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What products liability claims may Paul (P) bring against DishWay (DW)?

Strict Products Liability

Duty

Under a strict products liability claim, a duty is owed to any foreseeable consumers that are within the scope of danger whereas under the majority view and under the minority view a duty is owed to everyone.

Here, DW developed a new dishwasher powder that is named UltraKlean because this dishwasher power was designed to be a cleaning agent for washing dishes, DW owes a duty to all consumers that will be using this product.

Thus, DW had a duty.

Standard of Care

The standard of care owed to consumers is that of a reasonably prudent manufacturer within the circumstances. The standard of care applies to all manufacturers, commercial suppliers, and sellers.

Here, P will argue that as manufacturer of dish soaps DW was to act as a reasonably prudent manufacturer by testing the cleaning agent on all cookware including aluminum.

Thus, DW was to act under a standard of care of a reasonably prudent manufacturer.

Causation

Under a strict products liability theory, causation can be established through a manufacturing defect, a design defect, or a failure to warn.

Manufacturing Defect

In order to establish a manufacturing defect the product must have been defective once it left the defendant's control.

Here, DW was aware that any cleaning agent when ingested could cause severe stomach pain but also understood that this was true of all detergent products as well as the fact that it was not unusual for dishwasher powders to leave a harmless amount of residue on different surfaces. P will argue that DW had a duty to test out every single type of cookware before placing this product on the market but failed to do so and did not take the reasonable steps to see if the product would leave residue on aluminum cookware after a wash cycle and did not do so before placing it on the market.

Thus, P can establish that there was a manufacturing defect when the product left the defendant's

control.

Design Defect

A design defect can be established through a risk utility test or a consumer expectation test.

Risk Utility Test

Under a risk utility test a plaintiff must establish that there was a reasonable cost efficient alternative that could have made the product safer but the defendant failed to use this option.

Here, P will attempt to argue that although under industry standards it is established that a small amount of residue will always stay on dishes after they have been used by dishwasher powder, DW being aware of this could have found a different alternative to the formula of the dishwasher even though it would have cost more. However, this argument will likely fail as the dishwasher formula is not at issue it is more so the fact that it is not able to be used on all cook ware.

Thus, P will not prevail under the risk utility test.

Consumer Expectation Test

Under the consumer expectation test, a plaintiff must establish that the product was used in a reasonably foreseeable way and did not deviate from its purpose.

Here, P will argue that it was reasonably foreseeable to DW that a cleaning product that it would place on the market would be used to wash all kinds of dishes not just certain ones. P will further argue that as manufacturer of dishwasher products they should be aware that consumers want to be able to clean multiple dishes in the quickest way possible as they are purchasing the product for that purpose. Furthermore, as the facts indicate during product development DW tested UltraKlean on some surfaces but not on aluminum because they wrongfully assumed that it would not work differently on aluminum and the residue was not detectable to the eye. However, P will argue that just because the residue was not detectable to the eye does not mean that it should not have been further tested on every single different form of cook ware, it was equally as important for each cook ware to be tested because it was reasonably foreseeable that it would be used on any and all cook ware.

Thus, P will prevail under the consumer expectation test.

Failure to Warn

A plaintiff can establish that there was a failure to warn if there is no warning label present or if there is a label present it does not accurately state all the foreseeable ways that a product might be used or the dangers of the product.

Here, P will argue that DW advertised widely of the powerful cleaning agent and stated that it was "a revolutionary, safe product with the most powerful cleaning agent ever" and although this advertisement was accurate that their cleaning agent was more effective than others it failed to state what kind of dish ware it could be used on. DW will attempt to counter argue by stating that the instructions clearly stated

it the product should not be ingested. However, to this P will argue that his injuries were not caused from ingesting the cleaning agent alone, but rather after he used the cleaning product to wash aluminum pots and then used those pots to prepare a meal was when he suffered a severe stomach pain. If there was an accurate warning label that displayed that the cleaning product was to only be used on certain kinds of cook ware and to absolutely not use it on aluminum then P would not have used it to clean the pots and later cook a meal in them.

Thus, P can prevail under a failure to warn theory.

Damages

A plaintiff must establish that they suffered actual harm and not just economic loss.

Here, P suffered a severe stomach pain which required him to be hospitalized.

Thus, P can show that he suffered actual damages.

Defenses

A defendant can raise defenses under contributory negligence, pure comparative negligence, or assumption of the risk.

Contributory Negligence

Contributory negligence is a complete bar to recovery if the plaintiff in any way contributed to the negligence.

Here, P did not contribute any negligence as he used the cleaning product in a reasonably foreseeable way.

Pure Comparative Negligence

Under a pure negligence theory, if a plaintiff is more than fifty percent negligent they are not able to recover or their negligence is reduced by the percentage of their fault.

Here, DW will not prevail under this theory because P used the cleaning product in intended way and was not negligent in doing so.

Thus, DW will not prevail under a pure comparative negligence theory.

Assumption of the Risk

A defendant can prevail under the theory of assumption of the risk, if the plaintiff voluntarily and knowingly assumed the risk.

Here, P did not voluntarily and knowingly assume the risk because he used the cleaning product in the way it was intended to be used. If there was a warning label that stated otherwise, then DW could possibly have prevailed under this defense.

Thus, DW will not prevail under an assumption of the risk defense.

Negligent Products Liability

Under a negligent products liability a plaintiff must establish duty, breach, causation, damages, and defenses.

Duty

Under the majority view a duty is owed to anyone within the foreseeable zone of danger and under a minority view a duty is owed to everyone.

Here, P will argue that a duty was owed by DW to everyone consumer that purchased their product.

Thus, DW had a duty.

Standard of Care

The standard of care is that of a reasonably prudent person.

Here, the standard of care that DW has is that of a reasonably prudent manufacturer.

Thus, DW had a standard of care.

Breach

To establish breach the defendant must have been the actual and proximate cause of the plaintiff's injury.

Actual Cause

A plaintiff must show that but for defendants negligence they would not have suffered harm.

Here, P can show that but for DW's negligence in testing out their cleaning product on aluminum cookware and the lack of a warning label would not have caused P to suffer severe stomach pain that led to hospitalization.

Thus, P can show actual cause.

Proximate Cause

A plaintiff must show that the type of harm they suffered was foreseeable.

Here, P can show that it was reasonably foreseeable that if DW did not test out their cleaning product on all cook ware or did not include a label that clearly stated that this cleaning product should not be used on all kinds of cookware then a P could suffer harm.

Thus, P can show proximate cause.

Causation, Damages, Defenses

The analysis for causation, damages, and defenses is the same as strict products liability please see above.

For these reasons, P will prevail under a negligent products liability theory.

Warranties

Express Warranty

An express warranty is given with each product by a manufacturer that clearly states its intended purpose.

Here, P will attempt to argue that the only express warranty that was given with UltraKlean was that it was a "a revolutionary, safe product with the most powerful cleaning agent ever" and although this might warrant that UltraKlean is better than other cleaning products on the market it does not warrant the usage of this product and how it should or should not be consumed. However, DW will argue that this was not a warranty it was an advertisement.

Thus, P will not prevail under this warranty.

Implied Warranty of Merchantability

An implied warranty of merchantability is given with each product if it is used in a reasonably foreseeable way and can be disclaimed through an "as is" statement.

Here, P will argue that the product was used in a reasonably foreseeable way because it was used to wash dishes.

Thus, P will prevail under this warranty.

Implied Warranty of Consumer Expectation

Under this warranty, if a consumer relies on the manufactures' opinion and the manufacturer knows of this then they can be held liable.

Here, P relied on DW's ad that they had the best cleaning product on the market and that is why he purchased it.

Thus, P may prevail under this warranty.

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