

Question 1 -- Torts

A. Child v. Market

Products Liability

When a product is defective and causes injury, the manufacturer, distributor or retailer in the stream of commerce may be liable under products liability.

Strict Liability in Tort

If a manufacturer, distributor, or retailer places a defective product in the stream of commerce they will be held strictly liable in tort to all consumer-users for their injuries. For a product to be defective it must be sold by a commercial seller and be unreasonably dangerous in its normal intended use.

Market sold bananas to consumers. Thus, it is a retailer of the product.

Warning Defect

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

Child took a bite out of the banana, peel and all. The banana was sprayed with a toxic chemical. Once the child took a bite, Child became very ill. However, Market failed to warn Child of the toxic substance sprayed on the banana. Thus, there was a warning defect.

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.

Since the banana was sprayed with a substance that is both invisible and toxic, a consumer purchasing the banana would have no knowledge of the substance when purchasing and eating the banana. Moreover, eating such a banana sprayed with a toxic substance could make you very ill. An invisible toxic substance that can make someone eating the banana, such as Child, ill is unreasonably dangerous. As such, the product is inherently defective in design (application of an invisible toxic substance) where such use unknowingly could result in potential harm from the use of the product.

Market will contend that they had no knowledge that the banana was sprayed with an invisible toxic substance. Therefore, they should not be liable.

However, Market sells the bananas that had been sprayed with a toxic spray that can not be detected without a warning. Thus, as a retailer Market placed the banana in the stream of commerce, and will be liable for the defective design regardless of whether Market directly participated in application of the toxic substance or not.

Therefore, the banana has a design defect. Market will be held liable for strict liability in tort.

Actual Cause - Successive Tortfeasors

But for Market's failure to adequately warn that the banana was sprayed with a toxic substance, Child would not have become very ill. Further, the mother's act of being distracted and not noticing her child taking and biting a banana, peel and all, Child would not have become ill. Therefore, the successive negligent acts of Market and Child's mother resulted in Child becoming seriously ill due to the toxic substance sprayed onto the banana.

Therefore, Market is the actual cause of the Child's injuries.

Proximate Cause

Market will contend that it is not foreseeable for a child to bite the peel on a banana. Thus, it is not the proximate cause of the injuries.

However, it is foreseeable that a four-year-old child, whose hands are not as strong or dexterous as an adult's, would bite a banana peel in order to try to open the banana to enable the child to eat the banana, or a market consumer would peel the banana getting toxic substance on her hands and becoming very ill by thereafter ingesting the substance coming from her hands. Due to Market's, failure to adequately warn that the bananas had been sprayed with a toxic substance, Child would not have become very ill.

Therefore, Market is the proximate cause of Child's injuries.

General Damages

General damages allow recovery for personal injury and property damages.

Since Child became very ill because of the toxic substance on the banana peel, the child will receive damages which flow naturally from Market's lack of warning, such as pain and suffering.

Therefore, Child is entitled to general damages.

Special Damages

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

Child will be able to recover for any medical expenses that are specifically pleaded and proven.

Therefore Child is entitled to special damages.

Defense - Comparative Negligence

Where plaintiff's conduct falls below the standard of reasonable care including the amount of plaintiff's negligence, the court will reduce plaintiff's recovery by the amount of plaintiff's proportionate fault.

Market will argue biting into a banana peel is not normal. The fact that Child bit into the banana peel establishes conduct falling below the standard of care to which Child should have conformed to protect Child's own safety. Thus, Child contributed to the injuries.

However, Child will contend it is foreseeable that a four-year-old child may bite the peel of a banana in order to peel the banana, particularly in a grocery store where a child sees a banana and is hungry, and the colorful display of the bananas attracts a child's eye, enticing the child

to take and eat the banana. Further, as a four-year-old, child did not know of any potential danger associated with eating a banana peel. Moreover, a child up to the age of seven is presumed to be incapable of negligence.

Additionally, a customer of the market may assume, without knowledge to the contrary, that the bananas are not sprayed with a toxic substance which would make the banana dangerous. After all, most bananas are consumed without the peel being washed first.

Therefore, comparative negligence is not a valid defense.

Assumption of Risk

One who assumes the risk when he has knowledge, comprehension and an appreciation of the danger, and who voluntarily elects to encounter the danger.

Market will argue the act of Child eating the banana peel caused the illness. A banana is consumed by peeling, and then eating the contents inside of the peel. Thus, it is well known by the public that the banana peel is not consumed. Therefore, Child's act of eating the peel shows Child's comprehension, and an appreciation of the danger, and that he voluntarily elected to encounter the danger.

However, Child was not aware that the banana was sprayed with a toxic substance. Hence, Child's unawareness of the toxic spray negates any argument that child had knowledge and comprehended the risk before the child took a bite of the banana peel.

Therefore, assumption of the risk is not a valid defense.

Misuse

Liability will not be imposed on a manufacture, distributor or retailer, where the consumer misused the product, and such misuse was not foreseeable.

Market will argue a banana is consumed by peeling the banana, and then eating the contents inside of the banana peel, and not by eating the banana peel. Child's act of eating the peel shows Child misused the product.

However, most people peel and eat bananas without washing the banana or their hands. Further, consumers do not expect that a banana peel to be toxic. Moreover, consumers generally are not expecting a banana's peel to be covered with an invisible toxic substance. Since, Child was not aware the banana was sprayed with a toxic substance, and bit the peel, the conduct is a foreseeable misuse of the product. Hence, Child's act of biting into the banana peel is a foreseeable misuse and will not cut off liability.

Thus, misuse is not a valid defense.

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.

Although Market sold the banana containing the toxin, it was the supplier of the banana that sprayed the toxic substance onto the banana who caused the defect. Thus, the supplier is primarily responsible for Child's injuries and Market is only secondarily liable.

Market will be entitled to indemnification against the supplier of the bananas.

B. Shopper v. Market

Strict Liability in Tort

If a manufacturer, distributor, or retailer places a defective product in the stream of commerce they will be held strictly liable in tort to all consumer-users for their injuries. For a product to be defective it must be sold by a commercial seller and be unreasonably dangerous in its normal intended use.

Market will contend they did not sell shopping carts. Therefore, they are not a retailer of the product.

Shopper will contend that the Market needs to provide the shoppers with a shopping cart in order to sell their products. Without a shopping cart Market would not be able to sell any large amounts of groceries to their customers. Since the shopping cart is an essential product to enable one to purchase groceries, Market should be found to be in the chain of distribution.

Manufacturing Defect

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

The shopping cart used by Shopper had a sharp protruding edge. Since the shopping cart had a sharp protruding edge, the shopping cart was different in kind from the rest of the shopping carts produced by the manufacturer.

Therefore, there was a manufacturing defect.

Warning Defect

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

The shopping cart used by Shopper had a sharp protruding edge. Shopper while using the shopping cart in the market slipped and fell. Shopper hit his face on the sharp edge of the shopping cart which caused injury to his eye. Market failed to warn Shopper of the sharp protruding edge. Thus, there was a warning defect.

Market supplied the shopping cart which had the sharp protruding edge. Thus, Market placed the shopping cart in the stream of commerce. Further, the shopping cart had a sharp protruding edge which caused Shopper to injure his eye. Hence, the shopping cart was unreasonably dangerous.

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

Actual Cause

“But for” Market’s failing to discover and remove the shopping cart with the sharp protruding edge; Shopper would not have fallen and injured his eye.

Thus, Market was the actual cause of Shopper’s injuries.

Proximate Cause

Market will argue that Child’s conduct of throwing the banana peel onto the floor which

caused Shopper to slip and fall was an intentional act. However, intentional acts are generally viewed as a superseding cause of injury. Thus, an intervening act occurred which would cut off Market's liability.

Although Market's acts were indirect and independent of Child's act of throwing the banana peel onto the floor, it is foreseeable that another customer may drop something in the store that could cause another shopper to fall, or something in the store could be knocked off display causing a shopper to slip and fall. Hence, Child's act of throwing the banana peel on the floor would be foreseeable and not cut off Market's liability.

Therefore, Market was the proximate cause of Shopper's injuries.

General Damages

General damages allow recovery for personal injury and property damages.

Since Shopper's eye was injured because he fell onto the sharp edge on the shopping cart, Shopper will receive damages for pain and suffering which flow naturally from Market's lack of warning.

Therefore, Shopper is entitled to general damages.

Special Damages

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

Shopper will be able to recover for any medical expenses or lost income that he specifically pleads and proves.

Therefore, Shopper is entitled to special damages

C) Polly v. Market

Strict Liability in Tort

Defined and discussed in Shopper v. Market

Defense - Comparative Negligence

Where Plaintiff's conduct falls below the standard of reasonable care, the court will reduce defendant's liability in the proportion of plaintiff's to fault.

Market will argue Polly is a police officer and saw Shopper slip and fall on the sharp edge of the shopping cart. As a trained police officer Polly should not have run, knowing of the circumstances, to the aid of Shopper. Polly's act of running into a known dangerous situation shows conduct falling below the standard of care to which Polly, as a trained police officer, should have conformed to protect her own safety. Thus, Polly contributed to her own injuries.

Polly will contend it is foreseeable when a person is in peril that one would run to the aid of another. Polly only saw shopper fall and hit his eye. Polly did not know of any potential danger associated with Shoppers fall. Merely, she was helping a person in need as she has been trained to do.

Moreover, danger invites rescue. Upon seeing a person in the need of first aid it is foreseeable that a customer, like Polly would render help. Thus, Polly's conduct did not fall below the

standard of reasonable care she owed to herself.
Therefore, comparative negligence is not a valid defense.

Assumption of Risk

One who assumes the risk when he has knowledge, comprehension and an appreciation of the danger, and voluntarily elects to encounter the danger.

Market will argue Polly saw Shopper fall and ran to his aid. Polly's act of running to aid Shopper after she saw what had happened shows comprehension and an appreciation of the danger, and she voluntarily elected to encounter the danger.

However, there are no facts that indicate Polly was aware of the banana peel on the floor. Hence Polly's unawareness of the banana peel shows she did not have knowledge of or comprehend the risk before she attempted to help Shopper.

Therefore, assumption of the risk is not a valid defense.