

## DESIGN DEFECTS: CONSUMER EXPECTATION TEST

### Fact Pattern:

As part of a routine traffic stop, Stevens stopped a van. After a moment of questioning, Stevens asked the driver to step out of the van. The driver brandished an automatic weapon and fired at Stevens, first from inside and then from outside the van. Stevens' body was penetrated by six bullets. None of the five shots that hit the contour-style, concealable protective vest Stevens was wearing penetrated the vest or caused injury. The wounds Stevens suffered all were caused by shots that struck parts of his body not protected by the vest. The contour-style vest, issued by the State Highway Patrol, was one of several different styles then on the market. It provided more protection to the sides of the body than the style featuring rectangular panels in front and back, but not as much protection as a wrap-around style. The front and back panels of the contour vest, held together with Velcro closures under the arms, did not meet at the sides of the wearer's body, leaving an area along the sides of the body under the arms exposed when the vest was worn. This feature of the vest was obvious to the Patrol when it selected this vest as

standard issue for its troopers and would have been obvious to any trooper who chose to wear it. The bullet that proved fatal to Stevens entered between his seventh and eighth ribs, approximately three-and-one-fourth inches down from his arm pit and pierced his heart.

Stevens' widow alleged that the vest, worn by her husband, was unreasonably dangerous because of its design—its lack of closure at the sides—which allowed bullets to enter under the decedent's arms.

### Question:

Is the obvious nature of a product defect or danger material to the issue of whether a product is unreasonably dangerous?

## Rule

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The article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, and who has the ordinary knowledge common of the community as to its characteristics.



## *Discussion*

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In cases like this, courts apply what is known as the “consumer expectation” test for unreasonable dangerousness: the product sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with ordinary knowledge common to the community as to its characteristics. In this case, the consumer expectation test focuses attention on the vest’s wearer rather than on the manufacturer. The inherent limitations in the amount of coverage offered by the vest were obvious to anyone with ordinary knowledge, and a person wearing this vest could not expect to be shielded from a shot taken under the arm. An otherwise completely effective protective vest cannot be regarded as dangerous, much less unreasonably so, simply because it leaves some part of the body exposed. A person wearing the vest would no more expect to be shielded from a shot taken under the arm than he would expect the vest to deflect bullets aimed at his head or neck or lower abdomen or any other area not covered by the vest. Stevens’ vest was neither defective nor unreasonably dangerous; it performed as expected and stopped all the bullets that hit it.