

Products Liability – In-Class Exercises

Question 1

Beverly Corporation is a multinational conglomerate with holdings in hundreds of different industries and markets. Among its products are paint, liquor, and books.

Bruno Torchiani wanted to barbecue one afternoon, but decided not to use lighter fluid to start his fire. Bruno hates the smell of lighter fluid and claims that he can taste the difference between food cooked over a “fluid” or “non-fluid” fire. Rather than use lighter fluid, Bruno decided to make his own flame-thrower. He got a can of aerosol deodorant (a Beverly product) from his medicine cabinet and sprayed the contents over a lit match, creating a large jet of flame. Bruno pressed the button two more times before the can exploded in his hand, causing him severe burns. The can had a warning label reading “Flammable: Do not use near open flame.” The warning did not mention that the can was explosive nor did it warn against using the contents as a flamethrower.

Conflagra, Bruno’s wife, received a bottle of expensive bourbon (a Beverly product) as a gift. The bourbon was unusually strong (130 proof rather than the usual 80-90 proof), and neither Conflagra nor Bruno drink, but she decided to keep the gift and use it for cooking. One night, she decided to make a Bourbon Chicken recipe from a cookbook titled *JD’s Southern Cookin’* (published by – you guessed it – Beverly). The recipe essentially called for the cook to roast a chicken and baste it with bourbon (hence the title of the recipe). Conflagra put the chicken into a pre-heated oven, poured 2 cups of the whiskey over it, and closed the door. The resulting explosion blew the oven door off its hinges and started a fire that severely damaged the Torchianis’ home. Neither the whiskey bottle nor the cookbook contained a warning of this danger.

If Bruno sues Beverly, claiming that the company failed to warn him of the can’s dangerous qualities, will he recover?

Is Beverly liable for the damage to the home because the whiskey was defective? Is the cookbook defective for failing to warn of the fire hazard?

No federal labeling standards apply nor does the jurisdiction in which Bruno and Conflagra live consider whether a plaintiff would have heeded a warning.

Question 2

Susan acquires a taste for Grey Goose vodka while in law school. She eventually becomes an alcoholic and loses her marriage and job as a result. If she sues Grey Goose on the ground that its product is defective, what result? Consider all relevant products liability theories and the test(s) for those theories.

Question 3

Dye was riding his Cabrini motorcycle when he got into an accident with a car. The motorcycle fell over onto Dye's leg, crushing it. Dye wants to sue the manufacturer, based on the motorcycle's lack of crash bars that Dye claims would have protected his legs. Crash bars attach to the exterior of a motorcycle, running parallel down either side of the body. Crash bars are designed such that if the motorcycle tilts onto either side, the bars encounter the ground before the rider's legs do, thus shielding the rider from contact with the ground.

You represent Dye, and have the choice to sue in a jurisdiction that applies only the consumer expectation test or one that applies only the risk-utility test. Which is preferable for Dye's case? Explain fully.