

Question 1

Autos, Inc. manufactures a two-seater convertible, the Roadster. The Roadster has an airbag for each seat. Autos, Inc. was aware that airbags can be dangerous to children, so it considered installing either of two existing technologies: (1) a safety switch operated by a key that would allow the passenger airbag to be turned off manually, or (2) a sensor under the passenger seat that would turn off the airbag upon detection of a child's presence. Both technologies had drawbacks. The sensor technology was relatively new and untested, and the safety switch technology had the risk that people might forget to turn the airbag back on when an adult was in the seat. The safety switch would have increased the price per car by \$5, and the sensor would have increased the price per car by \$900. Research showed that most riders were adults and that the airbags rarely hurt children who were properly belted into the seat. No federal or state regulation required either a safety switch or a sensor. Autos, Inc. chose to install neither.

Oscar bought a Roadster. On his first day of ownership, he decided to take his 10-year-old daughter, Chloe, to a local ice cream shop. On the way home, Oscar accidentally ran the Roadster into a bridge abutment. The airbags inflated as designed and struck Chloe in the head, causing serious injury. Chloe was properly belted into the seat. She would not have been hurt if the airbag had not struck her.

What tort theories can reasonably be asserted on Chloe's behalf against Autos, Inc., what defenses can Autos, Inc. reasonably raise, and what is the likely outcome? Discuss.

Answer A to Question 1

4)

1)

Chloe v. Autos, Inc[.]

Products Liability

When a consumer is injured by a product, there are 5 theories the consumer can sue under in the area of products liability: battery; strict products liability; negligence; breach of warranties; and misrepresent[ation]. The facts in the present case would give rise to three of the causes of action: strict products liability; negligence; and breach of warranties.

Strict Products Liability

A manufacturer or distributor of a product placing a product into the stream of commerce in a defective manner will be strictly liable for harm caused by the product. In order to recover under this theory, the following elements must be met: a proper defendant, i.e., a manufacturer or distributor of the product that left the plant in a defective condition; a proper plaintiff; a defective product; causation; damages; absent defenses.

Proper Defendant - Manufacturer or Distributor

To recover under strict products liability, the defendant must be a manufacturer or distributor of the product that left the plant in a defective condition. Here, the defendant is Auto[s], Inc[.], the manufacturer of the vehicle. This is a proper defendant for recover[y] under the theory. Additionally, the product must have left the manufacturer's plant in a defective condition, which will be established under defective condition (see infra). The product here, the car, left the defendant's plant in the condition that was not subsequently changed and if found to be defective, was in that condition at the time it left the plant. This element is therefore met.

Proper Plaintiff - User or Consumer

Traditionally, the person injured was required to be the purchaser of the product, or at least a person in privity with the purchaser. Modernly, a proper plaintiff is any user, consumer, or foreseeable bystander who could be injured by the product. Here, the person injured was a passenger in the car, and the daughter of the purchaser. As a family member and rider in the vehicle, she is a proper plaintiff for recovery under this theory.

Defective Condition

A product can be defective by: manufacturing defect; design defect; or failure to adequately warn.

Manufacturing Defect

A manufacturing defect is present when a few of the products leave the plant in a condition different than the rest. The facts in the present case suggest that all the cars left the plant in the same condition. There was therefore no manufacturing defect.

Design Defect

A design defect can occur when all the products leave the plant in the same condition and there is a defect in the design of the product. There are two tests for design defects: the consumer expectation test and the reasonable alternative test.

Consumer Expectation Test

This test is met if the product leaves the plant in a condition more dangerous than the average consumer would reasonably expect. Here, a consumer might reasonably expect that a safety feature in a vehicle, such as an airbag, would make the car more safe, not less safe. Facts in the present case indicate that but for the airbag, Chloe would not have been injured. This product is therefore defective under this test.

Feasible Alternative Test

This test compares the design of the product with other reasonable alternatives available in the market. The test balances the availability of alternatives and their cost against the risk to users and the value of lives saved. Although there are no facts to indicate what other car producers did, it is evident that there were alternatives that were available. Even though there were no statutes to mandate their usage, this fact is not determinative in alternatives. Facts indicate that the company had considered implementing two separate safety measures. The fact that both the safety measures themselves had risks and drawbacks is also relevant. Chloe will first argue that the first alternative the defendant should have employed was the switch to manually disable the airbag. The cost of this product is very minimal at \$5. However, the defendant will claim that there was a risk that people would fail to turn it back on, making the car more dangerous to the majority of passengers, according to research. The reason the airbag was designed in the first place is [sic] to make the car more safe for the majority of riders, which this device would prevent. In weighing these two arguments, the court would probably find that even though the cost of this is minimal, its risk might have outweighed its utility, making the car even more dangerous.

The plaintiff will next argue that the second device should have been employed, the sensor switch, as it would not be at risk to user misuse. However, defendant will assert

that this device, because it is new and untested, would malfunction, making the product more dangerous. They will argue that the cost of this device, at \$900, is far too costly to be reasonable. In weighing utility, costs and risks, the outcome of this argument is highly dependent upon the reliability of this device. If it is truly new and unreliable, the defendant will no doubt be successful in its argument. If, however, it is shown to be reliable, the defendant's argument will be weakened. The court will have to decide whether, if useful and reliable, \$900 is reasonable for this device, in light of its reliability and lives saved.

Failure to Warn

A product is defective if the defendant, knowing of a defect, fails to adequately warn the consumer. An adequate warning is one that tells the consumer of the risk, how it occurs, how to prevent such risk, and any mitigating factors to avoid further injury. Here, facts indicate that the D was aware of the danger of the airbags to children. There is no information on whether there was a warning as to this fact. If there was no warning about the risk of airbags to children, as it appears from the available facts, this product is defective.

Causation

Actual Causation

For strict liability, the injury to the P must have been actually caused by the defendant's product. The test is "but for" for the D's conduct, the P would not have been injured. Here, the facts indicate that but for the airbags, the P would not have been injured.

Proximate Causation

Additionally, the P's injury must have been caused by the D's product. Here, P will argue that the injury was caused by the airbag and the D should be held strictly liable for all injury. The D will argue that Oscar crashing the car is a superceding intervening cause that should sever liability. Since airbags are installed to protect passengers in car accidents, this case is not superceding and the court will agree with the P here.

Damages

For strict liability, the P must have suffered physical injury. Here, the P was struck in the head, causing serious injury. This is a sufficient damage here.

Defenses

Contributory/Comparative Negligence

A P's recovery may be reduced or barred if found to be contributorily negligent. Although comparative neglig[e]nce is the majority view, under either comparative or contributory negligence, the P must be contributorily negligent. It is true here that Oscar ran the car into the bridge, but he is not the P. Even though Oscar may have been negligent, his conduct was not the conduct of the P, in order to trigger this defense. There are no facts present to indicate that P was at all negligent, since she had her seatbelt fastened.

Assumption of Risk

Assumption of risk is a defense when P proceeds in spite of a known risk. However, since D failed to warn of the risk, P could not have knowingly assumed it.

Since all elements have been met, P can recover under strict liability.

Negligence

Negligence cause of action is available when the D owed a duty of care to the P, which he breaches, causing damage to the P. A P can recover for injury caused by a manufacturer's negligence if P can establish: duty; breach; actual causation; proximate causation; damages; absent defenses.

Duty

A duty is owed by all persons to act in a way as to avoid harm to other[s]. The standard owed here is the duty to act as a reasonable prudent person to avoid harm to all for[e]seeable persons. Here, the D, as a car manufacturer (see supra), owed a duty to its consumers to produce a car in a safe way and to avoid all injury to purchasers and passengers. The amount of care owed is that of another reason[a]ble prudent car manufacturer.

Breach

The duty owed is breached when the D fails to act as another reasonable prudent person under the circumstances. Here, the P will argue that a reason[a]ble car producer would employ safety devices to protect riders and passengers, as were available. The D will argue that it acted reason[a]bly, since there were no statutes mandating conduct. Although presence of a statute may mandate conduct, absence of a statute is not a defense. The D still must act as a reasonable prudent car producer. Here, there is no indication of what other vehicle manufacturers do, but there are facts of other safety precautions. Since a reasonable car manufacturer would have at least warned of the danger, and facts indicate that the D did not, it appears as though D breached the duty owed when it failed to at least warn of the dangers.

Causation - Actual & Proximate

Actual Causation

See supra for actual cause. As discussed supra, the D was the actual cause of the D's [sic] injury.

Proximate Cause

See supra for proximate cause. As discussed supra, the D was the proximate cause of the D's [sic] injury.

Damages

The cause of action allows recovery for personal injury, which was incurred here (see supra).

Defenses

The same defenses are available here as under strict liability, and are not met (see supra). Therefore, P will be able to recover.

Warranties

Implied in every product are 2 implied warranties: Implied warranty of merchantability and implied warranty of fitness.

Implied Warranty of Merchantability

A product must be merchantable, meaning generally safe and fit for ordinary purposes. Here, the car was generally safe for general purposes. Although children could be injured by the car, this is a failure to warn not generally de[a]lt with by the warranty.

Answer B to Question 1

1)

CHLOE V. AUTOS, INC.[.] (“AUTOS”)

Chloe was injured while traveling as a passenger in her father, Oscar’s, Roadster, which was manufactured by Autos. Oscar will bring a cause of action against Autos on Chloe’s behalf ad litem because she is under eighteen years old. The following will examine and analyze the possible causes of action, the defenses Autos may raise, and the likely outcome.

1. CAUSE OF ACTION UNDER A STRICT PRODUCTS LIABILITY THEORY AGAINST AUTOS

STRICT PRODUCTS LIABILITY

A commercial seller who sells a defective, unreasonably dangerous product to an intended consumer or user will be held strictly liable for any harm caused as a result of the defective product.

Commercial Seller

In order to be held strictly liable, the defendant must be a commercial seller who purposefully injected the product into the stream of commerce.

Autos manufactures the Roadster and is a corporation. Because Autos manufactures the Roadster and places it into the stream of commerce, Autos is a commercial seller.

Defective Product

A defect may be shown by plaintiff the following ways: 1) Defective Design, 2) Manufacturing Defect of that Particular Product Only, 3) Failure to Warn or Inadequate Warning.

1) Design Defect

Plaintiff may show that defendant’s product had a design defect if there was a feasible alternative available at the time it was manufactured and if so, that the alternative would make the product safer and was economically reasonable.

Alternative Design Available

The facts state that at the time the Roadster was manufactured Autos itself was aware of two possible alternative designs to the Roadster that would possibly make the car's airbags safer for children. This included: (1) A safety switch operated by a key, or (2) A sensor under the seat that would detect the child's presence. The facts do not indicate that either product guaranteed the child's safety. However, they may have helped. Plaintiff will contend that the safety switch would have worked, but that Autos did not install it in fear that passengers would forget to turn it off and on. Thus, it appears that the safety switch, if operated correctly by the users, would have made the airbags safer for children. In regard to the sensor, its technology was relatively new and untested. Defendant will argue and thus there is no guarantee that it would have made the car safer. Plaintiff, however, will argue that while it might not have been tested and [was] relatively new, it was a feasible alternative design that could have indeed made the Roadster safer. Additionally, Plaintiff will assert that Autos was even "aware" of the danger to children, and even "considered installing either of the two existing technologies.[]" Autos will contend that neither the Fed nor State governments require a safety switch or sensor. However, this argument is invalid because they knew of the potential risk of the airbags and if they knew about the risk and did not remedy it, they should not have manufactured the Roadster. Because the safety switch and sensor were available technologies at the time that would likely have made the Roadster safer, there was an alternative design available to Autos.

Economic Feasibility of the Alternative Design

The alternative design must be one that is reasonable and economically feasible to the manufacturer.

The safety switch according to the facts would increase the Roadster's price by \$5.00. The sensor would increase the Roadster's price by \$900 per car. Plaintiff will first contend that for \$5.00 extra per car, the safety switch was economically reasonable and that \$5 would not have made a difference in the car's price and marketability, as the car is likely much more expensive already. Plaintiff will further assert that the sensor, while untested, was worth it to install for \$900 extra per car. Defendant will contend that \$900 was too much per car for an untested product and that \$900 extra would hurt the Roadster's sales appeal and marketability. While this may be somewhat true, Plaintiff will argue that safety is priceless, and that \$900 extra is relatively small in comparison to the overall price of a car such as the Roadster, and that saving a life or minimizing injury of a child or adult is worth every penny. For \$5 more, the safety switch is economically feasible and Plaintiff has a valid argument that for \$900 extra, the sensor is worth it if it has the chance of preventing injury or death while traveling in the Roadster.

2) Manufacturing Defect

Manufacturing defect may be asserted if the particular product that Plaintiff purchased was individually defective. Here, there is no evidence that Oscar's particular Roadster was individually defective, and thus Chloe cannot assert this theory.

3) Inadequate Warnings or Failure to Warn

Plaintiff may also show defect or that the product was unreasonably dangerous if Defendant failed to warn or gave inadequate warnings.

Chloe will contend that Autos failed to warn its purchasers of the risk to children by the airbags. As stated in the facts, "Autos Inc. was aware that airbags can be dangerous to children," and thus should have provided some warning to purchasers of the vehicle. Autos will contend that no warnings were necessary because "research showed that most riders were adults and that the airbags rarely hurt children who were properly belted..." Chloe will rebut this argument with the fact that children are everpresent and it should be obvious to Autos that children would ride in the Roadster as passengers and this is a fact that Autos should have considered, despite the research. Thus, because Autos knew of the risk to the children and the potential dangers, and failed to warn of them, they can be held accountable for failure to warn.

Conclusion: Chloe can show under a design defect theory that an alternative safer design existed. Additionally, Chloe can show that Autos failed to provide inadequate [sic] warnings as to the airbags' risk to children.

Foreseeable User

The consumer who was harmed by the alleged defect must be one that is foreseeable to the manufacturer.

Chloe, as a passenger in the Roadster, who was properly seated in the car, will contend that she was a foreseeable user, as it is foreseeable that the driver will have passengers in the vehicle from time to time. Autos will contend that Chloe, a ten-year old child was not a foreseeable user because "research showed that most riders were adults and that the airbags rarely hurt children who were properly belted..." However, this argument will fail for Autos because they were still aware that children would ride as passengers from time to time and thus Chloe was a foreseeable user.

Causation

Plaintiff must prove defendant was the legal and proximate cause of her injury.

Legal Causation

Under legal causation, plaintiff must show that “but for defendant’s defective design, she would not have been harmed.”

Thus, here we ask, but for the failure of Autos to install sensors or a safety switch or provide a warning to the users of the Roadster regarding the airbags and children, would Chloe have been hurt? The answer is no, because as the facts state, the airbags inflated as designed and struck Chloe, “causing serious injury,” and “she would not have been hurt if the airbag had not struck her.” Autos is the legal cause of Chloe’s harm.

Proximate Cause

Proximate cause examines whether the harm to plaintiff is foreseeable and whether there were any intervening forces.

Chloe was injured by the airbags as they [sic] inflated as designed as they [sic] struck her. Autos will contend that this was caused as a result of Oscar accidentally driving into a bridge. However, Chloe will successfully argue that accidents by drivers of the Roadster are foreseeable and frequent and that the whole purpose of airbags is to prevent or minimize injuries from such foreseeable accidents. Additionally, Chloe was properly belted in the seat, and because she was properly belted and the airbags operated as designed, Autos['] defect was the direct and proximate cause of Chloe’s injury.

Damage/Harm

Plaintiff must prove damage. As discussed, as a result of the defect Chloe suffered serious injury to her head.

DEFENSES BY AUTO

Assumption of the Risk

Plaintiff assumes the risk of injury if he consciously and voluntarily assumes the risk and is aware of the danger, but still proceeds. This serves a complete defense to strict liability in most modern jurisdictions.

Autos will contend that Chloe and Oscar assumed the risk of harm by purchasing a two-seater convertible and because it was a convertible they knew or should have known that it was a dangerous vehicle. However, Chloe will rebut this claim by asserting that even if the car was a convertible, it should have and could have been designed safer and that she did not assume the risk of a defective airbag whatsoever. Autos['] defense is weak and will fail because Chloe never assumed the risk of injury by a defective airbag according to the facts.

2) NEGLIGENCE CLAIM AGAINST AUTOS

Chloe may also assert a claim of negligence against Autos. Negligence requires the showing of: 1) Duty, 2) Breach of Duty, 3) Actual Cause, 4) Proximate Cause, and 5) Damages.

Duty

A person is held to the duty of care to act as a reasonably prudent person under the circumstances.

Autos, a car manufacturer, will be held to act as the reasonably prudent auto manufacturer would in designing and manufacturing the Roadster.

Foreseeable Plaintiff - Chloe as a passenger was a foreseeable plaintiff under both the Cardozo and Andrews views as she was legitimately riding with Oscar in the vehicle at the time of the accident.

Breach of Duty

Breach of duty may be shown to be an actual breach or inferred via *res ipsa loquitur*.

Chloe will contend that Autos breached its duty of care to her by failing to make the Roadster safe and by failing to install the safety devices, such as the sensor and/or switch. Furthermore, Autos knew of the alternatives, as discussed above, and could have installed them. Autos will contend that doing so would be costly and that there were drawbacks to each. However, as discussed, the drawbacks and risks were worth it in comparison to the risk of harm and thus viable. Autos will contend that neither the Fed nor State governments require a safety switch or sensor. However, this argument is invalid because they knew of the potential risk of the airbags and if they knew about the risk and did not remedy it, they should not have manufactured the Roadster. As a result, by failing to make Roadsters and its airbags safe for children, Autos breached its duty of care to Chloe, who was harmed by the defect.

Actual Cause/Legal Cause

Rule: see supra. As discussed above, Autos is the actual cause of Chloe's harm.

Proximate Cause

Rule: see supra. As discussed above, Autos is the proximate cause of Chloe's harm.

Damage

See supra.

DEFENSES

Assumption of the Risk

Rule: supra. As discussed above, an assumption of the risk defense will fail.

Comparative Negligence

Comparative negligence is shown by demonstrating that plaintiff was negligent in its actions. Depending on the jurisdiction (pure or partial), the damages will generally be reduced in proportion to plaintiff's negligence.

Autos will contend that because Oscar was negligent in causing the accident, as the Roadster ran into a bridge abatement [sic], he was contributorily negligent. While this is a valid argument, as the accident and release of [the] airbag was caused by Oscar, Chloe may contend that Oscar's negligence should not be imputed to her. This is true in most jurisdictions- that the driver's negligence is not imputed to a passenger's claim. However, if the jurisdiction imputes Oscar's negligence, his negligence will be reduced in proportion thereof and provide Autos with at least a partial defense.

Conclusion: Chloe has a valid negligence claim against Autos. Depending on the jurisdiction, however, Autos may reduce their damages via Oscar's comparative negligence.

3) IMPLIED WARRANTY OF MERCHANTABILITY

Under the implied warranty of merchantability, a product that is sold is impliedly warranted to be reasonably useful and safe for average use.

Chloe will contend under this theory that the Roadster, a two-passenger vehicle, should have been at least made safe for all that [sic] would be in the vehicle, including the driver and passenger. Because the airbags were not safe, and injured her, she will argue that the Roadster was not fit for regular use, as intended by its purchasers. Autos may try and contend that the Roadster was not designed to be safe for children because research showed that children were not regularly passengers in the Roadster. However, for reasons discussed above, this argument will fail. Chloe will be successful against Autos under an implied warranty of merchantability theory as well.