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PHILOSOPHICAL SAFETY

Minimum Safety Standard - An Oxymoron

by Ralph L. Barnett¹

I. INTRODUCTION

A worldwide multibillion dollar system of safety standards has been developed and nurtured for judging the adequacy of humankind's works and contrivances. Technologists, by and large, treat a standard as a "bible" which provides guidance for the discharge of their professional duties. Throughout the world, compliance or noncompliance with a safety standard is the criterion for determining whether or not adequate safety has been achieved. Only in the United States of America is compliance with an appropriate standard treated as a necessary but not sufficient condition for precluding liability. Nevertheless, defendants in product liability actions advance compliance as a persuasive argument in favor of their position. Counterpoint is provided by plaintiffs' attorneys who frequently plead that safety standards are merely "minimum standards." Setting aside the question of adequacy, a minimum standard is an oxymoron.

II. DEFINITIONS

A number of references are cited to establish the notion that a standard has no intrinsic variation or magnitude. As such the adjective minimum, which suggests the least quantity assignable, has no relevance with respect to *standard*. It's like the joke "a little bit pregnant." Both are oxymorons since they represent a combination of contradictory or incongruous words. One of the reasons for appealing to various sources for the definition of a standard is to suggest that the term "minimum standard" is used deliberately to mislead juries; it is not a matter of misinterpretation.

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Definition: Standard

The Oxford English Dictionary, Second Edition, Reprinted 1991, Clarendon Press, Oxford:

“10.a. An authoritative or recognized exemplar of correctness, perfection, or some definite degree of any quality.

b. A rule, principle, or means of judgement or estimation; a criterion, measure.

12. a. A definite level of excellence, attainment, wealth, or the like, or a definite degree of any quality, viewed as a prescribed object of endeavor or as the measure of what is adequate for some purpose.”

Webster’s Third New International Dictionary, Copyright 1966, G. & C. Merriam Company, Springfield, Massachusetts:

“3. a: something that is established by authority, custom, or general consent as a model or example to be followed: CRITERION, TEST b: a definite level or degree of quality that is proper and adequate for a specific purpose 4: something that is set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality; esp: an original specimen measure or weight (as the international prototype meter and kilogram of the International Bureau of Weights and Measures) or an official copy of such a specimen used as the standard of comparison in testing other weights and measures.”

The Random House Dictionary of the English Language, Second Edition, Copyright 1987, Random House Inc., New York, N.Y.:

“– noun 1. something considered by an authority or by general consent as a basis of comparison; an approved model. 3. a rule or principle that is used as a basis for judgment: *They tried to establish standards for a new philosophical approach.* 5. those morals, ethics, habits, etc., established by authority, custom, or an individual as acceptable: *He tried to live up to his father’s standards.*

– adj. 23. serving as a basis of weight, measure, value, comparison, or judgment. 24. of recognized excellence or established authority; *a standard reference on medieval history.*”

The Chambers Dictionary, Copyright 1994, Chambers Harrap Publishers Ltd., Edinburgh:

“noun – an established or accepted model, (often in pl) a principle of behaviour or morality; a criterion; a definite level of excellence or adequacy required, aimed at, or possible; an overall level achieved;

adj. – serving as or conforming to a standard; of the normal; regular quality, size, etc, without additions or variations; of accepted and enduring value;”

Black’s Law Dictionary, Revised Fourth Edition, Copyright 1968, West Publishing Co., St. Paul, Minn.:

“Stability, general recognition, and conformity to established practice. Standard Accident Ins. Co. Standard Surety & Casualty Co., D.C.N.Y., F.2d 119, 120.”

III. COMMENTARY

A safety profile may be correctly described as *below standard* or *above standard*. The standard itself may be lax or strict; satisfactory or unacceptable. It may not, however, be characterized as a minimum or maximum standard. Barnett has shown that safety standards describe *minimum requirements* for complying with the standard [1]. He has also suggested that there may be a need for maximum requirements in the form of restrictions.

Compliance or noncompliance with a safety standard forms an *a priori* basis for assessing safety. This holds great appeal for designers. Unfortunately, in a courtroom products are often judged *a posteriori*; the so called Monday Morning Quarterback perspective. Technologists cannot and do not function effectively in such an environment. Between these two extreme positions lies the concept of Rebuttable Presumption. Here, if a court finds that the injury-causing aspect of a product conforms to an adequate standard it shall instruct the trier of fact to presume the product was not defective. This presumption may be rebutted by clear and convincing evidence that the standard is inadequate [2].

REFERENCES

1. Barnett, Ralph L. 1983. “On Safety Codes and Standards,” *Triodyne Safety Brief* 2, no. 1 (July). Niles, IL: Triodyne Inc.
2. Seltzer, M.S. 1981. “The ASME Code and Product Liability: Should Compliance Create a Rebuttable Presumption of Proper Design?” Section 3.4 in *Critical Issues in Materials and Mechanical Engineering*, PVP-v. 47: 219-233. New York: American Society of Mechanical Engineers.