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### **Strict liability**

The strict liability is used under three circumstances: wild animals, product liability and dangerous activity. The strict liability is adopted by its propensity of the conduct or behaviors. In the theory of strict product liability, the merchants in the distribution chain held absolute liability for any defects of the products. And such defects should not be caused by any material modification by a third party.

Here, DishWay(D) developed a new dishwasher powder named UltraKlean(UK), this product is widely advertised that UK was " a revolutionary, safe product with the most powerful cleaning agent ever." This advertisement accurately represented that UK contained a new cleaning agent that made the product more effective than other dishwasher powders. Also, D is aware that the cleaning agent could cause severe stomach pain if ingested. Paul experienced severe stomach pain after he used UK to wash some aluminum pots and used those pots to prepare a meal. Paul may be able to claim that D should be taken strict liability for the damages he suffered because the product is defected.

However, D will argue that it is common for cleaning agent cause severe stomach pain if ingested , and it is usual in all detergent products, so he should not be taken strict liability, since this is not a defect on the product and there is no other alternation ways to avoid this. But Paul may claim that since D was advertised UK as a revolutionary and safe product, this is an implied warranty issued by D, and D should be responsible for it. D may argue that in his instructions it has been stated that the product should not be ingested, it is Paul's negligence caused his severe stomach pain at the end.

Paul will argue that D should know a potentially dangerous amount of UK residue will remain on aluminum cookware after a wash cycle, which makes the product is not suitable to be advised as "safe product" and thus D should be responsible under the strict product liability. D will argue that it is beyond his knowledge that a potential dangerous amount of UK residue will remain on aluminum cookware after a wash cycle and it is usual for dishwasher powders to leave a harmless amount of residue on different surfaces.

However, D's above argument will be failed because the point for the strict liability is the dangerous propensity of the product, there is no other defense for this, since D already advertised its product as " safe product" it should not be contain any dangerous elements in its products. Apparently, Paul's damage is related to the dangerous residue of UK and the fact has never been mentioned the product was ingested, so we can presume that the dangerous residue is the actual cause for Paul's damage. Therefore, D's responsibility will be under the theory of strict product liability and Paul did not need to prove any other things other than his damage under strict product liability.

### **Negligence liability**

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Negligence is fail to avoid a foreseeable risk as a reasonable person , for Candozo view is the foreseeable person in the zone of danger, for Andrew views it refers to all the foreseeable person. To prove in a negligence case, there must to meet with the following requirement:1) in the zone of danger 2) conduct is negligence 3) causation, the negligence act is the actual and proximate cause of the damage, 4)damages caused by the negligence conduct.For negligence product liability with negligent,if the party have conduct a reasonable inspection on the product as a prudent person, then it should not be liable for any unforeseeable damages caused to the plaintiff.

Here, during the product development, D tested UK on some surfaces to make sure it is safe, but it did not test on aluminum because there is no indication that it would work differently on aluminum than on other surfaces. The residue was not detectable to the eye and there was no flaw in D's manufacturing process. P will argue that because D failed to test on aluminum and the actual and proximate cause of his damage is caused by using aluminum pots after using UK to wash them. It is very clear that UK is the actual and proximate cause of Paul's damage.

However, D will argue that Paul's damage is not foreseeable for him, because there is no indication that the UK will work differently on aluminum than other surface, and D is not known that a potentially dangerous amount of UK residue will be left on aluminum cookware. So there should be no negligence conduct by D. Since D has done all the things available for him at the product development and there was no flaw in the manufacturing process. Thus, Paul is not a foreseeable victim for D.

As a matter of fact, the court may support D with this argument in negligence case, there is no other factor to prove that Paul is a foreseeable victim for D and the *res ipsa loquita* is not applied here, because the negligence is not the main cause for Paul's damage. And it will be very difficult to prove D is liable for Paul's damage under the theory of negligence. The only thing will be easy for Paul to prove is his damage. This is not a good choice for Paul.

### **Conclusion**

Although Paul is available to bring suit against D under the theory of strict liability and negligence, the strict liability will favor Paul than the theory of negligence will do, thus, it is better for Paul to bring claims against D under strict product liability.

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**END OF EXAM**