2)

PRODUCT LIABILITY CLAIMS

The question is what products liability claims Paul ("P") may bring against Dishway ("D")

Under law, there are five (5) theories in which a consumer such as P could bring a claim against D. P will bring a product liability claim based on the following theories:

1) Product liability claim based on Strict Product Liability; 2) based on Negligence; 3) based on Express Warranty; 4) based on Implied warrant theories - Implied warranty theories and 5) Fraud

STANDING TO BRING A PRODUCT LIABILITY CLAIM

To be able to bring a products liability claim, P would need to show that he is a consumer in the stream of commerce and that the product UltraKlean ("Ultra") has not been altered in any form or manner. Under law, there is no longer a privity requirement as anyone would be able to bring forth a product liability claim. Th

Here, P, as a purchaser of the Ultra, would be able to meet this requirement as he purchased Ultra to wash aluminum pots. In addition, the facts do not indicate that P has altered or changed Ultra in any shape or form. Rather, P just used it to wash it in the original form without putting anything in Ultra.

Thus, P has standing to pursue a product liability claim against D.

STRICT PRODUCT LIABILITY

P will sue D under the strict product liability theory. To prevail, P must first demonstrate that there was a defect with Ultra and that Ultra was unaltered. P would need to show, thereafter that there was a defect in the product.

DESIGN DEFECT

Design defect exists when the product could have been made safer and feasible.

Here, P will argue that there was a design defect in that D could have actually spent more time in making Ultra safer, in accordance to the industry standard. The reason is, while all detergent products are harmful when ingested, Ultra is especially harrmful. As such, D should have spent more time in designing Ultra to be safer.

MANUFACTURING DEFECT

Here, P will argue that there was a manufacturing defect in that if Ultra were safely manufacured, it would not have caused the damage.

FAILURE TO WARN

A failure to warn exists when a defendant, in the stream of commerce fails to warn of the danger associated with the product when the harm would have been prevented by an adequate warning or warning lable.

Here, P will additionally argue that there was a failure to warn because a simple warning about how Ultra would leave dangerous amount of trace on aluminum would have prevented P's injury.

Thus, there was a failure to warn.

D'S DEFENSE OF OBVIOUS DANGER

An obvious danger exists when it is clear that a certain and clearly visible danger is known. For example, there are obvious dangers associated with using a knife or a step ladder.

Here, D will contend that there is no need for any type of warning on Ultra as it is not unusual for dishwasher powders to leave a harmless amount of residue on different surfaces. The reason for this is that it is expected for a consumer for a user to rinse off the residue on the dishes or pots after washing as it customarily the practice to do so. As such, D will contend that the residues are obvious that it is common knowledge.

In addition, D will argue that there is no it is true of all detergent products, regardless of the brand or make, if it were ingested. As such, D will further argue that, for this precise reason, folks are expected to rinse off the residue after washing with a product such as Ultra, not just because it is common practice but it is the reasonable and the right thing to do. Thus, D will contend that there is no need for a warning label since the danger is obvious, just like using a kitchen knife.

However, D will not likely to prevail on this claim because, in contrast to other dish washing powders, Ultra knew that a potentially dangerous amount of the Ultra residue tends to remain on the aluminum cookware after a wash cycle. As a practical practice, D should have at least have some sort of a warning indicating that after using Ultra on aluminum or alumnimun-type of surfaces, there should be rinsing involved.Moreover, D should have realized that not everyone who washes with Ultra would rinse the pots or dishes after washing because of the inconveninece and the the time contraint.

Therefore, D's defense is not viable. In all, P will be able to show that Ultra is defective because of its design and manufacturing as well as the failure to warn.

ACTUAL CAUSE and PROXIMATE CAUSE

Actual cause is the "but for" cause while proximate cause is a test of foreseeability. Here, Ultra was both the acutal and the proximate cause of P;s injury in that :"but for" Ultra, P would not have experienced severe stomach pain, which required him to be hospitalized. and that it is the proximate cause in that it is forseeable that someone like P would be hurt or harmed since P actually bought it to wash his pots.

BREACH

Breach is a failure to uphold the duty of care to a plaintiff. Here, P will argue that D breached his duty when P did not uphold his standard of care by making Ultra safe and without putting in any warning labels. As such, P would have argued that any other seller or manufacturer in P's position would have at least put in a warning label.

DAMAGES

Under law, pure economic damages are not recoverable. Here, P sustained, actual and severe physical injury which required hospitalization. Thus, this element is met.

Thus, P would be able to prevail on the theory of negligence in his product liability suit against D.

CONTRIBUTORY NEGLIGENCE AND ASSUMPTION OF RISK

D will further argue that D should not be liable under the doctrine of contributory negligence and the assumption of risk,

Here, D will contend that P 1) was contributorily negligent in not rinsing the pots. 2) assumed the risk of not rinsing the aluminum pots after using ultra and that

But, these defenses will not work for the reasons discussed above.

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NEGLIGENCE

P will also pursue his claim under the negligence theory. To prevail on this theory, P must prove:that 1) D owes him a duty; 2) that there was actual and proximate cause; 3) that there was a breach by D and 4) Damages

DUTY

Duty refers to the duty to all foreseeable plaintiffs under Andrews and to those in the zone of danger under Cardozo. Here, D owes a duty under both theories since P is totally foreseeable as a plaintiff in that anyone who buys Ultra would use it for washing.

STANDARD OF CARE

The ordinary standard of care is to reasonably act like another under the same or similar set of circumstances. Here, the standard of care for D in selling Ultra is to act like another seller of dishwashing power. P will argue that the standard of care was not met since another dish washing company and seller would not have caused him the injury.

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E**XPRESS WARRANTY**

P will also pursue his claim under the express theory.

To prevail, P must prove D affirmativley made a promise or a guarantee. Here, P will prevail on this as well because the ad clearly stated that it is a "revolutionary and effectively SAFE product". - even though that it is not really safe, especially when it is used on aluminum products.

Thus, P will prevail

IMPLIED WARRANTY

P will also pursue his claim under the implied warranty theory - The implied warranty of merchantabilty and the impled fitness for a particular product.

to prevail,

IMPLIED WARRANTY OF MERCHANTABILITY

Under this implied warranty theory, the product, in this case Ultra must be fitness for the ordinary, viable purpose in which the product was sold. Here, P will prevail on this theory since it is expected that a dishwashing powder would be safe and that it would not require a user to go to the hospital after using it.

IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PRODUCT

To prevail, P must prove:

Under the implied theory, the D must know of the particular purpose in which the P bought the product for his or her particular purpose and that D is relying on the so stated purpose in the purchase.

To prevail, P must prove he relied on the advertisement for his purpose of cleaning the aluminum pots. Here, P will will prevail because the advertisement clearly stated that Ultra is more effective than others while NOT mentioning that it could cause severe problems on aluminum cookware.

Thus, P will prevail on the implied warranty claims

FRAUD

Finally, P will also pursue his claim under the fraud theory.

To prevail, P must prove:there was a 1) misrepresentation of facts; 2) that there was scienter; 3) that there the repersentation of facts 4) caused P to 5) suffer damages.

Here, P will argue that there was fraud on D's part in the advertisement. The reason is, while Ultra clean was more effective than others, it knew that it could cause severe problems in the residue if ingested.

Thus, P could prevail n this theory as well.

CONCLUSION

In conclusion, in spite of the defenses by D, P should prevail with one of the above theories as P would be able to meet the burden of proof.

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