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John and Mary v. Beyond Kitchens (BK)

**Products Liability-A plaintiff may bring suit against a seller or manufacturer of a defective product if it can be proven that there was a defect in design, manufacturing or warning.**

### I. Intentional

If a manufacturer or seller was aware that their product had the defect and sold it without correcting it, they will be held liable for battery.

There is no evidence that BK could be held liable under the theory of intentional products liability.

### II. Negligence

**Duty-** A manufacturer or seller owes a duty to inspect, discover and correct all defects in its product as well as to warn of any risk of harm. Under *McPherson v. Buick* privity is no longer required and if an average and reasonable man could foresee that there is a risk of harm from the product, the manufacturer or seller will be liable to all foreseeable users.

John purchased the vacuum from BK and therefore would be under privity with them. He would also be a foreseeable user of the product since privity is no longer required. Because he was the purchaser of the vacuum a duty would be owed to him, his wife and any other party that may use their vacuum, like a child or house cleaner.

**Breach-** To establish a breach we can use either the consumer expectation test, which means the product would act like other like products in the market, or the cost/benefit test, which would weigh the cost of making the item safer to the benefit to the public.

There are three types of breach;

**Defect in Design-** The product is as the manufacturer intended it to be and poses a risk of harm as is.

**Defect in Manufacturing-** The product is not as the manufacturer intended and the defect is a result of assembly. It is different than other products produced by the manufacturer.

**Defect in Warning-** The product fails to warn of certain risk of harm.

Based on the consumer expectation test, it can be reasonably inferred that this vacuum was not like other vacuums on the market. It could be said that the average vacuum is not in risk of over heating from the normal use of adding an extension cord and catching fire. Furthermore, as stated by the fact pattern there would be at least a breach of warning.

At the very least, there is a defect in warning.

**Causation-** Causation in products liability negligence is the same as in regular negligence. The product must be both the actual, "but for", and proximate, reasonably foreseeable, cause of the damage suffered by the plaintiff.

"But for" the lack of the warning, it can be assumed that John would not have used an extension cord with the vacuum. If the warning had been present, perhaps this whole problem could have been avoided.

Actual cause is satisfied.

Furthermore, it is reasonably foreseeable that a lack of warning on a vacuum that has the potential to cause a fire when used in conjunction with an extension cord, could lead an individual to use an extension cord and suffer the kind of damage that was suffered by John.

Proximate cause is satisfied.

**Damages-** The plaintiff can sue the defendant for damages they incurred as a result of the breach. A plaintiff can sue for personal damages, damages to his person, as well as property damages.

In the case at hand, BK would be joint and severally liable with the manufacturer for all damages caused by the vacuum. The damages suffered by Johns person was in the amount of \$3,000 in medical bills. Even though Johns insurance paid for the cost of the bills, the collateral source rule tells us that BK and Bite the Dust would still be joint and severally liable for the total cost of medical expenses. They would also be liable for his house that was burned down as well as for all the items in it.

As the facts state John was vacuuming the house, we can assume he did house work. Also it is stated that his injuries prevented him from doing house work. If he was not able to his normal chores and had to hire a maid to do them, BK would be liable for these as well

Because a seller is under no duty to inspect a sealed package, which we can assume the vacuum came in, they could seek contribution and indemnity from Bite the Dust.

**Defenses-** The defenses for this would be Contributory Negligence, Comparative Negligence or Assumption of the Risk. Since there was a failure to warn of the dangers associated with the product all of these defenses would fail.

### III. Warranty

**Express Warranty-** A warranty from the manufacturer or seller that the product will do or will not do a specific thing.

There is no information in the fact pattern that would lead us to believe that BK gave an express warranty.

**Implied Warranty of Merchantability-** A warranty that states that the product is of average and fair quality fit for normal use.

As the vacuum lit fire when it was used as it was intended to be used, in the absence of the warning that is, BK could be held liable under an implied warranty of merchantability as the seller.

**Implied Warranty of Fitness for a Particular Use-** The seller knows of the use the plaintiff intends to use the product for and the plaintiff relies on the knowledge and skills of the seller.

As it could be implied that anyone using a vacuum would be vacuuming up the floor, it would seem that this warranty is satisfied. However, the plaintiff made no specific mention of what he intended to do with the vacuum, such as the type of surface he intended to vacuum and the seller made no warranty that it would work for that purpose.

There is nothing that would lead me to believe that an implied warranty of fitness for a particular use was given.

**Causation-** see supra

**Damages-** see supra

### IV. Strict Liability in Tort

When a manufacturer or seller places a defective product into the stream of commerce they can be held strictly liable in tort. Any one from the manufacturer to the seller and the middle men in between can be found liable under this theory.

Because BK was a seller of the item and the item was placed into the stream of commerce defective, they can be held liable under this theory.

**Defenses-** The defenses for this would be Assumption of the Risk and Misuse of Product. Because there was a lack of warning, John could not have had knowledge or appreciation of the risks involved and so could not have encountered them voluntarily. Also as

there was no warning, he could not have been aware that he was misusing the product.

These defenses would fail.

**Causation- see supra**

**Damages- see supra**

John and Mary v. Bite-the-Dust (BTD)

**Products Liability- see supra**

### I. Intentional-see supra

Again, there is no proof that the manufacturer intentionally placed the defective product onto the market.

### II. Negligence

**Duty- see supra**

As stated above, as John was a reasonably foreseeable user of this product, BTD would owe him the duty to inspect, discover and correct any defect as well as to warn about any unsafe use of the product.

**Breach- see supra**

Again, as stated above, the vacuum did not live up to like products in the market. The company knew full well of the risk involved with using an extension cord and failed to warn foreseeable users, in this case John, that its use could cause a fire. This would be a breach due to a defect in warning.

It can be safely assumed that since they knew of the defect, this was not an issue of a manufacturing defect. With the limited facts, we cannot determine if there was a design flaw in the vacuum, but as I stated, a normal vacuum shouldn't catch fire and so it is a possibility.

**Causation- see supra**

The causation of the damages was as a direct result of the defect in warning as I stated above. Both actual and proximate causation are satisfied.

**Damages- see supra**

BTD would be joint and severally liable with BK for all the damages that occurred as a result of the defect in warning. They would be liable for all personal and property damages that were incurred by John and his wife. Again, the collateral source rule will make BTD and BK fully liable for the cost of medical bills even though John's insurance paid for them.

BTD could try to seek contribution and indemnity, but as discussed above, for the same reasons that BK would have a good cause for it, BTD would not.

### III. Warranty

**Express Warranty- see supra**

No express warranty was given

**Implied Warranty of Merchantability- see supra**

As stated above, since the vacuum was not average and fair quality fit for normal use and is, arguably, different than like products on the market, BTD would be held liable under this warranty theory. **Implied Warranty of Fitness for Intended Use- see supra**

As the manufacturer, BTD never had a chance to meet John and find out what his intended use was so it would be difficult to say that John relied on their knowledge and skill in making his purchase. No implied warranty of fitness for intended use was given.

**Causation- see supra**

**Damages- see supra**

**IV. Strict Liability in Tort- see supra**

Again, as the manufacturer, BTD did place a defective product into the stream of commerce. Since the defect was a warning, there can be no doubt that the defect was in existence at the time it left the manufacturer.

**Defenses-** The defenses for this would be Assumption of the Risk and Misuse of Product. Because there was a lack of warning, John could not have had knowledge or appreciation of the risks involved and so could not have encountered them voluntarily. Also as there was no warning, he could not have been aware that he was misusing the product in any way.

These defenses would fail.

**Causation- see supra**

**Damages- see supra**

Same damages as BK would have including the house keepers if John was unable to do house work which the facts indicate.

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**Fred V Sam**

**Conversion** - The expression of dominion or control over the personal property of another which so robs them of its use that one is justified in paying it's full market value.

Here the facts state that 2 hours a day Sam wasn't working. Thus implicitly he was stealing two hours worth of pay from Fred, thus the expression of dominion or control over the money of Fred. This would completely rob Fred of its use since it was now given to Sam and thus Sam would be justified in paying damages in the amount of the time spent fooling around.

**Misrepresentation** - The false statement of a material fact which is stated in order to induce another to rely on it, which they do to their detriment.

Alternatively Fred could have an action for misrepresentation. Sam by accepting to work for Fred would have implicitly stated that he was working during those hours and not playing games, thus a false statement. It can be inferred then that when Sam accepted pay for those hours not telling Fred he was fooling around he did so to get Fred to rely to his detriment. Fred then relied on this and paid him for the two hours that he spent playing video games, thus he lost the wages which was his detriment. Thus Fred should be able to recover for the wages paid while Sam fooled around playing games.

**Trespass to land** - The intentional entry onto the land of another.

Here mad at Fred for firing him Sam did volitionally and with the intent to steal a computer enter onto Fred's office. It can be inferred that since he was fired he didn't have the consent of Fred and thus he is liable for trespass to land.

**Conversion** - Defined Supra

Sam then while in the office did take the computer that he had worked on which it can be

inferred from the facts was Fred's. Thus we have the expression of dominion and control. Since Sam was mad at Fred it is arguable that he did so with the intent not to give it back and thus depriving Fred completely of its use. Thus it would be justified that Sam pay for its full market value.

### **Invasion of Privacy**

**Intrusion upon seclusion** - Where the D intrudes upon the reasonable expectation of privacy of another.

Here the facts state that Sam accessed Fred's financial documents. It would be reasonable to assume that there would be an expectation of privacy, that one wouldn't go looking for that information and thus we have an intrusion into Fred's seclusion. Fred should be able to recover any special damages due to the information falling into Sam's hands as well as any mental anguish.

**Public Disclosure of private facts**- Where a D make public facts that are private and their publishing would be highly offensive to the average reasonable person.

Here Sam did post Fred's personal information on the internet "for all the world to see". Unlike defamation public disclosure requires a larger audience, here this would meet the test as the internet would be a huge audience. The facts are definitely ones that would otherwise be private and there are no facts to suggest they weren't. An ordinary reasonable person would find it highly offensive to have their personal financial information put on the web, thus Sam should be liable for public disclosure of private facts. Here special damages are not required, and general damages are assumed. Fred would be able to recover for any damages that the publishing of this information caused to him.

**Intentional Infliction of Emotional Distress** - Extreme or Outrageous behavior, calculated to and causing severe mental distress.

Here the facts state that Sam was mad about being fired and so did voluntarily and with the purpose of upsetting Fred post Fred's private information online. A reasonable person would find this to be outrageous behavior and it seemed to be calculated to cause extreme distress. Fred was so upset that he ended up defaming Sam, this is weak and there is no other evidence to support that he suffered severe emotional distress. Thus it is a weak case.

### **Gyro V Sam**

**Intrusion upon seclusion** - Defined Supra

Here one would have a reasonable expectation of privacy regarding their computer system. The fact that Sam had to hack in also evidences this. Thus when Sam hacked into Gyro's computer he intruded upon Gyro's reasonable expectation of privacy and thus should be liable for damages. In intrusion upon seclusion again special damages are not required and general damages are presumed.

**Trespass to Chattels** - The damaging of quality or value of the personal property of another, or the significant interference with the chattel of another.

Here the facts state that Sam did take the personal confidential information of a competitor in order to use it for himself. Arguably in doing so he made the information less valuable because

now it is in the hands of another and is no longer or less proprietary. The law is catching up to the internet age but some courts have held that confidential information is considered personal property and thus this would be the damaging them of the value of the personal property of another and a trespass to chattels. Gyro then would be entitled to both compensatory and possibly punitive damages.

**Appropriation of another's Name or Likeness** - Where the D appropriates another's name or likeness for pecuniary gain.

Here the facts state that Sam stole Gyro's information and thus appropriated his ideas as his own. It is arguable that he did this for his own financial gain. If so he would have appropriated Gyro's ideas as that of his own for his own pecuniary interest. Thus there is a weak argument for appropriation of another's name or likeness. If such, Gyro should be able to recover what ever financial gain that Sam realized.

### **Gyro v Fred**

#### **Vicarious Liability**

**Respondote Superior** - The master will be held liable for the acts of the servant during the normal course and scope of their duties.

Here Gyro will argue that Sam as the computer worker for Fred's company and while working there did both invade his privacy and trespass to chattels and possibly appropriation. Thus Gyro would seek to hold Fred jointly and severally liable in the theory of respondeat superior.

However Fred would argue that he had no knowledge of what Sam was doing, this wasn't under the scope of his employment and as such that this was a frolic, (Sam was working way outside of the scope of his duties) and thus he shouldn't be held liable.

It would be up to a jury to decide if Sam was engaged in a frolic when he hacked into the computer, however since Fred fired Sam due in part to this they probably wouldn't hold him responsible. If they did Fred could always seek contribution and indemnity from Sam since he was the one who committed the torts.

### **Sam v Fred**

**Defamation** - For Sam to prove that Fred defamed him he must show; the matter was false and defamatory, published intentionally or negligently to a third person, the third person understood the matter to be defamatory and apply to Sam and Sam must suffer damages. Here we are dealing with a private defendant and private plaintiff.

**false** - Here the facts state that the matter was false, thus this element is satisfied.

**Defamatory** - For a matter to be defamatory it must lower the esteem of Sam in the community of which he is a part.

Running a dog fighting ring is a very hancous activity and thus it can be inferred that this would lower his esteem.

#### **Published to a Third Person**

Here the facts state that the matter was posted to in a local newspaper intentionally, thus it can be assumed that it was read by at least one more person. Also this matter was published in written text which makes the matter libel. Libel which is viewed as more damaging than slander (oral defamation) doesn't require the P to prove special damages and general damages are presumed. Also this would be considered slander per se since it accuses Sam of committing a crime (illegal dog fighting).

### **Third person understanding it to be defamatory**

An ordinary average person would view this as defamatory. Since operating an illegal dog fighting ring would be viewed as a hancous activity.

### **Apply to Sam**

It was published in a local newspaper and he used Sam's name thus it can be assumed the audience of the newspaper knew it to apply to Sam.

### **Damages**

Since this was both a matter of Slander Per Se (criminal activity) and libel there will be no need for Sam to show special damages but will be able to collect for any general damages that he sustained due to the publishing. There may also be a case for punitive damages.

### **Defenses**

There is no constitutional privilege since there are no facts to show that Sam was a public figure. Here we were dealing with a private figure and private defendant. There is also no fair comment defense since there it appears that Fred had actual knowledge that what he said was untrue, thus he acted with actual malice which would vitiate that conditional privilege.

**False Light in the Public Eye** - Where the D makes known false statements about the P which are highly offensive to the average reasonable person.

Here it can be inferred that Fred knew that Sam wasn't operating a dog fight ring and thus it was a known false statement. This would be highly offensive to an average reasonable person and thus it would satisfy that requirement. Unlike defamation false light requires a larger publication than just a third person. However, this burden seems to be met, since it was published in a newspaper.

**Intentional Infliction of Emotional Distress** - Extreme or Outrageous behavior, calculated to and causing severe mental distress.

Here the facts state that Fred with knowledge to the contrary did state that Sam was running a criminal dog fighting ring. He did this because he was angry with Sam for stealing and publishing his information. Thus we have extreme and outrageous behavior, calculated to cause emotional distress. The facts are mute as to whether or not Sam did indeed suffer emotional distress and thus we must conclude that unless Sam has some showing he can't recover for IIED.

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### **Sam v Newspaper**

**Defamation** - See Def Supra

Here the facts state that the matter was posted to in a local newspaper intentionally, the newspaper then further published the article thus they may be held just as liable as Fred.

**False** - See discussion supra, the matter was published without any follow up by the newspaper to see if it was true, this then could be a matter of reckless disregard for whether it is true or not. Thus meeting the actual malice standard.

**Defamatory** - Discussed supra.

**Published to a Third Person** - See supra

**Third person understanding it to be defamatory** - See Supra

**Apply to Sam** - See Supra

**Damages** - Baring it's defenses if the newspaper if found to have defamed Sam, they will be held jointly and severly liable for the deffamation. However they may seek contribution and indemnity against Fred, since he was the original publisher.

### **Defenses**

**Matter of Public Concern (Gertz)** - Arguably anyone in the local area who is running a illegal dog fighting ring would be a matter of public interest and concern, thus since Sam was a private defendant he may have to prove that actual malice was involved in the printing of the article in order to recieve punative damages. However negligence will suffice for other damages.

The rulling in Gertz held that a media defendant who prints a defamatory article about a private figure must be shown to have acted with actual malice in order to be held liable for punative damges.

**Actual Malice** - Acting with knowlege of the falsehood or with a reckless disregard for the truth.

Sam will argue that all the newspaper had to do was call and ask. The fact that they did no investigation at all but instead just published the article shows that they acted in reckless disregard for the truth, thus satisfying the actual malice standard. If this is shown then they will be liable for punative damages as well.

**Innocent Republisher** - The newspaper may argue that they were just an innocent republisher and therefore shouldn't be liable for deffamation against Sam. However, there are insufficient facts to make a case either way.

**END OF EXAM**