

2)

Dishway- D

UltraKlean-UK

Paul= P

P will sue D on the basis of battery, strict product liability, negligence, misrepresentation and inherently dangerous activity.

Battery

P can claim that D was liable for the battery, However, this is not strong because D was not intentionally cause the offensive and harmful contact to P. What D did was more of a negligence and strict product liability.

Strict product liability

P will claim that D was fully liable for putting the defective product into the interstate of commerce as the manufacturer that was not substantially changed after releasing the product since there was no fact to show that P bought it from another 3rd party or the product was changed before p receives it.

P was the foreseeable plaintiff because he any plaintiff that was going to use the product after it was in the market was the foreseeable plaintiff. Just because he washed the aluminum(Al) pots before putting the food in the pot does not make him unforeseeable. He used UK for cleaning purposes as any other buyers will use the product.

Liability

D is liable for allowing the defective product in the market. Traditionally, for the manufacture to be liable, the test used to be the inherently dangerous product. However, this has changed to the consumer expectancy test where the manufacture is liable for the product that is not meet the requirement of consumers. It is foreseeably defective and it is the proximate cause of the consumer's injury.

For the product to be defective, it must be show the types of the defectiveness:

Manufacturing defect: UK does not have manufacturing defect because usually for this type of defect, there must be only one of the product being defective. Here, it seems like all the new products of UK are defective.

Design defect: UK has a design defect because the entire line of UK is defective. D tested the product during the product development but it was not on Al because they did not know that UK will not work on Al. The product was defective because when a big amount of it left on Al for cookware after the wash cycle, it would cause a potential danger. This makes the product the defective because it had a design defect. Had D knew that it was working differently on Al, they would have designed it differently.

D will use defenses to design defect is not effective. D will argue that P over used the product, but he did not. P used it for cleaning the pot which was designed to clean the product.

D can also argue that the product was inherently dangerous. While D did not know that the remaining residue on AI was potentially dangerous, the product itself was not inherently dangerous.

Inadequate warning: P can claim that UK was defective because it did not have an adequate warning since it only said that it must not be digested. The reason for the warning was because D did not know about the potential harm. Had it knew about the harm, he would have made the warning more adequate. Thus, it is unlikely that P will prevail on inadequate warning argument.

Causation

The defective product was the actual cause of P's injury because but for the defective UK, P would have not have stomachache. The "but for" test must be meet the substantial test because it must show that the defective product was substantial cause (more than 60%) of P's particular injury of stomach pain which satisfies here.

Proximate cause

P's injury was the proximate intervening cause of D's defective product as he cleaned the pot and had the food in the pot. It was foreseeable for P to use the product to wash and then have a meal in the pot.

Injury

The product cause P's injury as stated above.

Defenses

Contributory negligence is not a defense to SL cases. However, the assumption of risk can be a defense to SL. However, it is not the case here because P did not voluntarily and knowingly assume the risk of eating the food in a clean pot used to be clean by the product.

Negligence Product liability

P can claim negligence action against D for negligently putting the defective product in the stream of commerce. To show the claim that, p must show duty, breach, causation, and injury.

Under both Cordozo, P is a foreseeable plaintiff because he was in a zone of danger of using the product. Under Andrew, everyone was the foreseeable plaintiff.

D had a duty to act as a reasonable manufacture that produces the cleaning agent under the similar circumstances.

D breached its duty by not acting as a reasonable manufacture by producing the defective product. Under learned hand formula, if the probability of harm and gravity of harm product exceed the cost and benefit, the manufacture is liable.

Here, the probability of the harm and gravity of the harm was excessive because it would lead the user to experience serious amount of harm. D as the cleaning agent knew that UK could

cause severe stomachache pain if ingested as the detergent product. It breached the duty of by not testing the product in all materials when it knew the risk of serious harm. Testing the product on the AI does not cost the manufacture much. They have all the materials to test the products. UK only required some reasonable care to be tested with an additional times on AI where it was tested on all services. And, as the reasonable manufacture, D must have know that many kitchen tools and dishes are made by AI. Thus, by not testing it on all material including AI, it breached its duty of care and violated the learned hand formula.

Causation

For Proximate and actual causation please incorporate by reference

Injury

Please incorporate by reference

Warranty and disclaimer

D can be sued on the basis of warranty and disclaimers but there is not the issue here.

Misrepresentation

D can be sued on the negligence misrepresentation for being negligent in advertising the UK. The advertisement was "revolutionary, safe product, with the most powerful cleaning agent ever." While this not intentional because D did not know about the potential harm, it was negligent because the safety of the product was material term, the reliance of the buyers were foreseeable. The advertisement induced the reliance of the buyers such as P with the negligence representation about the product which caused damages to the buyer.

Inherently dangerous activity

D can be strictly liable it was involved in inherent dangerous activity such as blasting and atomic bomb. However, D is not involved in a dangerous activity. D is only a manufacture supplying the defective product does not make it inherently dangerous.

Thus, it is likely D will be liable on strict product liability, negligence liability and misrepresentation.



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END OF EXAM