

A retired man who had been a sales representative for a drill manufacturer listed a few of his tools manufactured by his former employer on an online garage-sale website. A woman purchased one of the man's listed power drills to use in her home-remodeling business. The power drill had never been used and was still sealed in its original box. The drill manufacturer had used all available techniques to inspect the drill for defects. The drill manufacturer intended the power drill to be used on wood only and therefore included on the drill's box a warning against using the drill on metal or masonry.

One week later, the woman was using the power drill to put holes in a brick wall when the drill bit flew off the drill due to a defective component and caused her to sustain a severe eye injury.

Traditional common-law rules regarding contributory negligence apply in this jurisdiction.

If the woman asserts a strict products liability claim against the man, is she likely to recover?

- A. No, because the man was not a commercial supplier.
- B. No, because the woman used the drill in an unintended manner.
- C. Yes, because the drill had a defective component part.
- D. Yes, because the man was a retailer of the power drill.

Explanation:

Strict products liability applies to **commercial suppliers**—ie, persons in the business of manufacturing, distributing, or selling the type of defective product that caused the plaintiff harm. However, it **does not apply to casual sellers**—ie, persons conducting occasional sales *outside* their regular course of business.

Here, the man is a casual seller (not a commercial supplier) because he sold the power drill at an online garage sale—not in the regular course of business. Therefore, although the man sold the defective drill to the woman, he is not subject to strict products liability, and the woman is unlikely to recover.

(Choice B) **Misuse** is a defense to strict products liability when a product was used in an unintended, unforeseeable manner. Here, the woman used the drill in an unintended manner, despite the manufacturer's warning against using the drill on masonry (ie, brick). But that warning shows that her misuse was foreseeable.

(Choice C) It is irrelevant in this case that the drill had a defective component part. The man is only a casual seller, so he cannot be held strictly liable for the defective drill.

(Choice D) Any commercial supplier along the **chain of distribution**—including retailers—may be subject to strict products liability if the product contained a defect when it left the supplier's control. While the man likely would have been considered a retailer in his former job, he is only a casual seller in this case.

Educational objective:

Strict products liability is only imposed on commercial suppliers (persons who manufacture, distribute, or sell products as part of their business)—not casual sellers (persons conducting occasional sales outside their regular course of business).

References

Restatement (Third) of Torts: Prods. Liab. §§ 1 cmt. c, 20 (Am. Law Inst. 1998) (defining commercial supplier).

Products liability

