

TORTS MODEL ANSWER
OCTOBER 2017 BABY BAR

1. What tort cause(s) of action may Paula reasonably bring against Spacetrip?

Products Liability

When a product is defective and causes injury, the manufacturer, distributor or retailer may be liable under one or more theories of recovery governed by products liability. In a products liability lawsuit, the product can be defective in design, manufacture and/or warning.

Spacetrip is a new venture created to send clients on a trip of a lifetime to the moon aboard a spaceship. This spaceship is equipped with a vehicle escape system using parachutes to allow passengers to return to the ground should a malfunction occur. Thus, Spacetrip is a manufacturer of the spaceship, Escapade. As the manufacturer of the product, Spaceship is liable to Paula for damages caused by the use of this product if it is proven to be defective in design, manufacturing and/or warning.

Therefore, Spaceship may be liable for Paula's damages.

Negligence

Negligence requires a showing that a duty was owed from Defendant to Plaintiff, that the duty was breached by Defendant and that the breach was the actual and proximate cause of Plaintiff's damages.

Duty

A product manufacturer owes a duty of due care to inspect, discover and correct or warn of any defect. The duty is owed to all persons who may be a foreseeable user of the product.

Spaceship produced a spaceship that took paying clients to the moon. In order to make sure the spaceship returned to the ground safely if there was a malfunction, Spacetrip equipped the spaceship with parachutes. As the manufacturer, Spaceship owes a duty of due care to inspect, discover and correct or warn of any defects associated with the use of the parachutes and to eliminate any harm that could be caused from the use of this product. Since Paula purchased a ticket for a trip to the moon and was boarded onto the spaceship, Escapade, she is a foreseeable consumer.

Therefore, Spaceship owed a duty to Paula.

Breach

To prove the product is defective, Plaintiff must establish the product failed to meet the ordinary commercial expectations of the average reasonable consumer.

Design Defect

A design defect is found when a product is inherently dangerous in its design.

The parachutes on the spaceship was placed on the spaceship in order to allow passengers to safely return to the ground should a malfunction occur during the spaceship ascent. On the day of the liftoff, the weather was beautiful and all systems were working as designed. However, before shortly taking off an unpredictable violent storm arose blowing the Escapade off course. There was no way to correct the deviation, so Spacetrip activated the escape system. As a result, the storm caused the escape capsule to crash to the ground critically injuring Paula. Thus, the parachutes did not provide the spaceship to land safely and were inherently dangerous in its design.

However, Spaceship will argue the purpose to the parachutes are to provide safety if a malfunction occurred during ascent. The spaceship already took off, and then an unexpected violent storm caused the spaceship to go off course. The storm and not the design of the vehicle escape system was the cause.

Under the utility versus the risk formula where the cost (burden) of taking precautions in order to prevent harm and the probability of harm is slight then there is no breach. However, if the precaution to prevent injury is minimal and the injury risk is great then the Defendant breached its duty when the precaution is not taken and a harm results.

Based on the facts Spacetrip used a parachute system for its vehicle escape system to allow the space capsule to allow passengers to return safely to the ground should a malfunction occur. Although the parachute system was “sufficient to provide adequate safeguards a new system had become available that used rockets to navigate the escape capsule back to the ground much more safely. If Spacetrip had the new system the escape capsule would have been able to be properly navigated to the ground safely.

Spacetrip will argue that the system is not only more expensive than the parachute system, but it has not been tested in real-life situations. There is no way to determine if the rockets would have been able to properly navigate the space capsule in the violent storm. The utility of the new system being more costly and not tested versus the potential risk is not outweighed. Until the new system is tested in a real-life situation, the benefit of the new system versus the parachute system is not outweighed.

The parachute system does provide adequate safeguards and had been tested even by Spacetrip’s decision to stick with its tried-and true parachute system.

Therefore, since it can’t prove that the new safeguard of using the rockets to navigate the escape capsule, Spacetrip did not breach its duty of due care owed to Paula.

If the court finds that the utility of the risk was outweighed by the danger, Spacetrip would be in breach for not using the new system.

Warning Defect

A warning defect exists when the manufacturer fails to warn of any potential harm that may result from the use of its product.

Paula will contend that the contract she signed stating that “Although Spacetrip has taken all reasonable measures to provide a safe voyage, I understand space exploration is dangerous.” Did not provided an adequate warning by stating its dangerous. Paula will argue that an average consumer expect that a spaceship would be able to withstand weather issues since the spaceship will be entering space, and Spacetrip did not warn her adequately that the spaceship could crash to the ground because of weather conditions and cause injury to the user, even though a vehicle escape system is in place and may not work.

Therefore, there was a warning defect.

In light of the warning defects, Spacetrip breached its duty of due care owed to Paula.

Actual Cause

If Plaintiff would not have been injured “but for” Defendant’s negligent act, Defendant’s negligence is the actual cause of Plaintiff’s injuries and damages.

"But for" Spacetrip's failure to adequately design the escape vehicle when deployed in a storm, causing the capsule to crash to the ground since the new rocket system was not in place Paula would not have been injured.

Therefore, Spacetrip is the actual cause of Paula’s injuries.

Proximate Cause

A Defendant’s negligent act is the proximate cause of Plaintiffs’ injuries and damages if the manner and result of Defendant’s acts are foreseeable.

It is foreseeable when a manufacture of a spaceship vehicle escape system fails because of a storm, that injury to users, like Paula would result.

Spacetrip will argue that the vehicle escape system did work properly and did deploy as designed. However, the storm caused the escape capsule to crash to the ground. Thus, the storm is an intervening act cutting off its liability.

However, the storm is an indirect, independent act of Spacetrips negligence in providing a safe and proper escape system when there was a malfunction on the spaceship. In addition, it is foreseeable when a manufacturer of a spaceship with a vehicle escape system using parachutes fails one would suffer an injury.

Therefore, Spacetrip is the proximate cause of Paula’s injuries.

General Damages

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation for items that include physical injury, past, present and future pain and suffering, temporary and permanent disability, and disfigurement.

Paula suffered critical injuries, but survived the accident. She is also entitled to her pain and suffering damages. Because Paula's injuries resulted from her use of the product, the spaceship, her injuries reasonably and naturally flow from Spacetrip's tortious conduct by putting a defective product into the stream of commerce.

Therefore, Paula is entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and they must be specifically pleaded and proved. Further, special damages must be foreseeable, reasonable in amount and not too remote.

Paula most likely incurred medical and hospital expenses, and possibly loss of income as a result of the incident. Since these damages are unique to Paula, they must be specifically pleaded and proven for Paula to recover them. It is reasonable and foreseeable that when a consumer is injured that he will incur medical and hospital expenses, and possibly lose income because of his injuries.

Therefore, Paula may recover special damages.

Implied Warranty of Merchantability

The implied warranty of merchantability exists when a manufacturer, distributor or retailer places a product in the stream of commerce such that he warrants the product is of fair and average quality.

Spacetrip manufactures the spaceship that is used to send paying clients on a trip to the moon. Thus, it is a product manufacturer. Paula, who wanted an adventure, purchased a trip from Spacetrip and, because of the space trips its inadequate design of its emergency escape vehicle, she became injured. Thus, the space ships vehicle escape system was not of fair and average quality.

Therefore, Spacetrip will be held liable for breach of implied warranty of merchantability.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Strict Liability in Tort

Strict liability is where an unreasonably dangerous product is placed in the stream of commerce, the manufacturer, distributor or retailer will be held strictly liable in tort to all foreseeable users for their injuries.

Spacetrip manufactured the space ship, which was defective in design and warnings regarding its emergency safety vehicle. Spacetrip allowed the space ship to be equipped with an inadequate escape vehicle when Paula was on the space ship. This dangerous condition would not be expected by an ordinary consumer in normal use. Thus, the spaceship safety escape vehicle was unreasonably dangerous.

Spacetrip will rebut that Paula did have an adequate warning in the contract stating that space exploration is dangerous. However, the warning was inadequate by the use of the term dangerous. Further, the vehicle escape system was using parachutes versus rockets in order to navigate the escape capsule to the ground safely. Since the defect was in existence at the time the space ship was placed in the stream of commerce, Spacetrip will be strictly liable for Paula's injuries.

Therefore, Spacetrip will be held liable under a strict liability in tort theory.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

2. What defenses if any, does Spaceship have? Discuss.

Defenses

Contributory Negligence

At common law, the Plaintiff's contributory negligence, however slight, was a complete bar to his recovery against a negligent defendant. If a Plaintiff's conduct falls below the reasonable person's standard of care and contributes to his own injury or damages, he is barred from recovering against Defendant.

When the Escapade was blown off course there was no way to correct the deviation. The escape system was deployed and the storm caused the capsule to crash to the ground injuring Paula. Paula signed in the contract which stated I understand that space exploration is dangerous, and the facts with this knowledge boarded the spaceship her conduct fell below a reasonable person's standard of care.

However, Paula will counter that although she signed a contract with the knowledge that space travel is dangerous, as a reasonable person believed that Spacetrip would provide a safe escape system. Although the storm blew the escape capsule off course, Spacetrip should anticipate this could occur. Under such circumstances, a reasonable person wouldn't have foreseen that the spaceship would not have a proper escape system. Thus, Paula's conduct fell below a reasonable person's standard of care.

Therefore, contributory negligence is not a valid defense.

Comparative Negligence

The doctrine of comparative negligence apportions the relative negligence or fault, i.e., blameworthiness, of the Plaintiff and Defendant, and reduces Plaintiff's recovery of damages accordingly.

As discussed Paula was not negligent, discussed supra.

Therefore, comparative negligence is not a valid defense.

Assumption of the Risk

A person who expressly or impliedly agrees to confront the risk posed by Defendant's act and knowingly assumes the risk of his conduct is barred from recovery. Defendant must show that Plaintiff recognized and understood the particular risk, and voluntarily elected to encounter it.

Paula signed the contract stating space travel is dangerous. In light of her knowledge she voluntarily encountered the risk with knowledge that space travel is dangerous. Thus, Paula

assumed the risk.

However, Paula only signed a contract stating that space exploration is dangerous, at the time of injury the spaceship was not in space, rather still in Earths' orbit. Paula believing that all safety measures were in place she had no knowledge of the risk nor did she choose to encounter that risk of the escape capsule being blown off course.

Therefore, assumption of risk is no defense.