

Facts:

Cosmo Kramer lives in the same apartment complex as his good friend Newman. Cosmo and Newman are always trying to outdo one another. Lately, Cosmo and Newman have been debating which of their respective apartments has the most vegetation. Cosmo goes to the nearby park and digs up some flowers and replants them in fertilized pots. Each pot weighs about 30 pounds.

Cosmo then travels to Jerry's Sports and Hardware Store and purchases some "30-pound test" fishing line, which he plans to use to hang his newly-planted vases. The fishing line was manufactured by Elaine's Fishy Lines. Unbeknownst to Cosmo, in fishing parlance, "30-pound test" means that the fishing line will not break under initial stress of up to 30 pounds when a fish tugs against the line. However, it does not mean that the fishing line can support a constant 30 pounds. This is commonly known to fishermen. Although he purports to be many things, Cosmo is not a fisherman. Elaine's Fishy Lines does not have any warnings or explanations on the packages in which the lines are sold.

Cosmo goes home and proceeds to hang his pots around his apartment. He hangs one of the pots above his sofa in his TV room. Cosmo calls Newman and invites him over to watch some TV. Newman comes over and sits on the sofa to watch TV. After about 30 minutes, the fishing line breaks and the pot comes crashing down on Newman's head causing him severe head injuries.

Questions:

1. Will Newman prevail in a lawsuit against Elaine's Fishy Lines?
2. Will Newman prevail in a lawsuit against Cosmo Kramer?

Example Answer:

1. Yes. Generally, when a person is injured by an unsafe product, a cause of action may be premised on any or all of the following three broad theories: (1) negligence, (2) strict liability, and/or (3) misrepresentation or breach of warranty.

Newman is likely to prevail against Elaine's Fishy Lines in a products liability action based on negligence or strict liability. To prevail under a products liability action based on negligence, Newman must prove by a preponderance of the evidence that Elaine's Fishy Lines owed him a duty of care, the duty of care was breached, causation, and actual damages.

A product might be suitable for its intended purpose when used properly, but may be considered unreasonably dangerous if used for a different purpose. Knowledge on the part of Elaine's Fishy Lines that its lines are used to hang objects would give rise to a duty to place warnings on the packages of its

products. Here, the facts indicate that the fishing line was manufactured to withstand a certain amount of stress for purposes of catching fish. Newman will likely be able to show that Elaine's Fishy Lines knew or had reason to know that the general public might use the fishing line for other purposes—using the fishing line to support constant amount of weight to hang objects—and that marketing the product without warnings created an unreasonable risk of injury that might occur when the line broke. This is strengthened by the fact that Cosmo purchased the finishing line from a sports and hardware store.

Elaine's Fishy Lines breached its duty of ordinary, reasonable care by failing to include appropriate warnings. This breach of duty was the actual and proximate causes of Newman's severe head injuries. The breach was the actual cause, because "but for" Elaine's Fishy Lines' failure to include appropriate warnings, Newman would not have been injured. The breach was also the proximate cause (also known as legal cause) because Newman's injuries are a foreseeable consequence of Elaine's Fishy Lines' failure to include appropriate warnings. Therefore, Elaine's Fishy Lines is liable to Newman.

Newman is also likely to prevail in a products liability action based on strict liability. A commercial supplier (manufacturer, wholesaler, or retailer) that introduces into the stream of commerce a product "in a defect condition unreasonably dangerous" is liable for personal injury and property damage caused by the product's dangerous defect. Suppliers are required to anticipate reasonably foreseeable uses even if they are misuses of the product. Thus, the lack of warnings accompanying the fishing lines would subject Elaine's Fishy Lines to strict liability.

Newman is not likely to prevail under a misrepresentation or breach of warranty products liability theory. The facts do not indicate that Elaine's Fishy Lines made a public misrepresentation of a material fact concerning the character or quality of the fishing line. Additionally, Elaine's Fishy Lines does not appear to have made any implied warranties.

Damages Recoverable

Newman will likely be able to recover compensatory damages, which include the elements of loss of earnings, medical expenses, and pain and suffering.

2. No. Newman will not be able to recover from Cosmo Kramer.

Newman must prove by a preponderance of the evidence that Cosmo owed him a duty of care, the duty of care was breached, causation, and actual damages. The first step in analyzing Cosmo's potential liability is to classify whether Newman is a trespasser, licensee, or invitee because a different duty is owed to each. Newman does not appear to be a trespasser. A trespasser is one

who enters or remains on the land of another without permission. The fact pattern indicates that Cosmo invited Newman over to watch TV. Accordingly, Newman is either a licensee or an invitee. He is more likely to be classified as a licensee because invitees are generally business visitors or public people. A licensee is a person who is privileged to enter the premises solely by virtue of the owner's or occupier's express or implied consent.

Cosmo, as the owner or occupier of the apartment has a duty to Newman, a licensee, to warn of known dangerous conditions that the licensee is unlikely to discover on his own. Cosmo had no reason to suspect that the fishing line would snap. Because Cosmo was unaware of the potential danger, he was under no duty to warn Newman.