

June 2006 Baby Bar
Question #4 -Torts

1. Milk Consumers v. Grain Co.

Products Liability

Negligence

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

Duty

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

Grain Co. sells seed grain. Thus, they are a distributor. Like all seed grain dealers, Grain Co. treats its grain that it purchases from farmers, with an invisible mercury-based chemical to poison the parasites. As the distributor, Grain Co. owes a duty of due care to inspect, discover and correct any defects associated with the use of the seed grain in order to eliminate any harm that could be caused from the use of this product by consumers. Farmer Jones purchased a truckload of seed from Grain Co. and used some of the grain to feed her dairy cattle. Since Farmer Jones produced milk that was sold to Big Food and then purchased by milk consumers, the milk consumers are foreseeable users.

Therefore, Grain Co. owed a duty to milk consumers.

Breach

Where the product is defective in manufacturing, design or there is an inadequate warning, Plaintiff may establish a breach if the product does not meet the ordinary consumer expectations of the average reasonable consumer.

Warning Defect

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

Grain Co. will contend the seed grain was sold in bulk by the truckload and that its trucks displayed signs stating "Seed Grain. Not for Use in Food Products." Thus, Grain Co. provided an adequate warning to Farmer Jones.

However, the milk consumers will argue that Grain Co. treated the grain with invisible mercury-based chemical to poison the parasites that attack and eat grain

that is stored. Even though the truck was labeled with the warning, Grain Co. failed to warn that the grain was poisonous. Further, milk consumers would not have this knowledge of Grain Co.'s warning and, as such, the grain did not meet the ordinary consumer expectation of the average reasonable consumer.

Since Grain Co. warning was insufficient, Grain Co. breached their duty to the milk consumers.

Design Defect

A design defect exists when the product is inherently dangerous in its design which will result in potential harm from the use of the product.

Grain Co. like all seed grain dealers treated the seed grain with invisible mercury-based chemical to poison the parasites. Since they used invisible poison, the seed grain is inherently dangerous. A farmer purchasing the grain would have no knowledge that the seed grain is treated with the mercury-based poison by mere observation. As such, there is no obvious sign that the grain was treated with a mercury-based poison. On the other hand Grain Co. could have applied a colored poison that would instantly put grain seed purchasers on notice that the seed was chemically altered such that a purchaser, such as Farmer Jones, would be put on inquiry notice. The use of the product based on its design resulted in harm from the use of the product.

Grain Co. will contend that all seed grain dealers use the invisible mercury-based poison to kill the parasites. Since that is the standard in the industry, Grain Co. did not breach their duty to Plaintiff.

However, since the poison can not be detected without a disclosure that the mercury-based poison was used, the court will find the design of the poison used on seed grain is inherently dangerous in its design.

Thus, Grain Co. breached their duty owed to the milk consumers.

Actual Cause- Successive Tortfeasors

But for Grain Co.'s failure to adequately warn that the seed grain was not for use in food products, Farmer Jones may not have used the seed grain to feed her dairy cattle which produced the milk that consumers bought and consumed. Therefore, the successive negligent acts of Grain Co. and Farmer Jones resulted in milk consumers becoming seriously ill because of the mercury poisoning.

Therefore, Grain Co. is the actual cause of the milk consumers' injuries.

Proximate Cause

It is foreseeable when Grain Co., a distributor of seed grain, failed to adequately warn that the seed was not for use in food products, as well as an improper design for the poison used on the grain, Farmer Jones would feed the seed to her dairy cattle. The mercury poisoned milk would then be sold to consumers who would become seriously ill suffering from mercury poisoning. As such, Grain Co. is the legal cause of the plaintiff's injuries.

Therefore, Grain Co. is the proximate cause of milk consumer's injuries.

General Damages

General damages are damages that naturally flow from the tort, such as damages for pain and suffering for personal injury and property damages

Since the milk consumers became seriously ill from of the mercury poisoning, they may receive damages which flow naturally from Grain Co.'s conduct for their pain and suffering.

Therefore, the milk consumers are entitled to general damages.

Special Damages

Special damages allow recovery for those damages which are specifically plead and proven.

Milk consumers will be able to recover for any medical expenses or lost income that is plead and proven.

Therefore, the milk consumers are entitled to special damages.

Indemnity

Indemnity allows a Defendant, who is secondarily liable for Plaintiff's injuries, to receive full reimbursement against the party who was primarily responsible for the injury.

Grain Co. is a distributor of the seed grain with the mercury poisoning. Farmer Jones purchased the seed grain and fed it to her dairy cattle that produced the poisoned milk. Grain Co. will argue that its trucks displayed signs stating the seed grain was not for use in food products.

When Farmer Jones bought a truckload of grain from Grain Co., she was present when the Grain Co. employees unloaded the seed grain from the truck into her silo. Even though the truck had the display sign, Farmer Jones may not have seen nor read the sign. Farmer Jones still fed the seed grain to her cattle. As such, Farmer Jones is primarily responsible to the milk consumers for failing to adhere to Grain Co.'s warning.

However, Farmer Jones did not have adequate notice that the seed grain was not to be used for food consumption since Grain Co. did not adequately warn her of the mercury-based poison.

Therefore, Grain Co. should not be entitled to indemnification against Farmer.

Contribution

Contribution is where a tortfeasor, who is jointly and severally liable, must contribute their proportionate share of liability.

Alternatively, if Grain Co. and Farmer Jones are classified as joint tortfeasors and the milk consumers recover against Grain Co., Grain Co. may sue Farmer Jones for payment of Farmer Jones' proportionate share of liability.

Therefore, Grain Co. might recover against Farmer Jones for contribution.

Implied Warranty of Merchantability

Where there exists an implied assurance from a manufacturer, distributor or retailer that warrants the product is of fair and average quality.

Grain Co. distributes seed grain. Like all seed dealers, Grain Co. sprayed the seed grain with mercury-based poison. Thus, it is a product chemically altered and distributed by Grain Co. Farmer Jones purchased the seed grain without adequate warning and used the grain for cattle feed. The cattle produced milk containing mercury poisoning. Because of the inadequate warning, milk consumers of Farmer Jones' milk that was purchased at Big Food grocery store became ill. Thus, the milk was not fair and average quality.

Therefore, Grain Co. 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

If a defective product is placed in the stream of commerce, the manufacturer, distribution and retailer can be held strictly liable in tort to all consumer-users for their injuries. In order for a product to be defective it must be sold by a commercial seller and be unreasonably dangerous in its normal intended use. Some jurisdiction require the defective product to cause harm in its normal use.

Grain Co. failed to adequately warn foreseeable users of its product that its grain was treated with chemicals to kill parasites and that the seed was not for use in food products. Farmer Jones, in turn, fed the seed to her dairy cows that produced milk that contained mercury poisoning. As such, the seed grain was unreasonably dangerous in its normal intended use. Since the milk consumers drank the milk that contained the invisible mercury, it was a defective product that caused harm in its normal use.

Grain Co. will argue that they did have an adequate warning on the truck when the grain was delivered to Farmer Jones. However, the warning was insufficient. Grain Co. should have told the purchasers of the grain of the invisible mercury poison on the seed grain and that the seed grain was not intended for use in food products. Since the defect was in existence at the time it was placed in the stream of commerce, Grain Co. will be strictly liable for the milk consumer's injuries.

Therefore, Grain Co. 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. Milk Consumers v. Farmer Jones

Products Liability

Defined supra.

Farmer Jones manufactured the milk used by the milk consumers. As the manufacturer of milk, Farmer Jones is liable to milk consumers for damages caused by the use of this product if it is proven to be defective in design, manufacturing or warning.

Therefore, the milk consumers may recover under a products liability cause of action.

Negligence

Defined supra.

Duty

Defined supra.

Farmer Jones produced the milk that the consumers drank. As the manufacturer, Farmer Jones owed a duty of due care to inspect, discover and correct any defects associated with the milk and to eliminate any harm that can be caused from the use of this product. Further, Farmer Jones had a duty to exercise due care and determine any potential dangers, risks or harm that could come from the use of the milk. Since the milk consumers purchased and drank the milk, they are a foreseeable consumer.

Therefore, Farmer Jones owed a duty to the milk consumers.

Breach

Defined supra.

Manufacturing Defect

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

Farmer Jones bought a truckload of the seed grain from Grain Co. Farmer Jones used the grain she purchased to plant and the remainder of the grain she mixed in with the feed for her dairy cattle. Farmer Jones then produced milk from the cattle. Since the cattle that produced the milk ate the poisoned grain, such grain was different in kind from the grain usually consumed by the cattle. This in turn resulted in tainted milk that is different in kind from consumable milk.

Therefore, there was a manufacturing defect.

Actual Cause

Defined supra.

But for Farmer Jones mixing the grain into the feed for her dairy cattle and then producing milk that contained the mercury poison, the milk consumers would not have been injured.

Therefore, Farmer Jones is the actual cause of the milk consumers' damages.

Proximate Cause

Defined supra.

It is foreseeable when a manufacturer of milk introduces mercury poison into a product that will be consumed as food by dairy cattle, the consumer would suffer an injury when they consumed milk produced from such cattle.

Therefore, Farmer Jones is the proximate cause of the milk consumers' damages.

Damages

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Implied Warranty of Merchantability

Defined supra.

Farmer Jones manufactured the milk that was sold to the milk consumers and is therefore a manufacturer. The milk consumers purchased the milk and because of the manufacturing defect, the milk consumers became seriously ill and suffered injury. Because the milk was defective, Farmer Jones' milk was not of fair and average quality and Farmer Jones breached the implied warranty of merchantability.

Therefore, Farmer Jones will be held liable under a breach of implied warranty of merchantability 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.

Strict Liability in Tort

Defined supra.

Farmer Jones manufactured the milk sold to the milk consumers without adequate warning of the invisible mercury poison. Farmer Jones allowed the grain to be mixed with the feed that was used to feed her dairy cattle. Since the dairy cattle produced milk containing mercury poison and the milk was to be sold in this condition without an adequate warning, the milk was defective.

Farmer Jones will be strictly liable in tort.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

3. Milk Consumers v. Big Food

Products Liability

Defined and discussed supra.

Negligence

Defined supra.

Duty

Defined supra.

Farmer Jones sold milk that contained the mercury to Big Food, a grocery chain. As the retailer of the product, Big Food owes a duty of due care to correct known defects associated with the sale of the milk and to eliminate the harm that can be caused from the use of such product. Since the milk consumers purchased the milk, they are foreseeable users.

Therefore, Big Food owed a duty to the milk consumers.

Breach

Defined supra.

Big Food had no knowledge of the defect with the milk. Thus, under the sealed container doctrine, Big Food had no duty to warn of any potential dangers.

Therefore, Big Food did not breach their duty to the milk consumers.

Implied Warranty of Merchantability

Defined supra.

Big Food sold the milk to the milk consumers. Big Food, as a retailer, warrants that the product is of fair and average quality. Because of the manufacturing defect of the milk, the milk consumers became seriously ill and sustained injuries. Thus, the milk was not of fair and average quality.

Therefore, Big Food 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

Defined supra.

Big food sold the milk containing mercury poisoning, a manufacturing defect, to milk consumers. Thus, the milk was in an unreasonably dangerous condition in its normal use. By Big Food selling the defective milk to the public, they placed the product in the stream of commerce.

Therefore, Big Food will be held liable for strict liability in tort.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Indemnity

Defined supra.

Although Grain Co. sprayed the seed grain with poison, it was Farmer Jones who manufactured the defective milk. Thus, Farmer Jones is primarily responsible for the milk consumers' injuries.

Therefore, Big Food will be entitled to indemnification against Farmer Jones.