

At a country auction, a collector acquired an antique cabinet that he recognized as an extremely rare and valuable collector's item. Unfortunately, the cabinet had several coats of varnish and paint over the original finish. Its potential value could only be realized if these layers could be removed without damaging the original finish. Much of the value of the cabinet depended on the condition of a unique oil finish, the secret of which died with the cabinet's inventor.

A professional restorer of antique furniture recommended that the collector use a certain paint-stripping product to remove the paint and varnish from the cabinet. The collector obtained and read a sales brochure published by the manufacturer of the paint-stripping product. The brochure stated: "This product will renew all antique furniture. Will not damage original oil finishes."

The collector purchased this paint-stripping product and used it on his cabinet, being very careful to follow the accompanying instructions exactly. Despite the collector's care, the cabinet's original finish was irreparably damaged. When finally refinished, the cabinet was worth less than 20% of what it would have been worth if its original finish had been preserved.

If the collector sues the manufacturer of the paint-stripping product to recover the loss he has suffered as a result of the destruction of the cabinet's original finish, will the collector likely prevail?

- A. No, if the product was not dangerous to persons.
- B. No, unless the product was defective when sold by the manufacturer.
- C. Yes, if the loss would not have occurred had the statement in the brochure been true.
- D. Yes, unless no other known removal technique would have preserved the cabinet's original finish.

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.

A **commercial seller** (ie, manufacturer, distributor, retailer) is subject to strict liability for harm caused by **defective products**. In addition, a commercial seller can be strictly liable for **misrepresentations** regarding any of its products—regardless of whether that product is defective. To recover based on misrepresentation, the plaintiff must show that:

the commercial seller **misrepresented a material fact** about a product—ie, a fact that would be important to a normal purchaser

the plaintiff **justifiably relied** on that misrepresentation when purchasing the product *and* the product **caused** the plaintiff physical harm—ie, harm that would not have occurred had the seller's representation been true.

Here, the manufacturer's brochure falsely stated that its paint-stripping product "[w]ill not damage original oil finishes" (misrepresentation). The collector read the brochure before purchasing the product to use on his antique cabinet (justifiable reliance). And since the destruction of the cabinet's original finish would not have occurred had the statement in the brochure been true (causation), the collector will likely prevail.

(Choice A) Products liability based on misrepresentation applies to *any* type of physical harm (ie, personal injury or *property* damage), so the fact that this product was not dangerous to persons would not absolve the manufacturer of liability.

(Choice B) A commercial seller is strictly liable for harm caused by its misrepresentations about *any* of its products—not just defective ones.

(Choice D) Products liability can be based on a commercial seller's misrepresentation about a product even if no other product can satisfy that representation.

Educational objective:

Products liability based on misrepresentation arises when (1) a commercial seller misrepresented a material fact about a product, (2) the plaintiff justifiably relied on that misrepresentation, and (3) the product caused the plaintiff physical harm.

References

Restatement (Second) of Torts § 402B (Am. Law Inst. 1965) (explaining that a commercial seller is subject to strict liability for physical harm caused by its misrepresentations regarding its products).

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