

PRODUCTS LIABILITY

Yellowstone National Park

Victor and Doreen (“The Smiths”) went to Sporting Emporium (Sporting) in Pembroke Pines, in order to pick up supplies and equipment for their upcoming hiking and camping trip into Yellowstone National Park’s backcountry. The Smiths would need sturdy gear, including hiking boots that can traverse rough terrain, and clothing designed to prevent frost bite in freezing conditions.

Victor is a dentist, and Doreen runs a preschool. Both have lived in South Florida their entire lives, and have no camping experience, or experience with cold weather whatsoever.

Therefore, Sporting’s salesperson, Brice, meeting them at the front of the store as they walked into Sporting was welcomed. The Smiths explained their planned sub-zero hiking trip to Brice, and told him that they needed sturdy hiking boots for rough terrain, and clothing and supplies designed for very cold weather, as average temperatures in Wyoming in the winter are far below freezing.

Brice worked on commission, so he was sure he could upsell the Smiths, who clearly had no idea what they needed. Brice showed the Smiths clothing made of laminates by Gore-Tex, eVent or REI Elements, all designed for sub-zero temperatures. The Smiths purchased top of the line outerwear made of laminates by Gore-Tex, designed to protect wearers in temperatures down to 10 degrees below zero. Brice was glad they were headed to Wyoming, and not somewhere with a milder climate, because the laminate clothing was three times the price of the less expensive alternatives made of polyurethane-coated fabrics, which isn’t designed to wear in temperatures below freezing.

Brice convinced the Smiths they needed to purchase hiking boots made by Hermès for \$1,295.00 a pair, telling them the boots were the sturdiest they carried, and would prevent frostbite in sub-zero temperatures. Brice knew the boots weren’t sturdy or weather resistant, and definitely wouldn’t prevent frostbite in sub-zero temperatures, like RefrigiWear’s extensive line of footwear they carried, ranging from \$79.00, for their ‘lightweight- good weather’ model to \$179.00 for their ‘maximum protection- sub-zero’ model, which protects feet from frostbite in temperatures all the way down to -50F. Brice knew it didn’t matter that the Hermès boots wouldn’t protect the Smiths in sub-zero weather, because there was no way those two Muppies were doing any real camping or hiking. They would probably just take an hour long guided hike on the main public trail, and then spend the rest of the weekend at the Four Seasons.

The Smiths arrived at Yellowstone the first day of their trip, camping gear in hand, and took off hiking on Yellowstone’s backcountry hiking trails. By afternoon, the temperatures had dropped by 30 degrees and it was snowing heavily. By nightfall, they found themselves lost, freezing, and disoriented in blinding snow.

Just when they thought it couldn’t get much worse, Doreen twisted her ankle due to the uneven terrain, and the fact that her Hermès boots provided no ankle support. The Smiths were freezing, and their arms, legs, and faces were becoming completely numb. Victor found a small cubby-hole in the rock, sort of a mini-cave, and carried Doreen to the back of it. He then built a fire, and made sure she was comfortable, because Victor knew Doreen couldn’t walk on that ankle. It was really swollen and painful, and he was sure it was broken. Victor decided their only hope was for him to get help. Since it was now dark out, he knew that he could use the stars to guide him.

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About an hour after Victor took off, Doreen's broken ankle started to hurt severely, out of the blue she was in unbearable pain, and started to wail loudly. Good thing for Doreen, they weren't quite as lost as they thought. Their little cave was only about 200 yards from one of Yellowstone's designated backcountry campsites. As it happened, an Orthopedic Surgeon from South Florida having a "guy's weekend" with his teenage son, heard her cries and came to her aid.

The doctor realized instantly that Doreen was suffering from Acute Compartment syndrome. This was a life or death situation. The doctor sprung into action, using the only tools he had available to him. He grabbed the pocket knife and matches he brought to build their campfire from, sterilized the knife, and then proceeded to make a long vertical incision down Doreen's lower leg and ankle, relieving the pressure and almost certainly saving her foot and life. Doreen asked the doctor for his card, she planned to send him a thank you card as soon as she got home.

In the meantime, Victor found a ranger station, and an ambulance soon arrived and brought them both to the hospital. Victor suffered from severe frostbite, not only were the hiking boots not meant for tough terrain and sub-freezing temperatures; but, their clothes weren't either. It turned out that the manufacturer mistakenly mislabeled the clothing as 'laminated clothing' (designed to protect wearers in sub-zero temperatures), but the clothing was actually made of polyurethane-coated fabrics, designed to protect wearers in sub-zero temperatures).

The Smith's medical bills were substantial, not to mention the financial troubles they suffered from missing so much work. As soon as the Smiths were discharged from the hospital, and made it back to South Florida, Doreen mailed doctor a "thank you" card to the doctor who saved her life. In response, the doctor mailed Doreen an invoice for \$5,000.00 for his medical services, which stated that payment was 'due upon receipt'. Doreen was in shock, she thought the doctor had helped her because it was the right thing to do, not because he expected payment for his help.

Discuss any claims the Smiths have against Sporting and the Manufacturer, and any defenses they may have. Also, explain if Doreen will have to pay the doctor's invoice, and if so why, if not, why not.

The Smiths v. Brice & Sporting

Here, Brice convinced the Smiths to purchase hiking boots made by Hermès for \$1,295.00 a pair, telling them the boots were the sturdiest they carried, and would prevent frostbite in sub-zero temperatures. Brice knew the boots weren't exactly sturdy or weather resistant, and definitely wouldn't prevent frostbite in sub-zero temperatures.

Express Warranty

An express warranty is a statement or binding document provided by the seller relating to the goods or services, which statement is part of the basis of the bargain. This means that the buyer has purchased the goods or services on the reasonable assumption that they were as stated by the seller. Thus, a statement by the seller with respect to the quality, capacity, or other characteristic of the goods is an express warranty.

Warranty for a particular purpose

A merchant will be held liable if: 1. a consumer appraises a merchant of a particular need, 2. the merchant recommends a particular product to meet that particular need, 3. the consumer relies on the merchant's recommendation 4. the consumer purchases the product 5. the consumer uses the product 6. the product does not perform the particular use 7. the consumer is injured thereby,

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either directly or, in the fullness of time in which the consumer uses the product. The merchant will also be liable to anyone who obtains the product from the consumer who relied on the merchant's recommendation and uses the product.

Puffery

"Puffery" is an exaggerated or extravagant statement made for the purpose of attracting buyers to a particular product or service. It is commonly used in connection with advertising and promotional sales testimonials. The Federal Trade Commission defines puffery as a term referring to exaggerations of the quality of a product. Puffery is often employed by business to "puff up" the image of their product. Statements or terms of puffery are usually subjective opinions rather than objective representations of facts. It is assumed that most consumers would recognize puffery as an opinion that cannot be verified. Most reasonable persons would not take puffery literally. The difference between puffery (which is allowed) and false factual representations (which is not allowed) is the degree of specificity of the claim.

The Smiths v. Brice

The Smiths will argue: When Brice told the Smiths the boots would prevent frostbite and were good for rough terrain, he made an express, false promise, or an express "Warranty for a particular purpose" Brice knowingly violated that warranty when he made the untrue claims. The Smiths will argue that Brice's representations about the boots were very specific, and not allowable hyperbolic claims (puffery), like the boots were "the best in the world". This argument will succeed. Brice will be liable to the Smiths for breach of an express warranty.

Brice will argue: that he didn't violate the express Warranty for a particular purpose, because he never dreamed the Smiths would actually believe that the \$1,295.00 designer Hermès hiking boots would be "sturdy", or would actually protect anyone from sub-zero temperatures. People do not actually wear \$1,295.00 designer Hermès hiking boots hiking, or in extreme weather. They are for show, not utility. Brice will say he simply used a little "puffery", which is perfectly ok for people in his line of business. However, because of the specificity of Brice's claims, this argument will fail.

Intentional Misrepresentation (fraud)

Florida recognizes two separate theories of recovery for damage occurring as a result of misrepresentation. One basis of recovery is for intentional misrepresentation and the other is for negligent misrepresentation. In other words, under Florida law, a party may be liable for misrepresenting a material fact even if the misrepresentation was a mistake, instead of intentional. For a claim of fraudulent/intentional misrepresentation, the plaintiff may rely on a false statement, even though its falsity could have been discovered if the plaintiff had made an investigation. However, the plaintiff may not rely on a false statement if he knew it was false or its falsity was obvious to him.

Product liability action based in warranty: that warranty causes of action, both express and implied, require privity of contract between the seller and the injured party. If a plaintiff cannot establish privity of contract, he is limited to negligence and strict liability theories.

Conclusion: Brice's representations about the boots was more than Puffery; they was fraud. Brice told the Smiths that the \$1300 boots were the best for bad terrain and extreme weather, when he knew they weren't. Brice did this because he wanted to make a higher commission from the sell.

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Brice knew the \$179 boots were actually the best for bad terrain and extreme weather. The Smith's reasonably relied on Brice's claims because he sells those products for a living and they have never had any experience with extreme weather or hiking. Brice was the "professional", knowledgeable about such things. Brice will be liable to the Smiths for any injuries they sustained secondary to wearing the boots, under a (1) Fraud/ Intentional Misrepresentation tort claim, and (2) breach of warranty claim: breach of an express warranty for a particular purpose.

Respondeat Superior

Respondeat superior is a type of vicarious liability, which allows a third party to be held liable for a defendant's negligence in some cases, even if the third party wasn't there when the injury occurred and did not cause the injury or make it worse. Respondeat superior means "let the master answer." When respondeat superior applies, an employer will be liable for an employee's negligent actions. To hold an employer to be liable for an employee's negligence or bad actions, the injured plaintiff must prove all of the following: (1) The injury occurred while the defendant was actually working for the employer; (2) The injury was caused by something the defendant would ordinarily do while working for the employer; and (3) The employer benefited in some way from whatever the defendant was doing that caused the injury, even if the benefit was very small or indirect.

The Smiths v. Sporting

Hermès Boots

While working at Sporting, Brice sold the Smiths two pairs of Hermès for \$1,295.00 a pair, telling them the boots were the sturdiest they carried, and would prevent frostbite in sub-zero temperatures. Brice knew the boots weren't sturdy or weather resistant, and definitely wouldn't prevent frostbite in sub-zero temperatures.

The Smiths will argue: that Brice made these false claims about the boots while he was at work, selling camping equipment (his job) for his employer, Sporting. Therefore, Sporting is vicariously liable to them for damages under the doctrine of Respondeat Superior. However, this argument will likely fail, because Brice's misrepresentations were intentional, not negligent. They were fraud. As such, Sporting will not be liable for Brice's Intention Misrepresentations under the doctrine of Respondeat Superior. (because employers are not liable for intentional torts of their employees)

Sporting will argue: that it is not liable for its employees' intentional torts, and that Brice's Intentional Misrepresentations to the Smiths about the boots were Fraud, as such, Sporting is not liable for any injuries the Smith's suffered as a result of that Fraud.

Outerwear

The Smiths purchased outerwear from Sporting. The label on the clothing said that it was made of top of the line laminate fabrics by Gore-Tex, designed to protect wearers in temperatures down to 10 degrees below zero. However, the clothing was actually made of polyurethane-coated fabrics, which aren't designed to wear in temperatures below freezing.

Products Liability Claims

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A product can be considered defective because of: (1) Defective Design: a design which renders the product unreasonably dangerous for its intended purpose or use, or foreseeable misuse, by a user or foreseeable bystander; (2) Manufacturing Defect: a departure from the product's intended design which renders the product defective, even though all care may have been exercised in the preparation of the product.; and (3) Labeling or Marketing Defect: (inadequate warning) defective because of the lack of adequate warning or instruction when the foreseeable risks of harm posed by the product could have been avoided by a reasonable warning or instruction provided with the product at the time it left the hands of the manufacturer.

Negligence or Strict Liability Theories

Products liability cases can be brought under a negligence claim, or a strict liability claim. A negligence action focuses on the defendant's lack of due care in manufacturing or selling the defective product, and strict liability focuses only on the defect. As one court expressed it, in negligence cases, the plaintiff must impugn the defendant and in strict liability cases, the plaintiff must impugn the product.

Negligence

Manufacturers are held to a higher standard than under a negligence case (duty, breach of the duty, cause of injury, damages). Florida states that it needs only be shown that the defendant did not adequately warn of known or knowable dangers. A product is said to be defective "when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings", and that by not providing the warnings "renders the product not reasonably safe".

Strict Liability

If a person is injured due to a defective product, the designer and manufacturer, as well as any distributor, importer, or seller in the chain of distribution can be found strictly liable for injuries caused by the defective product, regardless of whether they exercised all possible care, because strict liability does not depend on actual negligence or intent to harm. In order to hold a company or companies in the distribution chain liable under a theory of strict liability in a manufacturing defect lawsuit, it must be proven: (1) the manufacturer or other company's relationship to the product, (2) a defect in the product and the defect causes an unreasonably dangerous condition, (3) the defect was the cause of the user's injuries. If you purchase a defective product from a store, the store is strictly liable for the damages (ie: injuries) that are caused by the defective product- even if the store didn't produce the product and had no way of knowing the product was defective. You can sue the store even though it was the manufacturer who made the defective product. That is how strict liability works. It protects consumers from having to chase down the negligent party.

Comparative Negligence

Florida's Comparative Fault statute apportions damages purely on a pro rata finding of fault. Therefore, there is no longer a need or a right to seek contribution from a joint tortfeasor. Comparative negligence of the consumer may kick in if the consumer failed to use normal care in the handling of the product. If the consumer was not responsible for any of their own injuries they will be "zero percent" Comparatively at fault.

The Smiths will argue: that they thought they were purchasing outwear made of laminate that would protect them in sub-zero conditions. The label on the clothing said that it was made of laminate fabrics. However, the clothing was actually made of polyurethane-coated fabrics, which aren't designed to wear in temperatures below freezing. Because of the mislabeled clothing, the

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Smiths will argue, they both got frostbite, spent time in the hospital, have suffered a lot of pain, and have missed work and incurred costly medical bills. Further, because Sporting sold them the mislabeled clothes, the Smiths will argue that Sporting is liable for their damages. This argument will succeed.

Sporting will argue: that it was not negligent, because the clothing was clearly labeled as being made from laminate fabrics. Sporting will argue that it received the clothing from Manufacturer mislabeled, and that it was reasonable for Sporting to rely on Manufacturer's label. Further, Sporting will argue, the Smiths have the wrong defendant, because it is Manufacturer, and not Sporting that is liable for their injuries. Sporting is half right. Manufacturer is liable for the Smith's injuries, but so is Sporting. The Smiths may sue both parties.

When a set of facts will support a theory of common law negligence and strict liability, plaintiff is entitled to proceed on either theory or both.

Here, the outerwear left the Manufacturer with the wrong label attached. At first glance, it would seem this would be a Products Liability case, based on defective labeling.

Conclusion: There is an argument that the outerwear clothing label wasn't defective per se, because it had an inadequate warning on the label; the label was defective because somebody negligently attached the wrong label to the clothing. Therefore, this is a Products liability case, based on a manufacturing defect. However, most likely this will be a Products liability case based on an inadequate label. Either way, the Smiths may sue all companies in the distribution chain (including Sporting and Manufacturer) under the Strict Liability theory, and the store will be liable for all of their damages (even though they weren't negligent). However, the Smiths can only receive their total damages once. Therefore, if they sue the store and receive 100% of their damages awarded from the store, they may not sue the manufacturer for more money, and vice versa.

Damages: Strict liability can be a powerful weapon in a products liability case as the Smiths only need show that the clothing was defective and caused injury and that the defendant(s) are responsible. Further, all companies in the distribution chain can be sued providing for increased ability to recover damages for the Smiths. However, the Smiths can only receive their total damages once.

Here, an Orthopedic Surgeon heard Doreen's cries and came to her aid, and almost certainly saving her foot and life. Doreen mailed doctor a "thank you" card to the doctor who saved her life. In response, the doctor mailed Doreen an invoice for \$5,000.00 for his medical services, which stated that payment was 'due upon receipt'.

Doctor's bill

An implied in law contract, or "quasi contract" as it is sometimes called, is really more of an equitable remedy rather than a breach of contract action. It's not really a contract at all, but a "legal fiction". It is a court imposed remedy that allows courts to remedy situations in which one party would be unjustly enriched were he or she not required to compensate the other. Unjust enrichment arises in situations where there is a contract implied by law where although there is no express contract, there is a benefit conferred on one party and it would be unfair for that party to retain the benefit without compensating the party conferring the benefit.

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An implied in fact contract is a contract that is shown to exist solely by the facts of the particular case and the course of conduct of the parties, and may be formed where services are rendered by one person for another without his expressed request, but with his knowledge, and knowing the other party expects payment. Instead of pleading a breach of contract claim, to enforce an implied in fact contract, the attorney may plead an unjust enrichment claim.

Unjust Enrichment

In Florida, a claim for unjust enrichment requires a showing that: The plaintiff has conferred a benefit on the defendant; The defendant has knowledge of the benefit; The defendant has accepted or retained the benefit; and; The circumstances are such that it would be inequitable for the defendant to retain the benefit without paying fair market value for it. A party who proves an implied in fact contract exists can recover monetary damages for breach that are measured in "quantum meruit." (Latin for "how much he deserves"). Quantum meruit as the legal doctrine which, in the absence of an express agreement, imposes legal liability on a contract that the law implies from facts where one *receives goods or services* from another under circumstances where in the normal course of common affairs a reasonable person receiving such benefit would ordinarily expect to pay for it.

Conclusion: Doreen has to pay the doctor's bill. The two had an implied in law, or "quasi contract", which isn't a contract at all, but a legal fiction imposed by a court to remedy certain situations to prevent unjust enrichment. Doreen allowed him to treat her, and was thankful. Further, \$5,000.00 is not an unreasonable bill for life saving surgery. Moreover, Doreen will be unjustly enriched if she does not compensate the doctor. If she refuses to pay him, he can bring an action against her for "Unjust Enrichment", and the doctor would be entitled to "Quantum meruit" damages, or the objectively "fair" amount for the life-saving surgery he performed.