

Tort Law for Paralegals: Chapter 11

Chapter Outline

The screenshot shows a digital learning interface with a black header bar containing the text "Tort Law for Paralegals: Chapter 11". On the left side, there is a vertical stack of seven blue buttons with white text: "Lecture Hints", "Answers to Case Questions", "Problems", "Problem Answers", "Projects", "Project Answers", and "Chapter Quiz". The main content area on the right is titled "Chapter Outline" and "Chapter 11 Products Liability". It includes a "Summary" paragraph, a "CHAPTER OUTLINE" section, and a list of topics: "I. INTRODUCTION TO PRODUCTS LIABILITY", "A. Historical development", "1. Privity of contract", and "a. Definition: Direct contractual relationship". A vertical scrollbar is visible on the right side of the content area.

Step Text

Chapter 11

Products Liability

Summary: This chapter continues the discussion of strict liability as applied to defective products. The topic of bad faith is also addressed.

CHAPTER OUTLINE

I. INTRODUCTION TO PRODUCTS LIABILITY

A. Historical development

1. Privity of contract

a. Definition: Direct contractual relationship between parties making agreement (e.g., students paying college for this course). Privity of contract exists between parties.

b. *Winterbottom v. Wright*, English landmark case (1842)

(1) The defendant manufactured a coach for the postmaster-general, whose driver, the plaintiff, was injured because of a defective wheel.

(2) The court held that privity of contract was required between the plaintiff and the defendant for recovery of defective product.

(3) The plaintiff's recovery was barred in this case because the plaintiff had no privity with the defendant.

2. Imminent danger exception (Winchester rule):

a. *Thomas v. Winchester*, New York Court of Appeals case (1852)

(1) Privity of contract is not required when the defective product is imminently dangerous.

(2) Imminent danger = inherent risk created by very nature of defect in product.

(3) Mislabeled medicine (actually containing poison) is inherently dangerous, and thus the plaintiff may recover from the defendant even without privity.

b. This exception was expanded throughout nineteenth and early twentieth centuries to include spoiled food, explosives, exploding machines, and defectively made vehicle components.

3. The imminent danger exception overtakes the privity rule.

a. *McPherson v. Buick Motor Co.*, New York Court of Appeals landmark case (1916)

(1) Justice Cardozo (writing for majority) declared that privity of contract was unnecessary for the plaintiff to recover from the defendant for defectively made products.

(2) If any product, when defectively manufactured, becomes unreasonably dangerous, then the manufacturer or seller becomes liable for injuries caused by the defective product.

b. The MacPherson rule was adopted by many state courts throughout 1920s through 1940s.

4. California strict products liability suggestion:

a. *Eco v. Coca Cola Bottling Co.*, California Supreme Court case (1944)

(1) Justice Traynor concurring opinion-Advocated strict liability for manufacturers and sellers of defective products.

b. Traynor's position adopted by court in *Greenman v. Yuba Power Products, Inc.* (1962); began modern products liability

B. Public policy objectives behind products liability: Products liability = society's decision, through its court or legislatures, that businesses manufacturing or selling defective products are in the best position to bear the costs of injuries to innocent product users. Manufacturers and sellers can purchase insurance and spread the cost of adverse tort judgments (by including it in product prices).

II. WARRANTIES

A. Express warranty: Statement that a particular promise or set of facts is true.

B. Implied warranty of merchantability

1. Arises by virtue of law

2. When goods are sold, the law imposes an implied warranty that the goods sold will be "merchantable."

3. This means the goods must be fit for their ordinary purposes.

III. PARTIES TO PRODUCTS LIABILITY CASES

A. Manufacturers: Makers of defective products giving rise to lawsuit.

B. Sellers

1. Anyone in business of selling goods such as the defective one

2. Includes manufacturers, wholesalers, and retailers

C. Ultimate users

1. Purchasers who use the defective product
 2. Persons who use the defective product that the purchaser bought (usually family members, friends, employees, etc.).
 3. The ultimate user is defined as the reasonably foreseeable user of the defective product.
- D. "Going for the deep pocket": Plaintiff's philosophy in products liability litigation is to sue virtually everybody, but especially the wealthiest members of the seller chain, usually the manufacturer.

IV. ELEMENTS OF PRODUCTS LIABILITY

- A. Strict liability for seller or manufacturer for injuries caused to ultimate user by defective product
 - B. No privity of contract requirement
 - C. Negligence and intent are irrelevant.
 - D. Typical formula (statutory and/or common law in most states)
 1. Defect renders product unreasonably dangerous to use
 2. Seller or manufacturer must be in business of selling products such as flawed one
 3. Product cannot have been substantially changed between time it left seller or manufacturer's hands and time it reached ultimate user
 4. Ultimate user must have used product properly (i.e., in way that product was designed to be used)
 - E. Additional elements (used in some jurisdictions)
 1. Ultimate user must have been foreseeable (foreseeable plaintiffs theory)
 2. Seller or manufacturer must have been responsible for condition in which product was maintained
 3. In a few states, a product sale must have occurred.
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F. Proximate cause: Defective product must proximately cause ultimate user's injuries.

G. Restatement (Second) of Torts § 402A

1. Seller of defective products that are unreasonably dangerous to the user or consumer or the user's property is liable for physical harm caused to the ultimate user or consumer or the user's property, if:

a. Seller is engaged in business of selling such products, and

b. Product is expected to, and does, reach user or consumer without substantial change in condition in which it was sold.

2. Liability rule applies even though: a. Seller has exercised all possible care in preparing and selling defective product.

b. User or consumer has not bought product from, or formed contract with, seller (no privity of contract requirement).

3. Unreasonably dangerous defective products

a. Fault in product design

(1) Product is unreasonably dangerous because of faulty design.

(2) Court tests for faulty design:

(a) Consumer contemplation test-Product is unreasonably dangerous if consumer ordinarily would not reasonably anticipate danger created through its design.

(b) Danger/utility test-Product is unreasonably dangerous if danger created by its design outweighs benefits derived from its use.

(c) State-of-the-art discoverability test-If manufacturer could have discovered hazards created by defective product designs, using current, state-of-the-art technologies, then failure to do so makes design-flawed product unreasonably dangerous.

b. Error in product manufacture or assembly: Defects were created while product was being manufactured or assembled.

c. Improper product maintenance

(1) The seller failed to properly maintain the product before the injured user used it.

(2) This failure makes the product unreasonably dangerous.

d. Manufacturer or seller's failure to warn user of product dangers: Product becomes unreasonably dangerous because of manufacturer's or seller's failure to warn user of potential dangers.

4. Restatement (Second) vs. Restatement (Third): A frequently cited section of the Restatement (Second) of Torts is the section on products liability, Section 402A.

a. A major difference between the Restatement (Second) and the newer Restatement (Third) is that a strict liability standard is now applied to manufacturing defects of products, and a different test, a risk-utility standard, is limited to design defects.

b. For design defects, the burden is placed back on the plaintiff in Restatement (Third). There is no longer a "consumer expectation test" as an independent means to determine if a product is defective.

5. A product is defective in design under Restatement (Third) when: "the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design . . . and the omission of the alternate design renders the product not reasonably safe."

V. DEFENSES TO PRODUCTS LIABILITY A. Ultimate user's misuse of product

1. If the user does not use the product properly (i.e., uses it in a fashion in which product was not designed to be used), then the manufacturer or seller is not liable even if the defective product is unreasonably dangerous.

2. Misuse = uses that were not reasonably foreseeable.

B. Assumption of risk: Ultimate user assumes risk of using defective product by:

1. Discovering defect but disregarding it and using product anyway,

2. Failing to properly maintain product, or

3. Failing to follow instructions or heed warnings for safe product use.

C. Contributory negligence is not a defense.

1. Some statutes, however, specifically allow comparative negligence.
2. Contributory and comparative negligence can apply to other types of absolute liability cases.

VI. COMPARISON OF PRODUCTS LIABILITY TO CONTRACT LAW WARRANTIES

A. Warranty = contractual guarantee that seller gives buyer that product will meet certain standards.

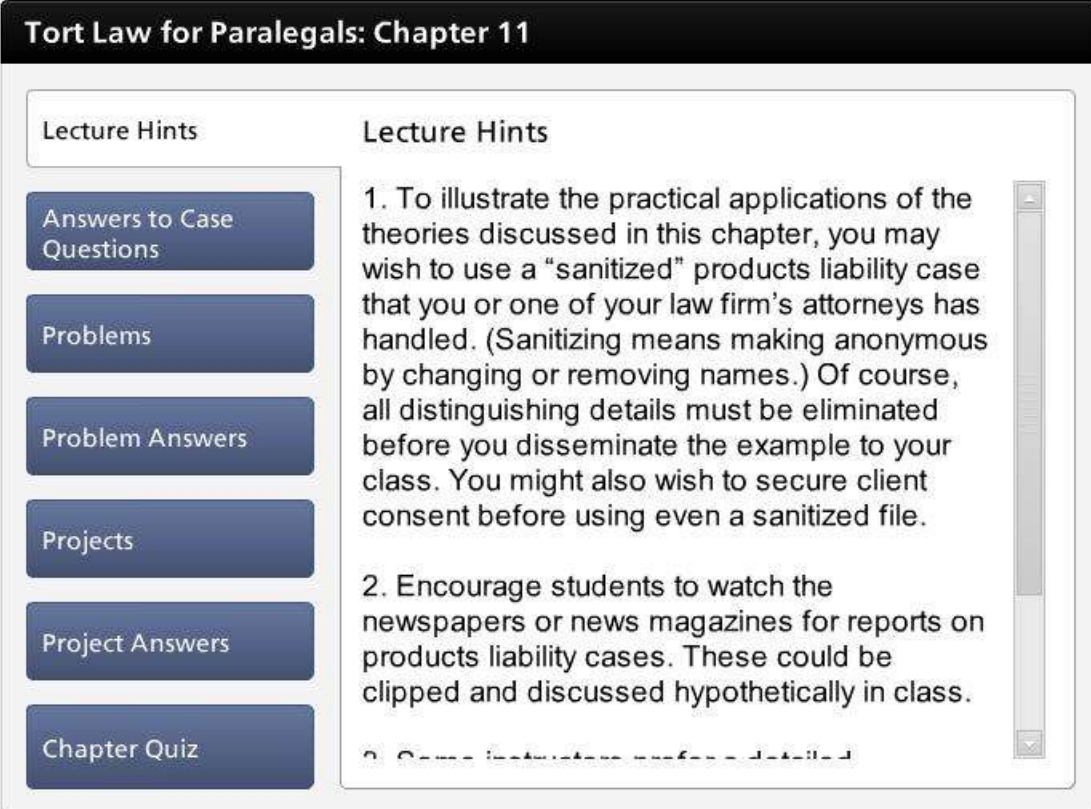
B. If product fails to satisfy guaranteed standards, then warranty is breached, and buyer may sue seller for damages.

VII. BAD FAITH

A. Bad faith = An insurance company's unreasonable denial of a claim or failure to pay a claim in a timely fashion within the policy limits.

Lecture Hints

5 seconds



Tort Law for Paralegals: Chapter 11

Lecture Hints

- Answers to Case Questions
- Problems
- Problem Answers
- Projects
- Project Answers
- Chapter Quiz

Lecture Hints

1. To illustrate the practical applications of the theories discussed in this chapter, you may wish to use a “sanitized” products liability case that you or one of your law firm’s attorneys has handled. (Sanitizing means making anonymous by changing or removing names.) Of course, all distinguishing details must be eliminated before you disseminate the example to your class. You might also wish to secure client consent before using even a sanitized file.
2. Encourage students to watch the newspapers or news magazines for reports on products liability cases. These could be clipped and discussed hypothetically in class.

3. Some instructors prefer detailed

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2. Encourage students to watch the newspapers or news magazines for reports on products liability cases. These could be clipped and discussed hypothetically in class.

3. Some instructors prefer a detailed discussion of product warranties while discussing products liability. Students who have not yet had business law courses often confuse the contractual and tort elements of warranties and strict liability.

Answers to Case Questions

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The screenshot shows a software interface for 'Tort Law for Paralegals: Chapter 11'. On the left is a sidebar with several blue buttons: 'Lecture Hints', 'Answers to Case Questions', 'Problems', 'Problem Answers', 'Projects', 'Project Answers', and 'Chapter Quiz'. The 'Answers to Case Questions' button is highlighted. The main content area on the right is titled 'Answers to Case Questions' and contains the following text:

Sobczak v. General Motors Corporation
1. No. The van did not meet consumer expectations.
2. Yes. There is a good chance General Motors was aware of this defect. Many manufacturers find it cheaper to pay for accidents than to make a product safer.

Sweeney v. Aurora Casket Company
1. The court found no privity of contract between the Sweeneys and Aurora.
2. No. All the claims were dismissed.

Smith v. Scripto-Tokai Corp.
1. The risk that children would be injured was unreasonable. A high social value is placed upon the safety of people and property that are threatened by child-play fires. In this case there was a high risk of

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2. Most likely, financial reasons were a concern when the product was designed and manufactured without features to make it childproof.

Scott v. Dutton-Lainson Comp.

1. Scott's evidence was not admissible because Scott seeks to introduce evidence of a subsequent remedial measure to do exactly what the rule forbids: prove negligence or culpable conduct

2. The court categorizes design defect claims as "defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design."

Perez v. VAS S.p.A.

1. Yes, the case meets expectations. The employer altered procedures for using a complicated and dangerous machine. The designer can't contemplate that.

2. Pabco Paper should have required the manufacturer to demonstrate the new machine to employees. Employees should have been tested on the new manual and use of the machine before being allowed to use the machine by themselves. Also, OSHA found that a guard should have been placed near the nip point.

Problems

5 seconds

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Lecture Hints

Answers to Case Questions

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Problems

In the following hypotheticals, determine if strict liability under products liability applies, and if the tortfeasor will be strictly liable to the injured party. Are any defenses relevant? If so, how would they be applied?

1. WedgeCorp manufactures golf clubs. The clubs have rubberized grips that golfers hold onto to swing them. Chase bought his wife a set of clubs for her birthday. Cindy is an avid golfer and uses the clubs three times weekly at the local country club. When WedgeCorp manufactured the clubs, the company used an improperly mixed glue that did not tightly bond the grips to the end of the clubs. While Cindy was swinging a five iron, the grip came loose and the club sailed through the air, striking Cindy's golfing partner, Betty, in the forehead.
2. Better Bovine, Inc. (BB) sells dairy cattle to farmers.

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2. Better Bovine, Inc. (BB) sells dairy cattle to farmers. These livestock are raised on one of BB's pasturing farms outside of town. To control weeds, BB's employees sprayed pasture land with herbicides. The cattle ate this grass and absorbed the chemicals into their systems. These chemicals reduced the cows' milk production. Several farmers who purchased BB cows suffered substantial economic losses when the animals' milk productivity plummeted.

3. Whopper Toys Corporation manufactures "Mr. Killjoy," a combat doll. Mr. Killjoy comes equipped with sharp plastic swords that you can fit into his hands for mock battles. Whopper indicated on its packaging that this toy was not suitable for children under the age of six years. This was the only warning printed on the package. Franco bought a Mr. Killjoy figure for his four-year-old son, Francisco. While playing with Charlotte, a three-year-old neighbor girl, Francisco had the doll "attack" her. Its sword stabbed Charlotte through her nose, leaving a permanent scar.

4. Omar is an accountant who lives in an apartment next to Joyce. Omar sold his electric stove to Joyce for \$200. Omar had never kept the electric heating elements on top of the stove particularly clean. In fact, they were caked with grease and dirt. The first time Joyce turned on the stove, the heating elements caught fire and set Joyce's long hair ablaze.

5. The Steak Out restaurant has a reputation for excellent steaks. One day it received a meat shipment from the Midwestern Meat Packing Company, a national meat distributor. When the shipment left Midwestern, it was shipped in a refrigerated truck. However, en route to The Steak Out, the truck's refrigeration system broke down, but the driver never noticed. The meat spoiled. When The Steak Out's employees unloaded the truck, they did not notice that the meat smelled bad. In fact, the meat did not smell much, if at all. Nevertheless, customers served from this shipment of beef became seriously ill from food poisoning.

6. Vlad bought a large screwdriver, made by the Hand Tool Manufacturing Company, from his local hardware store. Unknown to anyone, the screwdriver had a microscopic crack in its shaft. If excessive pressure were exerted on the screwdriver, it would snap. Vlad used the screwdriver to pry open sealed crates that he received at work. One day, while he was prying open a crate, the screwdriver broke, severely cutting the tendons in Vlad's left hand.

7. Chase works for the United States Department of Defense. One day he noticed that his paper-shredding machine made a loud grinding noise during operation. He opened the maintenance door, but could see nothing wrong with the parts inside. Chase continued using the machine, despite the

horrible noise. Several coworkers complained to him about it. The grinding occurred because the machine was out of lubricating oil, which, according to the machine's instruction manual, should have been checked at least monthly. No one had checked the oil level since the machine was purchased more than a year ago. While Chase was using the machine, its gears froze up and broke loose the paper-shredding blades. These lodged in Chase's thighs, cutting him deeply.

Problem Answers

5 seconds

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Problem Answers

1. Is WedgeCorp strictly liable, under products liability law, for Betty's injuries? Using the "typical products liability formula" discussed in this chapter, the basic elements are satisfied: (1) The defectively glued grip (an assembly defect) rendered the club unreasonably dangerous to use, as the grip would most likely give way while a golfer was swinging the club, which could render it an extremely dangerous projectile, just as in this problem. (2) WedgeCorp was engaged in the business of manufacturing and selling golf clubs such as the defective one in this case. (3) According to the facts in this problem, the condition of the clubs did not substantially change from the time they left WedgeCorp until they reached Cindy, the ultimate user. (4) It was reasonably foreseeable that a defectively glued grip would come loose while Cindy was swinging the club, causing the club to fly through the air, striking Betty, who was standing nearby. Thus, the defect proximately caused Betty's injuries. (5) Cindy was using the golf club properly, that is, swinging to hit a golf ball, an activity for

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that is, swinging to hit a golf ball, an activity for which the product was obviously designed. Applying the elements from § 402A of the Restatement (Second) of Torts, one should reach these same conclusions. The key to this hypothetical, however, is whether the injured party, Betty, was an ultimate user. Betty was not using the defective golf club at the time of her injury. Instead, Cindy, the owner of the club, was using it when the defectively glued rubberized grip came loose. Thus, Cindy, not Betty, would be considered the ultimate user. WedgeCorp is not absolutely liable under products liability theory. However, Betty should prevail in her products liability lawsuit against WedgeCorp. Under the foreseeable plaintiffs theory, it was reasonably foreseeable that Betty, Cindy's companion, would be injured while Cindy was using the club. This would place Betty within the zone of foreseeability for purposes of proximate cause (which, under products liability, is the range in which reasonable plaintiffs theory is applied). WedgeCorp is strictly liable to Betty for her injuries caused by the defective club. No defenses apply to this hypothetical, because there was no assumption of risk or product misuse.

2. Is Better Bovine strictly liable, under products liability theory, for the farmers' economic losses incurred when their cattle, purchased from BB's stock, experienced diminished milk production as a result of ingesting BB's herbicides? First of all, cattle are goods and, accordingly, are covered by products liability statutes. Some states have specific provisions pertaining to livestock, in addition to commercial warranty statutes under states' versions of the Uniform Commercial Code. Applying the typical products liability formula discussed in this chapter, the elements are satisfied: (1) The cattle suffered an "assembly defect," in that they were injured by absorbing harmful chemicals while eating grass sprayed with BB's herbicides. (a) Did this absorption render the cattle unreasonably dangerous to the ultimate user or to the user's property? Yes. By absorbing these chemicals, the cattle's milk production significantly declined. Although this presented no direct physical danger to the farmers (the ultimate users of the products), it clearly did harm the farmers' property (the cattle themselves). Under Restatement (Second) § 402A and most state statutory versions, product liability includes harms to the ultimate user's property as well as personal injuries. Thus, the chemically tainted cattle were unreasonably dangerous. (b) The chemicals would probably contaminate the cattle's milk, which could directly threaten the farmers (if they drank the milk) or, for that matter, any subsequent purchasers of the milk. But that goes beyond the scope of this problem, which involves only the farmers' economic losses from declining milk production. (2) BB is in the business of selling cattle such as the ones hurt in this problem. (3) The cattle's condition did not substantially change from the time they were contaminated with the herbicides to the time they reached the farmers. (4) The chemical absorption proximately caused the farmers' economic losses. It was reasonably foreseeable that these chemicals would diminish the cattle's milk productivity, from which the farmers' economic hardships reasonably would, and did, follow. (5) The farmers used the cattle properly, in a manner in which they were intended, which was, obviously, milk production. No defenses

apply in this hypothetical, because there was no assumption of risk and no product misuse. BB is strictly liable to the farmers for their economic losses for the tainted cattle, under products liability theory.

3. This hypothetical focuses on the product misuse and assumption of risk defenses. First, review the products liability elements to determine if a prima facie case has been stated. Decide whether Mr. Killjoy was unreasonably dangerous with his sharp plastic swords that could, and did, injure children such as Charlotte. This is a design defect, which, under the consumer contemplation test, makes the toy unreasonably dangerous. Although a reasonable adult would plainly anticipate the dangers created by sharp plastic swords, reasonable young children, even at age six or beyond, might overlook or forget the risks when playing. Thus, the product includes an unreasonably dangerous design for the ultimate users (who are young children).

Charlotte was a reasonably foreseeable ultimate user, because children often share toys with playmates and frequently engage in mock battles with warlike toys such as Mr. Killjoy. Charlotte's injuries were reasonably foreseeable for purposes of proximate cause. The so-called typical formula in the textbook includes lack of product misuse as an element of products liability. Some states' statutes or common law include this as an element, whereas others (and Restatement [Second] § 402A) leave it as a defense. For purposes of convenience, we may consider it defensively for this problem. Although it was reasonably foreseeable that young children would use the toy to pretend-attack each other, the toy contained clear warnings to adults that the toy was inappropriate for children under the age of six. Franco bought the toy for his four-year-old son, Francisco, who used it to hurt his neighbor and friend, three-year-old Charlotte. Both children were clearly too young to be using this toy, as the manufacturer plainly warned the purchaser. Had he been acting reasonably, Franco would not have purchased this toy for his son. This represents product misuse, a defense that would insulate Whopper Toys Corporation from strict products liability. Assumption of risk would likewise protect the corporation, as Franco reasonably should have anticipated that his son and his son's friend could be hurt by, and would not understand the dangers inherent in, those sharp plastic swords. By giving the toy to his son and failing to heed the manufacturer's age warnings for safe product use, Franco assumed a known risk with full appreciation of the dangers involved.

4. Joyce's products liability lawsuit against Omar would fail, because Omar is not engaged in the business of selling electric stoves such as the one he sold to Joyce. Thus, products liability would not apply. One might erroneously jump immediately to defenses, looking to Joyce's use of the obviously dirty stove as assumption of risk or product misuse (because stoves are not intended to be used when so filthy). Although these are interesting defenses, they are wasted ammunition in this hypothetical.

5. The customers would likely sue The Steak Out restaurant (seller) and the Midwestern Meat Packing Company (manufacturer) under products liability. The customers' cause of action against the manufacturer would fail under this theory, because the defective products (spoiled meat) reached the customers in a condition substantially changed from the state in which it left the manufacturer. Accordingly, the manufacturer would not be strictly liable. The customers' cause of action against the restaurant, however, would be successful. The meat was spoiled when the restaurant received it from the shipper. It was still spoiled when the restaurant served it to its customers, who became seriously ill as a result. No substantial change in product condition occurred from the time it left the restaurant's (seller's) hands until it reached the ultimate users. The spoiled meat was unreasonably dangerous as a major health risk, the restaurant was in the business of selling this type of food, the defect (spoilage) proximately caused the customers' injuries, and the customers used the products properly (human consumption). Thus, the typical products liability elements discussed in this chapter were satisfied and, accordingly, the restaurant would be strictly liable for the customers' injuries. One might be outraged at the outcome of this hypothetical. It may be argued that the shipper was the proximate cause of the customers' injuries. Those arguing such will be on the right track for the restaurant's joinder of the shipper as a third-party defendant. The restaurant will successfully allege that the shipper's negligence, or, more likely, gross negligence or negligence per se, proximately caused the customers' injuries. The shipper plainly violated its duty of care to properly ship refrigerated foods. All the elements can be checked off easily. Negligence per se would apply if the shipper violated a state health statute pertaining to the proper shipment of refrigerated food, which it almost certainly did. Gross negligence would exist here, because the driver's failure to discover the broken refrigeration system on the truck is carelessness beyond that of ordinary, reasonable care. It approaches wanton misconduct. Thus, gross negligence would apply, which could afford the plaintiffs punitive damages under some state statutes.

6. Vlad would successfully recover from both his local hardware store and the Hand Tool Manufacturing Company under products liability. Both defendants were engaged in the business of selling goods such as the defective screwdriver. The defective condition of the screwdriver did not substantially change from the time the product left the manufacturer until it reached the ultimate user, Vlad. The defect proximately caused Vlad's injuries, as it was reasonably foreseeable that Vlad would be hurt-as he was-if the screwdriver broke under pressure. A tough threshold question is whether the defect rendered the screwdriver unreasonably dangerous. Many courts would rule that this was a defective design case, although actually it is a defective assembly or manufacture case. Under the design analysis, such courts would apply the state-of-the-art discoverability test to determine the question of unreasonable dangerousness. It is likely that the manufacturer had technological equipment or testing procedures capable of detecting the microscopic flaw in the screwdriver shaft. Regardless, this test is

misapplied in this hypothetical. The proper analysis focuses on whether the product became unreasonably dangerous because of its assembly defect. Because of the microscopic crack, the screwdriver shaft was likely to break when used under pressure, just as Vlad used it. Given the reasonable foreseeability of the injuries- that is, the high probabilities that (1) users would exert significant torque when using screwdrivers, and (2) a broken shaft could severely cut a user's hand-the defect rendered the screwdriver unreasonably dangerous. The key issue in this hypothetical is whether Vlad properly used the screwdriver. Product misuse, as previously noted, may be invoked as an element or a defense, depending on a particular state's products liability statutes or common law. Was Vlad's use of the screwdriver as a prying tool to open sealed crates a reasonably foreseeable use? Yes. Screwdriver shafts are thick metal rods ideally suited for prying open many sealed containers. Small pry bars closely resemble large screwdrivers in this regard. Assuming that this case involved a large screwdriver, Vlad's use would be considered reasonably foreseeable and therefore not a misuse. No other defenses apply in this case, because Vlad could not reasonably have discovered the microscopic defect. The Hand Tool Manufacturing Company would be strictly liable to Vlad under products liability.

7. The keys to this hypothetical are product misuses and assumption of risk. Chase improperly used the paper-shredding machine by failing to follow the manufacturer's maintenance instructions and by continuing to use the machine although it was obviously functioning under some disability, as evidenced by the annoying grinding noise. Chase assumed the risk of the machine's shredding blades breaking and injuring him when he ignored a discovered defect and continued using the machine. A reasonable person would have anticipated that the grinding noise might be caused by lubrication deficiency and, accordingly, that the mechanism could break apart if the stresses of ordinary use continued. Furthermore, Chase (and his coworkers) failed to properly maintain the machine through routine lubrication checks as prescribed by the manufacturer's instruction manual. This also illustrates the user's failure to follow the manufacturer's instructions for safe product use. All point to these conclusions: (1) Chase voluntarily assumed a known risk with full appreciation of the dangers involved; and (2) Chase misused the product, because it was not designed or intended to be used when lubrication was absent. The machine manufacturer would not be liable to Chase for his injuries under products liability theory.

Projects

5 seconds

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- Chapter Quiz

Projects

1. Which version of products liability do your state courts follow? Is it different from or identical to Restatement (Second) § 402A?
2. Has your state legislature enacted any products liability statutes? If so, how are they similar to the elements discussed in this chapter? How are they different?
3. How does a products liability case differ from a negligence case?
4. Read the complete case of *Greenman v. Yuba Products* in Appendix C at the student companion website. How did this landmark case change tort law?
5. Bring to class the warranty and warnings from a product you have recently purchased. Is the language in the two documents similar? Can they be read together without conflict?

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Project Answers

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Project Answers

1 & 2. These are state-specific questions. You may wish to photocopy and distribute your state's products liability statute(s) or relevant court decision (s) to assist students with these problems.

3. In a negligence case, you are establishing that someone did something wrong by falling below an acceptable level of care, and failed to act as the "reasonable person would have acted." In a products liability case, negligence and intent are irrelevant. The plaintiff must prove that a defect in a product rendered the product unreasonably dangerous to use.

4. The Greenman case changed tort law in that injured consumers no longer need to give notice to a manufacturer that they never even dealt with. This case abandoned the need for a contract between the manufacturer and the injured party or ultimate

Step Text

1 & 2. These are state-specific questions. You may wish to photocopy and distribute your state's products liability statute(s) or relevant court decision(s) to assist students with these problems.

3. In a negligence case, you are establishing that someone did something wrong by falling below an acceptable level of care, and failed to act as the "reasonable person would have acted." In a products liability case, negligence and intent are irrelevant. The plaintiff must prove that a defect in a product rendered the product unreasonably dangerous to use.

4. The Greenman case changed tort law in that injured consumers no longer need to give notice to a manufacturer that they never even dealt with. This case abandoned the need for a contract between the manufacturer and the

injured party or ultimate consumer. Accordingly, the manufacturer is held strictly liable by law for injuries.

5. You may wish to photocopy warranty and warning language from a popular or common household product. Have the class look for inconsistencies in the language of both documents, and decide whether the two documents can be read together without conflict.

Chapter Quiz

5 seconds

Tort Law for Paralegals: Chapter 11

- Lecture Hints
- Answers to Case Questions
- Problems
- Problem Answers
- Projects
- Project Answers

Chapter Quiz

Chapter Quiz

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Step Text

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