

In preparation for a mountain-climbing expedition, a climber purchased the necessary climbing equipment from a retailer in sporting goods. A week later, the climber fell from a rock face when a safety device he had purchased from the retailer malfunctioned because of a defect in its manufacture. Thereafter, a paramedic was severely injured when he tried to reach and give assistance to the climber on the ledge to which the climber had fallen. The paramedic's injury was not caused by any fault on his own part. This jurisdiction does not recognize the firefighter's rule in products liability actions.

If the paramedic brings an action against the retailer to recover damages for his injuries, will the paramedic prevail?

- A. No, because the paramedic did not rely on the representation of safety implied from the sale of the safety device by the retailer.
- B. No, unless the retailer could have discovered the defect by a reasonable inspection of the safety device.
- C. Yes, because injury to a person in the paramedic's position was foreseeable if the safety device failed.
- D. Yes, unless the climber was negligent in failing to test the safety device.

Explanation:

Under **products liability** law, a **commercial seller** is strictly liable when (1) it produces or **sells a defective product** and (2) the product's defect **harms a foreseeable plaintiff**—ie, a person who is reasonably likely to suffer harm because of the defect. A rescuer is a foreseeable plaintiff because a rescuer is likely to risk injury by aiding a person endangered by the defective product.*

Here, the retailer sold a defective safety device that caused the climber to fall. The paramedic then tried to assist the fallen climber and was severely injured in the process. Since it was reasonably foreseeable that the paramedic would risk injury by attempting to aid a climber who was injured by the defective safety device, the paramedic will likely prevail.

*In jurisdictions that recognize the firefighter's rule in products liability actions (not seen here), professional rescuers are generally precluded from recovering for injuries sustained in attempting to rescue an individual harmed by the defective product.

(Choice A) Products sold by a commercial seller have an implied warranty of merchantability—a seller's implied representation that the product is safe and suitable for its ordinary purpose. However, a plaintiff's reliance on a seller's implied warranty is irrelevant to a strict products liability claim since reliance is not an element of that claim.

(Choice B) Since strict liability is imposed without proof of the defendant's culpability, the retailer would be strictly liable regardless of whether it could have discovered the defect by a reasonable inspection of the safety device.

(Choice D) A consumer has no duty to inspect a product for manufacturing defects. Therefore, the climber could not have been negligent in failing to test the safety device.

Educational objective:

A commercial seller (eg, manufacturer, wholesaler, retailer) is subject to strict products liability when (1) it sells a defective product and (2) the product's defect harms a foreseeable plaintiff (eg, purchaser, rescuer).

References

Restatement (Third) of Torts: Prods. Liab. §§ 1, 2(a) (Am. Law Inst. 1998) (liability for products that contain manufacturing defects).

Restatement (Third) of Torts: Liab. for Physical & Emotional Harm § 32 (Am. Law Inst. 2010) (liability to rescuers).

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Foreseeable plaintiff

