manufacturer would be liable for risks for which it neither bargained nor expected. Manufacturers could not invoke any contractual disclaimer or limitation of liability against the purchaser, as bargained. If tort law applied to economic loss, such an attempt to limit liability for which the purchaser would probably pay a lower price , would be meaningless.

Chapter 3 : Products Liability : Casa Clara Condominium Association, Inc. v. Charly Toppino & Sons, Inc.

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Supreme Court of Wisconsin. It is established law in Wisconsin that the economic loss doctrine bars tort recovery for economic loss suffered by commercial entities. This case requires us to determine whether the economic loss doctrine also applies to consumer transactions. The circuit court concluded that the economic loss doctrine bars tort damages for purely economic losses in consumer transactions. For purposes of this appeal, the facts are not in dispute. Along with the vehicle, Renberg purchased an extended service warranty from Ford for the vehicle. Renberg also insured the vehicle with State Farm. On July 31, , Renberg drove his Ford Bronco to work. At the end of his shift, Renberg approached his vehicle to find that a fire had occurred within the vehicle although the vehicle was still locked and the windows were rolled up. Unfortunately for Renberg, his extended service warranty had expired. Renberg filed a claim with his insurance company, State Farm. In September , Renberg received a recall notice from Ford stating that through model Bronco and F-series trucks could develop a short circuit in the ignition switch, causing overheating, smoke and possibly fire in the steering column. The recall notice stated that the short circuit could develop when the vehicle was in use or unattended. State Farm was notified of this recall notice and thereafter initiated this subrogation action against Ford to recover money it had paid to its insured, Renberg. State Farm based its action on theories of negligence, strict liability and breach of contractual duties including express and implied warranties. State Farm later voluntarily dismissed its contractual causes of action because the sales contract for the vehicle was "as is" and the extended service warranty had expired at the time of the fire. Ford also moved for summary judgment. The court of appeals certified the appeal to this court pursuant to Wis. The issue presented by this case, and as certified by the court of appeals, is whether the economic loss doctrine applies to consumer transactions 2 to bar tort recovery for purely economic loss. In other words, we must determine whether State Farm may rely on tort theories to recover damages resulting from a defect that causes harm only to the product itself. We conclude that the economic loss doctrine applies to consumer transactions. The question of whether the economic loss doctrine applies to consumer transactions, given the undisputed facts presented by this case, is a question of law that this court reviews de novo. Economic loss is "the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold. Economic loss has also been defined as "damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profitsâ€”without any claim of personal injury or damage to other property. See also Daanen, Wis. See Sunnyslope, Wis. This rule has become known as the "economic loss doctrine. Three policies support applying the economic loss doctrine to commercial transactions: Our review of these policies convinces us that each policy applies with equal force to consumer transactions. The first and most compelling policy supporting application of the economic loss doctrine to commercial transactions is that it maintains the distinction between tort and contract law. It is important to maintain this distinction because the two theories serve very different purposes. Transamerica Delaval, U. See also Northridge, Wis. Tort law was designed to protect people from unexpected losses that amount to an overwhelming misfortune that a person may be unprepared to meet. East River, U. Coca Cola Bottling Co. Tort extends to all reasonably foreseeable parties; it may encompass unforeseen damages as well as those reasonably contemplated because it is circumscribed only by proximate cause. Tort law provides redress for safety hazards, Northridge, Wis. Contract law, on the other hand, is based on obligations imposed by bargain, and it allows parties to protect themselves through bargaining. Gaebler, Negligence, Economic Loss, and the U. Gilmore, The Death of Contract ; S. A party to a contract voluntarily assumes a duty to perform a promise. The law of contracts seeks to hold parties to their promises, ensuring that each party receives the benefit of his

or her bargain. Recovery under contract is limited to the parties to the contract or those for whose benefit the contract was made. Damages are limited to those reasonably contemplated by the parties when the contract was made. Contract law provides redress for defects in suitability and quality of a product. Throughout legal history, courts have struggled to find the appropriate boundary between tort and contract. This boundary has fluctuated with societal pressures. For example, early in legal history, parties relied on the strict "forms of action" rather than a distinction between tort and contract. However, there were occasions where the gravamen of the action prevailed over the form of the action. This "gravamen of the action" approach led to the modern distinction between tort and contract law. As society became more industrial, it needed to address the influx of mass-produced products reaching the market place, some of which were defective. Initially it was thought "necessary to protect struggling and unstable industry against an onslaught of disastrous claims. Courts protected manufacturers from liability by requiring privity of contract between the manufacturer and ultimate purchaser. Protecting the development of industry took precedence over protecting injured plaintiffs. Thus the boundary between tort and contract law began to move in the direction of protecting purchasers. Strict liability developed as a totally separate area of recovery for such injured purchasers, aimed at recovery for physical injury to both person and other property. White Motor Company, P. Imposing strict liability on manufacturers for defective products grew out of a "public policy judgment that people needed more protection from dangerous products than is afforded by the law of warranty. Products liability law was designed to govern the distinct problem of physical injuries resulting from a defective product; it was not designed to undermine contract law or the warranty provisions of the Uniform Commercial Code U. The law of contract and warranty has its own function. The rules of warranty determine the quality of the product promised by the manufacturer and the quality it must deliver. When a product does not function as warranted by the manufacturer, that is the manufacturer fails in its end of the bargain, the purchaser may recover contract damages. With the acceptance of products liability law, commercial plaintiffs, appreciating the advantages provided by tort law, continued to push the boundary between tort and contract law by filing claims under tort theories of products liability and negligence where their only damages were economic loss; that is, where the defective product caused no personal injury or damage to other property but only damage to itself. Gilmore, The Death of Contract It was perceived that plaintiffs were attempting to move the boundary between tort and contract too far. Thus, the dawn of the economic loss doctrine. The economic loss doctrine was developed and applied largely as a response to attempts to extend products liability law too far and into the unintended realm of economic loss. The economic loss doctrine maintains the distinction between tort and contract. Rather, the specific functions of a product are a matter of contract. Contract law permits the parties to specify the terms of their bargain and to protect themselves from commercial risk. Parties use the rules of warranty and contract to "determine the quality of the product the manufacturer promises and thereby determine the quality [the manufacturer] must deliver. If a plaintiff could recover tort damages for purely economic loss, "the manufacturer would be liable even though it did not agree that [the product] would perform as plaintiff wished or expected it to do. The United States Supreme Court, along with a majority of other courts readily adopted the economic loss doctrine for commercial transactions to bar tort recovery for purely economic loss. See East River, U. Wisconsin has similarly followed East River and the majority of courts across the country in applying the economic loss doctrine to commercial transactions and barring tort recovery for purely economic loss in commercial transactions. See Daanen, Wis. Smith Harvestore, Wis. Recovery for economic loss is intended to protect purchasers from losses suffered because a product failed in its intended [or expected] use. Recovery for economic loss necessarily focuses on the bargain struck between the parties; warranty law is premised on protection of the bargain. Economic loss is defined, as we stated previously, as damages for inadequate value, because the product is inferior and does not work for the general purpose for which it was manufactured or sold. Prosser and Keeton on Torts, secs. See also Sunnyslope, Wis. We conclude that the policy of maintaining the distinction between tort and contract applies with equal force to consumer transactions. As discussed above, it is well-established that a manufacturer has no duty to another commercial entity to prevent a product

from injuring itself. See also East River, U. However, there is no principled reason to hold that same manufacturer to a different standard when it sells its product to an individual consumer. Whether the purchase is a commercial or consumer transaction, the specific functions of the product are a matter of contract. Just as contract law allows commercial parties to bargain and protect themselves from risk, so too does contract law allow consumer parties to protect themselves. Contract law most appropriately enforces the duties that the parties imposed upon themselves by entering into contracts. Whether in a commercial or consumer context, the distinction between tort and contract should not be eroded. In this case, Renberg purchased the Bronco "as is," an agreement which likely affected the price of the vehicle. Ford did not warrant that it would be free from defects, such as a faulty ignition switch. Renberg also purchased an extended service warranty which provided certain protections for a certain price. Were Renberg or State Farm, as his insurer, allowed to recover tort damages for purely economic lossâ€”the very type of loss meant to be covered by these contractsâ€”the contracts would be rendered meaningless. Ford would be liable though it did not agree that the Bronco would perform as Renberg expected or wished, and though the service warranty had expired. This case illustrates that plaintiffs, still appreciating the "more congenial environment," provided to consumers by tort law, Spring Motors, A. However, whether a consumer or commercial plaintiff, if tort law were allowed to provide tort relief for purely economic loss, contract law would drown in a sea of tort. Because tort and contract serve entirely different purposes, maintaining the distinction between the two theories is important, whether in commercial or consumer transactions.

Chapter 4 : CASA CLARA CONDO. ASS'N v | So.2d () | 2d | calendrierdelascience.com

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Opinion Annotation So. Supreme Court of Florida. Hugh McConnell and Steven M. Wagner and Richard A. Powell Miller and M. Bay Colony Club Condominium, Inc. The issue is whether a homeowner can recover for purely economic losses from a concrete supplier under a negligence theory. We agree with the district court that such a recovery cannot be had and approve the decisions under review and disapprove the conflicting decisions. Apparently, some of the concrete supplied by Toppino contained a high content of salt that caused the reinforcing steel inserted in the concrete to rust, which, in turn, caused the concrete to crack and break off. The circuit court dismissed all counts against Toppino in each case. On appeal the district court applied the economic loss rule and held that, because no person was injured and no other property damaged, the homeowners had no cause of action against Toppino in tort. The district court also held that Toppino, a supplier, had no duty to comply with the building code. Plaintiffs find a tort remedy attractive because it often permits the recovery of greater damages than an action on a contract and may avoid the conditions of a contract. Cooley Lectures, 4th Series, The distinction between "tort recovery for physical injuries and warranty recovery for economic loss" rests on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm. An individual consumer, on the other hand, should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Seely sets out the economic loss rule, which prohibits tort recovery when a product damages itself, causing economic loss, but does not cause personal injury or damage to any property other than itself. The rule is "the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby encourages citizens to avoid causing physical harm to others. A Critical Analysis, 40 S. Economic loss has been defined as "damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits without any claim of personal injury or damage to other property. It includes "the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold. In other words, economic losses are "disappointed economic expectations," which are protected by contract law, rather than tort law. Coldwell Banker Commercial Group, Inc. This is the basic difference between contract law, which protects expectations, and tort law, which is determined by the duty owed to an injured party. For recovery in tort "there must be a showing of harm above and beyond disappointed expectations. They argue that holding them to contract remedies[3] is unfair and that homeowners in general should be excepted from the operation of the economic loss rule. Coca Cola Bottling Co. Thus, the "basic function of tort law is to shift the burden of loss from the injured plaintiff to one who is at fault When only economic harm is involved, the question becomes "whether the consuming public as a whole should bear the cost of economic losses sustained by those who failed to bargain for adequate contract remedies. We are urged to make an exception to the economic loss doctrine for home-owners. Buying a house is the largest investment many consumers ever make, see Conklin v. East River, U. There are protections for homebuyers, however, such as statutory warranties,[4] the general warranty of habitability,[5] and the duty of sellers to disclose defects,[6] as well as the ability of purchasers to inspect houses for defects. If we held otherwise, "contract law would drown in a sea of tort. We refuse to hold that homeowners are not subject to the economic loss rule. The character of a loss determines the appropriate remedies, and, to determine the character of a loss, one must look to the product purchased by the plaintiff, not the product sold by the

defendant. Generally, house buyers have little or no interest in how or where the individual components of a house are obtained. They are content to let the builder produce the finished product, i. These homeowners bought finished products dwellings not the individual components of those dwellings. They bargained for the finished products, not their various components. The concrete became an integral part of the finished product and, thus, did not injure "other" property. We also disagree with the homeowners that the mere possibility that the exploding concrete will cause physical injury is sufficient reason to abrogate the economic loss rule. This argument goes completely against the principle that injury must occur before a negligence action exists. Because an injury has not occurred, its extent and the identity of injured persons is completely speculative. Thus, the degree of risk is indeterminate, with no guarantee that damages will be reasonably related to the risk of injury, and with no possibility for the producer of a product to structure its business behavior to cover that risk. The cases in conflict, Adobe, Drexel, and Latite, incorrectly refused to apply the economic loss rule to what should have been contract actions, and we disapprove them. It is so ordered. If the allegations of the homeowners in this case are true, their homes are literally crumbling around them because the concrete supplied by Toppino was negligently manufactured. The homeowners assert that the concrete is now cracking and breaking apart and poses a danger of serious injury. The courts, including this one, have said "too bad. I understand and accept that sometimes the remedies provided cannot be in the full measure that pure justice unfettered by pragmatism can provide. Thus, some applications of the economic loss doctrine may have acceptable viability. But surely it stretches reason to apply the doctrine in this context to deny these homeowners any remedy. Their claim for breach of implied warranty has been denied they lack privity with Toppino ; their claim that Toppino violated the Florida Building Codes Act has been denied Toppino, as a material supplier, is not governed by the Standard Building Code ; and now their claim in tort has been denied because, notwithstanding their alleged ability to prove that their houses are falling down around them, they have not suffered any damage to their property on the basis that homes are "products. That premise does not exist here. As Justice Shaw notes, the economic loss doctrine surely cannot and should not apply in a situation such as this. SHAW, Justice, concurring and dissenting. While I basically agree that, under a negligence theory, purely economic loss cannot be recovered by parties to a contract when the loss is to the property that is the subject of the contract, I find the logic of the restriction inapplicable in this instance. The rationale of the economic loss rule is that parties who have bargained for the distribution of risk of loss should not be permitted to circumvent their bargain after loss occurs to the property that was the subject of the bargain. 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Chapter 5 : BRIGADIER GENERAL SHARON A. SHAFFER > U.S. Air Force > Biography Display

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Citing Case So. Supreme Court of Florida. Attorney s appearing for the Case H. Hugh McConnell and Steven M. Wagner and Richard A. Powell Miller and M. Bay Colony Club Condominium, Inc. The issue is whether a homeowner can recover for purely economic losses from a concrete supplier under a negligence theory. We agree with the district court that such a recovery cannot be had and approve the decisions under review and disapprove the conflicting decisions. Apparently, some of the concrete supplied by Toppino contained a high content of salt that caused the reinforcing steel inserted in the concrete to rust, which, in turn, caused the concrete to crack and break off. The circuit court dismissed all counts against Toppino in each case. On appeal the district court applied the economic loss rule and held that, because no person was injured and no other property damaged, the homeowners had no cause of action against Toppino in tort. The district court also held that Toppino, a supplier, had no duty to comply with the building code. Plaintiffs find a tort remedy attractive because it often permits the recovery of greater damages than an action on a contract and may avoid the conditions of a contract. Cooley Lectures, 4th Series, The distinction between "tort recovery for physical injuries and warranty recovery for economic loss" rests on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm. An individual consumer, on the other hand, should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Seely sets out the economic loss rule, which prohibits tort recovery when a product damages itself, causing economic loss, but does not cause personal injury or damage to any property other than itself. The rule is "the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby encourages citizens to avoid causing physical harm to others. A Critical Analysis, 40 S. Economic loss has been defined as "damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits â€” without any claim of personal injury or damage to other property. It includes "the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold. In other words, economic losses are "disappointed economic expectations," which are protected by contract law, rather than tort law. Coldwell Banker Commercial Group, Inc. This is the basic difference between contract law, which protects expectations, and tort law, which is determined by the duty owed to an injured party. For recovery in tort "there must be a showing of harm above and beyond disappointed expectations. They argue that holding them to contract remedies 3 is unfair and that homeowners in general should be excepted from the operation of the economic loss rule. Coca Cola Bottling Co. Thus, the "basic function of tort law is to shift the burden of loss from the injured plaintiff to one who is at fault When only economic harm is involved, the question becomes "whether the consuming public as a whole should bear the cost of economic losses sustained by those who failed to bargain for adequate contract remedies. We are urged to make an exception to the economic loss doctrine for home-owners. Buying a house is the largest investment many consumers ever make, see Conklin v. East River, U. There are protections for homebuyers, however, such as statutory warranties, 4 the general warranty of habitability, 5 and the duty of sellers to disclose defects, 6 as well as the ability of purchasers to inspect houses for defects. If we held otherwise, "contract law would drown in a sea of tort. We refuse to hold that homeowners are not subject to the economic loss rule. The character of a loss determines the appropriate remedies, and, to determine the

character of a loss, one must look to the product purchased by the plaintiff, not the product sold by the defendant. Generally, house buyers have little or no interest in how or where the individual components of a house are obtained. They are content to let the builder produce the finished product, i. These homeowners bought finished products â€" dwellings â€" not the individual components of those dwellings. They bargained for the finished products, not their various components. The concrete became an integral part of the finished product and, thus, did not injure "other" property. We also disagree with the homeowners that the mere possibility that the exploding concrete will cause physical injury is sufficient reason to abrogate the economic loss rule. This argument goes completely against the principle that injury must occur before a negligence action exists. Because an injury has not occurred, its extent and the identity of injured persons is completely speculative. Thus, the degree of risk is indeterminate, with no guarantee that damages will be reasonably related to the risk of injury, and with no possibility for the producer of a product to structure its business behavior to cover that risk. The cases in conflict, Adobe, Drexel, and Latite, incorrectly refused to apply the economic loss rule to what should have been contract actions, and we disapprove them. It is so ordered. If the allegations of the homeowners in this case are true, their homes are literally crumbling around them because the concrete supplied by Toppino was negligently manufactured. The homeowners assert that the concrete is now cracking and breaking apart and poses a danger of serious injury. The courts, including this one, have said "too bad. I understand and accept that sometimes the remedies provided cannot be in the full measure that pure justice unfettered by pragmatism can provide. Thus, some applications of the economic loss doctrine may have acceptable viability. 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Chapter 6 : Thomas Mcintyre Cooley | calendrierdelascience.com

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In addition, his book, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union, written in , became the most widely-read and important work of its day on constitutional law. The son of Thomas and Rachel Cooley, he was part of a large, Protestant family. His father had come from Massachusetts to western New York 20 years earlier, and the Cooleys were a farming family. Although the family was poor, learning was important to young Cooley. As a child he loved history and literature. When he could not go to school, Cooley taught himself at home, but he did complete three years of high school. Later, he taught school in order to earn money for his education. Stong in Palmyra, New York. As noted on the Michigan Supreme Court Historical Society website, Cooley had planned to continue his studies in Chicago, but during his travels, he ran out of money. He settled in Adrian, Michigan, in , and finished his law studies in the firm of Tiffany and Beaman. His biography in American Biographical History of Self-Made Men commented that Cooley was a "careful student â€¦ quick, through, and methodical. In December , he married Mary Horton, and the couple would have six children. Also in that year, he was admitted to the Michigan Bar. As noted in his biography on the Michigan Supreme Court Historical Society website, Cooley began a fast-paced professional life upon his admission to the bar. He worked as a deputy county clerk and later, his biography noted, "worked in two law firms while editing the Adrian Watchtower, serving as court commissioner and recorder for Adrian, and cultivating his acre farm. As noted on the Cooley Law School website, after Cooley completed this task in early , he was appointed reporter of the State Supreme Court, a position he would hold until Accepted Position as Law Professor In his biography on the Michigan Supreme Court Historical Society website, it was noted that early in his career, Cooley was offered a number of teaching positions at various law schools around the country, but he declined. In , when a department of law was being organized at the University of Michigan in nearby Ann Arbor , he accepted a position. He would remain at the school as a professor until and also served as dean of the law department and chair of the history department. The Cooley Law School website noted that Cooley "taught constitutional law, real property, trust, estates, and domestic property. He joined colleagues James V. Campbell and Isaac P. Christiancy on the bench. Graves joined the Court, filling the Justice position vacated by Cooley. Together, these four men became known as "the Big Four. Yet, as it was noted in his profile in American Biographical History of Self-Made Men, Cooley had an "enviable reputation" and possessed "genial qualities â€¦ a delicate sense of honor â€¦ and strict integrity. In his book Michigan: Dunbar explained that the Michigan State Legislature passed an act in that authorized any school district with more than children to establish a high school. The school board would then put forth a proposal to its residents, who would vote on a tax to support the high school. Some school districts ran into resistance, as their residents believed a primary school education was sufficient. As told by Bruce A. Rubenstein and Lawrence E. They were opposed to taxes supporting a local high school. The citizens lost, but the decision was ultimately appealed to the State Supreme Court. It was instrumental in sharpening judicial procedures and resolving constitutional issues. In one of his writings, he also coined the phrase "A public office is a public trust. These influences also led to his intense dislike of special privileges for corporations. As a justice on the Michigan State Supreme Court, Cooley used common law in his opinions to place clear limitations on government power. He did this to keep corporations from influencing the government or violating public trust. He felt a distinct division between public and private activity was necessary. He was placed on a commission to investigate issues involving railroads. He believed the separation of public and private spheres of activity would keep the railroads from financing their own development with public credit and tax revenues. Because of the abuses perpetrated by the railroads, the Interstate Commerce Act became law in He was elected chairman and established the guidelines for the

administration of this first important federal regulatory agency. He retired from the commission in In his later years, Cooley received honorary degrees LL. He continued to be highly regarded at the University of Michigan Law School. He died on September 12, , in Ann Arbor, at the age of Papers that Cooley wrote between and can also still be found at the University of Michigan Bentley Historical Library. Dunbar perhaps summed it up best when he wrote, "Cooley was the most notable jurist Michigan has ever produced. Eerdmans Publishing Company, Paludan, Phillip, A Covenant with Death: Cooley Law School website, http: Cooleyâ€"The Man," Thomas M.

Chapter 7 : State Farm Mutual Automobile Insurance Company v. Ford Motor Company

Prosser, William Lloyd SELECTED TOPICS ON THE LAW OF TORTS Five Lectures Delivered At the University of Michigan, February 2, 3, 4, 5, and 6, (The Thomas M.

He was a charter member and first chairman of the Interstate Commerce Commission Cooley Law School of Lansing , Michigan , founded and now affiliated with the Western Michigan University since , was named after Justice Cooley to recognize his extensive contribution to American jurisprudence. He attended Attica Academy and took an interest in the law and literary pursuits. In , he studied law under Theron Strong , who had just completed a term as a U. By , he was admitted to the Michigan bar and married Mary Horton. In addition to his small legal practice, Cooley was active in other intellectual and political pursuits. He wrote poems criticizing slavery and celebrating the European revolutions of , edited pro-Democratic newspapers, and founded the Michigan branch of the Free Soil Party in In the s, he slowly built his professional reputation. He was compiler of Michigan statutes and a reporter for the Michigan Supreme Court. However, he maintained a certain independence politically, and bolted from the Republican party as a mugwump to support Grover Cleveland in , and later in With Mary Horton he had six children, including Charles Cooley , a distinguished American sociologist, and Thomas Benton Cooley , a noted pediatrician. Angell, in August, A third edition was published in Boston by Little, Brown and Company in It was probably the best-known legal treatise of its time. Collegial citation of Thomas M. Corwin wrote of the extranational judicial recognition and, of course, that under the United States of the implementation of, or concurrence with, Article IV , within which is the Full Faith and Credit Clause of the United States Constitution: McCloskey wrote as to the legal essentiality of the concept due process of law in The American Supreme Court, "was a product[,] no doubt[,] of many converging factors: As Waite wrote, the voices of two great contemporaries[,] Thomas M. Cooley and Stephen J. Field , must have been echoing in his mind. Students of Constitutional law and Tort law will note this additional aspect of modern libel law as applied to legal issues intersecting the comments and comportment of public figures. It is axiomatic that the management of purely local affairs belongs to the people concerned, not only because of being their own affairs, but because they will best understand, and be most competent to manage them. The continued and permanent existence of local government is, therefore, assumed in all the state constitutions, and is a matter of constitutional right, even when not in terms expressly provided for. It would not be competent to dispense with it by statute.

Chapter 8 : "Selected Topics on the Law of Torts. The Thomas M. Cooley Lectures, Fo" by John V. Thornto

William L. Prosser, The Borderland of Tort and Contract in Selected Topics on the Law of Torts, , (Thomas M. Cooley Lectures, 4th Series,). The distinction between "tort recovery for physical injuries and warranty recovery for economic loss" rests.

Supreme Court of Florida. Hugh McConnell and Steven M. Wagner and Richard A. Powell Miller and M. Page William J. Bay Colony Club Condominium, Inc. The issue is whether a homeowner can recover for purely economic losses from a concrete supplier under a negligence theory. We agree with the district court that such a recovery cannot be had and approve the decisions under review and disapprove the conflicting decisions. Apparently, some of the concrete supplied by Toppino contained a high content of salt that caused the reinforcing steel inserted in the concrete to rust, which, in turn, caused the concrete to crack and break off. The circuit court dismissed all counts against Toppino in each case. On appeal the district court applied the economic loss rule and held that, because no person was injured and no other property damaged, the homeowners had no cause of action against Toppino in tort. The district court also held that Toppino, a supplier, had no duty to comply with the building code. Plaintiffs find a tort remedy attractive because it often permits the recovery of greater damages than an action on a contract and may avoid the conditions of a contract. Cooley Lectures, 4th Series, The distinction between "tort recovery for physical injuries and warranty recovery for economic loss" rests on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm. An individual consumer, on the other hand, should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees that it will. Seely sets out the economic loss rule, which prohibits tort recovery when a product damages itself, causing economic loss, but does not cause personal injury or damage to any property other than itself. The rule is "the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby encourages citizens to avoid causing physical harm to others. A Critical Analysis, 40 S. Economic loss has been defined as "damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits--without any claim of personal injury or damage to other property. It includes "the diminution in the value of the product because it is inferior in quality and does not work for the general purposes for which it was manufactured and sold. In other words, economic losses are "disappointed economic expectations," which are protected by contract law, rather than tort law. Coldwell Banker Commercial Group, Inc. This is the basic difference between contract law, which protects expectations, and tort law, which is determined by the duty owed to an injured party. For recovery in tort "there must be a showing of harm above and beyond disappointed expectations. They argue that holding them to contract remedies 3 is unfair and that homeowners in general should be excepted from the operation of the economic loss rule. Coca Cola Bottling Co. Thus, the "basic function of tort law is to shift the burden of loss from the injured plaintiff to one who is at fault When only economic harm is involved, the question becomes "whether the consuming public as a whole should bear the cost of economic losses sustained by those who failed to bargain for adequate contract remedies. We are urged to make an exception to the economic loss doctrine for homeowners. Buying a house is the largest investment many consumers ever make, see Conklin v. East River, U. There are protections for homebuyers, however, such as statutory warranties, 4 the general warranty of habitability, 5 and the duty of sellers to disclose defects, 6 as well as the ability of purchasers to inspect houses for defects. If we held otherwise, "contract law would drown in a sea of tort. We refuse to hold that homeowners are not subject to the economic loss rule. The character of a loss determines the appropriate remedies, and, to determine the

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