

A mother purchased an expensive television from an appliance store for her adult son. Two years after the purchase, a fire started in the son's living room in the middle of the night. The fire department concluded that the fire had started in the television. No other facts are known.

The son sued the appliance store for negligence. The store has moved for summary judgment.

Should the court grant the store's motion?

- A. No, because televisions do not catch fire in the absence of negligence.
- B. No, because the store sold the television.
- C. Yes, because the son is not in privity with the store.
- D. Yes, because there is no evidence of negligence on the part of the store.

Explanation:

Products liability claims

Claims	Required elements
Strict products liability	Commercial seller (ie, manufacturer, distributor, retailer) produced or sold defective product Defect caused plaintiff harm
Negligence	Seller (commercial or noncommercial) failed to use reasonable care in producing or inspecting defective product Product caused plaintiff harm
Intentional tort	Seller (commercial or noncommercial) purposefully or knowingly produced or sold defective product Product caused plaintiff harm
Misrepresentation*	Commercial seller misrepresented material fact about product Consumer justifiably relied on misrepresentation when purchasing product Product caused plaintiff harm
Warranty	Merchantability (implied) Commercial seller warranted product is generally acceptable & reasonably fit for its ordinary purpose Fitness for particular purpose (implied) Seller (commercial or noncommercial) warranted product is fit for particular purpose Purchaser relied on seller's judgment or skill to purchase product Express Seller (commercial or noncommercial) made affirmation of fact or promise that is part of basis of bargain

*Commercial sellers are strictly liable for the misrepresentations they make regarding their products—regardless of whether those products are defective.

To prevail on a products liability claim based on **negligence**, the plaintiff generally must prove that the defendant's failure to use reasonable care caused the plaintiff harm. But in the absence of direct evidence of negligence, the doctrine of **res ipsa loquitur** allows the defendant's negligence to be **inferred** when:

the plaintiff suffered a **type of harm** that is **usually caused by negligence** of someone in the defendant's position *and*

the evidence tends to **eliminate other potential causes** of that harm.

If the plaintiff fails to provide sufficient evidence to support such an inference of negligence (ie, no reasonable jury could find in the plaintiff's favor), the court should grant the defendant's motion for [summary judgment](#).

Here, the fire in the son's living room started in his television, which had been purchased from an appliance store two years earlier. But there is no direct evidence of the store's negligence. And even if televisions do not usually catch fire in the absence of a store's negligence, the evidence does *not* eliminate other potential causes of the fire—eg, manufacturing defect, improper repair **(Choice A)**. Therefore, there is insufficient evidence to infer that the store was negligent, and the court should grant the store's motion for summary judgment.

(Choice B) Commercial sellers (ie, manufacturers, wholesalers, and retailers) are strictly liable for harm caused by defective products that they sell. But here, the son sued the store for negligence—not strict products liability.

(Choice C) Negligence does not require the plaintiff to be in privity (ie, in a contractual relationship) with the defendant. Instead, any foreseeable plaintiff can recover for injuries caused by the defendant's negligence.

Educational objective:

Under the doctrine of *res ipsa loquitur*, the defendant's negligence can be inferred when (1) the plaintiff suffered a type of harm that is usually caused by negligence of someone in the defendant's position and (2) the evidence tends to eliminate other potential causes of that harm.

References

Restatement (Second) of Torts § 328D (Am. Law Inst. 1965) (explaining when a defendant's negligence can be inferred based on the type of accident that injured the plaintiff).

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