

**November 2020 Baby Bar  
Question 3 – Torts**

**1. On what theory or theories of liability could Alice reasonably sue Manufacture? Discuss.**

**Alice v. Manufacture**

**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.

Manufacture manufactured fully assembled bicycles. As the manufacturer of the product, Manufacture is liable to Alice for damages caused by the use of this product if it is proven to be defective in design, manufacturing and/or warning.

Therefore, Manufacture may be liable for Alice'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.

Manufacture produced bicycles that Alice was riding when it collapsed. As the manufacturer, Manufacture owes a duty of due care to inspect, discover, and correct or warn of any defects associated with the use of the bicycle in order to eliminate any harm that can be caused from the use of this product. Since Alice purchased and used the bicycle, she is a foreseeable consumer.

Therefore, Manufacture owed a duty to Alice.

**Breach**

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

## **Manufacturing Defect**

A manufacturing defect is where the product is different in kind to the rest of the line of products.

Alice purchased one of Manufacturer's commuter bikes. Alice was riding it to work when, without warning, the frame collapsed, causing her to crash and suffer serious injuries. Alice took the broken frame to a bike mechanic, who told her that several of the tubes had not been properly welded together. The mechanic told Alice that, "In my many years of repairing bikes, I have never seen such sloppy welds on this or any other brand of aluminum bikes." Since several of the tubes had not been properly welded together, the bike was different in kind from the rest of the bikes produced before and/or after Alice's bike.

Therefore, there was a manufacturing defect.

## **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 the manufacturer's failure to inspect, discover, correct or warn of the defective product, Plaintiff would not have been injured. Further, but for Manufacture's failure to adequately weld the bike together Alice would not have suffered serious injuries.

Therefore, Manufacture is the actual cause of Alice's injuries.

## **Proximate Cause**

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

It is foreseeable when a manufacturer of a bike fails to properly weld the aluminum bike adequately a user of the product would suffer an injury.

Therefore, Manufacture is the proximate cause of Alice'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.

Alice suffered serious injuries. She is entitled to her pain and suffering damages. Because Alice's injuries resulted from her use of the product, her injuries reasonably and naturally flow from Manufacture's tortious conduct by putting a defective product into the stream of commerce.

Therefore, Alice 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.

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

Therefore, Alice 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.

Manufacture manufactures bikes. Thus, it is a product manufacturer. Alice purchased a bike and, because of its inadequate manufacturing, she became injured. Thus, the bike was not of fair and average quality.

Therefore, Manufacture 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.

## **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.

Manufacture manufactured the bike that Alice purchased, which was defective in manufacturing since the welding was sloppy and caused the bike to collapse. Manufacture allowed the bike to be sold in this condition when it was sold to Alice. This dangerous condition would not be expected by an ordinary consumer in normal use. Thus, the bike was unreasonably dangerous.

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

## **2. On what theory or theories of liability could Bill reasonably sue Manufacture? Discuss**

### **Bill v. Manufacture**

#### **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.

Manufacture manufactured fully assembled bicycles. As the manufacturer of the product, Manufacture is liable to Bill for damages caused by the use of this product if it is proven to be defective in design, manufacturing and/or warning.

Therefore, Manufacture may be liable for Bill's damages.

#### **Negligence**

Defined supra

#### **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.

Manufacture produced bicycles that Bill was riding in a race when it collapsed. As the manufacturer, Manufacture owes a duty of due care to inspect, discover and correct or warn of any defects associated with the use of the bicycle in order to eliminate any harm that can be caused from the use of this product. Since Bill purchased and used the bicycle, he is a foreseeable consumer.

Therefore, Manufacture owed a duty to Bill.

### **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.

Manufacturer reduced the thickness of the carbon tubing by one millimeter in comparison to its competitors. Several reviews of Manufacturer's bike in bike racing magazines stated using less fiber carbon material made the frame considerably weaker and subject to breakage. Thus, the frame on the bike was inherently dangerous in its design.

Therefore, due to the design defect of the bike, Manufacture breached its duty of due care owed to Bill.

Therefore, there was a design defect.

### **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.

Bill purchased one of Manufacturer's bikes to use for racing. While riding the bike during a race the frame collapsed, causing him to suffer serious injuries. An investigation of the crash revealed that one of the carbon fiber tubes on Bill's bike had cracked and broken in half. In order to make its racing bikes lighter than similar bike on the market, Manufacturer reduced the thickness of the carbon tubing by one millimeter in comparison to its competitors. However, several reviews of Manufacturer's bike suggested that, although the bike was lighter, using less fiber carbon material made the frame considerably weaker and subject to breakage. Bill purchased the bike to race, and when he used the bike the frame collapsed. Thus, the bike was defective. Since several reviews stated that using less fiber carbon material made the frame considerably weaker and subject to breakage, and there was no warning of this risk on the bike, Bill, as an average reasonable consumer, would not expect the bike frame to collapse.

Therefore, Manufacture did not meet its ordinary commercial expectations. Thus, there was also a warning defect.

In light of the design and warning defects, Manufacture breached its duty of due care owed to Bill.

### **Actual Cause**

Defined Supra.

But for the Manufacturer's failure to inspect, discover, correct or warn of the defective product, Plaintiff would not have been injured. Further, but for Manufacture's failure to adequately design the bike in order to make it lighter, Bill would not have suffered serious injuries.

Therefore, Manufacture is the actual cause of Bill's injuries.

### **Proximate Cause**

Defined Supra.

It is foreseeable when a manufacturer of a bike fails to properly design the aluminum bike, that a user of the product would suffer an injury.

Therefore, Manufacture is the proximate cause of Bill's injuries.

### **General Damages**

Defined Supra.

Bill suffered serious injuries. He is entitled to his pain and suffering damages. Because Bill's injuries resulted from his use of the product, his injuries reasonably and naturally flow from Manufacture's tortious conduct by putting a defective product into the stream of commerce.

Therefore, Bill is entitled to general damages.

### **Special Damages**

Defined Supra.

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

Therefore, Bill may recover special damages.

### **Implied Warranty of Merchantability**

Defined Supra.

Manufacture manufactures bikes. Thus, it is a product manufacturer. Bill purchased a bike and, because of its inadequate design, he became injured. Thus, the bike was not of fair and average quality.

Therefore, Manufacture 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.

### **Strict Liability in Tort**

Defined Supra.

Manufacture manufactured the bike that Bill purchased, which was defective in design since the frame was weak and collapsed. Manufacture allowed the bike to be sold in this condition when it was sold to Bill. This dangerous condition would not be expected by an ordinary consumer in normal use. Thus, the bike was unreasonably dangerous.

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