

A car enthusiast, who was 20 years old, purchased a new, high-powered sports car that was marketed with an intended and recognized appeal to youthful drivers. The car was designed with the capability to attain speeds in excess of 100 miles per hour. It was equipped with tires designed and tested only for a maximum safe speed of 85 miles per hour. The owner's manual that came with the car stated that "continuous driving over 90 miles per hour requires high-speed-capability tires," but did not describe the speed capability of the tires sold with the car.

The car enthusiast took his new car out for a spin on a straight, smooth country road where the posted speed limit was 55 miles per hour. Intending to test the car's power, he drove for a considerable distance at over 100 miles per hour. While he was doing so, the tread separated from the left rear tire, causing the car to leave the road and hit a tree. The car enthusiast sustained severe injuries.

The car enthusiast has brought a strict products liability action in tort against the manufacturer of the car. Assume that pure comparative fault principles apply to this case.

Will the car enthusiast prevail?

- A. No, because the car enthusiast's driving at an excessive speed constituted a misuse of the car.
- B. No, because the car was not defective.
- C. Yes, if the statement in the manual concerning the tires did not adequately warn of the danger of high-speed driving on the tires mounted on the car.
- D. Yes, unless the car enthusiast's driving at a speed in excess of the posted speed limit was negligence per se that, by the law of the jurisdiction, was not excusable.

## Explanation:

### Adequacy of instructions/warnings

#### Content & comprehensibility

Unclear or ambiguous instructions  
Technical language  
Incomplete or excessive information

#### Intensity of expression

Text size  
Location (eg, manual v. product)  
Inconspicuous color  
Depiction of danger (eg, skull & crossbones)

#### Expected users

Children/adolescents  
Education/skill level  
Disability

A **commercial supplier** is subject to **strict products liability** for harm caused by the commercial supplier's **defective** product. A product is defective for failure to warn if (1) the product posed a **foreseeable and unobvious risk of harm** and (2) that risk could have been reduced or eliminated by providing **reasonable warnings or instructions**. In assessing the reasonableness of a product's warnings or instructions, courts consider:

the **content** and comprehensibility of the warnings or instructions  
the **intensity** (eg, prominence) of the warnings or instructions *and*  
the **characteristics** of the **expected user groups**.

Here, while the 20-year-old car enthusiast was driving at over 100 miles per hour, the tread separated from a tire, causing him to crash into a tree and sustain injuries. The owner's manual warned that "continuous driving over 90 miles per hour requires high-speed-capability tires." But it failed to warn expected users (youthful drivers prone to drive at high speed) that the car was *not sold with high-speed-capability tires* (inadequate content). That inadequate warning rendered the car defective, so the car enthusiast will prevail (**Choice B**).

**(Choice A)** A commercial supplier is strictly liable for harm resulting from the supplier's failure to provide adequate warnings or instructions regarding a foreseeable misuse of its product. Therefore, the foreseeability of high-speed driving by youthful drivers (misuse of the sports car) *necessitates* an adequate warning.

**(Choice D)** Under the doctrine of negligence per se, an unexcused violation of a statute (eg, the car enthusiast's speeding violation) is automatically deemed negligent if the statute was designed to prevent the kind of accident that occurred. However, in a pure comparative fault jurisdiction (default rule), the car enthusiast's **contributory negligence** will merely *reduce* recovery by his share of fault—not bar his strict liability claim.

**Educational objective:**

A commercial supplier must provide reasonable instructions or warnings about any foreseeable and unobvious risk posed by its product. Reasonableness is determined by (1) the content and comprehensibility of the warnings or instructions, (2) the intensity of the warnings or instructions, and (3) the characteristics of the expected user groups.

**References**

Restatement (Third) of Torts: Prods. Liab. §§ 1, 2(c) (Am. Law Inst. 1998) (commercial sellers' liability for inadequate instructions or warnings).

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