

A seller sold his boat to a buyer. During negotiations, the buyer said that he planned to sail the boat on the open seas. The seller told the buyer that the boat was seaworthy and had never sustained any significant damage. In fact, the hull of the boat had been badly damaged when the seller had run the boat aground. The seller had then done a cosmetic repair to the hull rather than a structural repair.

The buyer relied on the seller's representations and paid a fair price for a boat in good repair, only to discover after the sale was completed that the hull was in fact badly damaged and in a dangerous condition. The seller has refused to refund any of the buyer's money, and the buyer is contemplating suing the seller.

Under what theory would the buyer be most likely to recover?

- A. Fraud.
- B. Intentional endangerment.
- C. Negligent misrepresentation.
- D. Strict products liability.

Explanation:

Misrepresentation

(fraudulent v. negligent)

| | Conduct | Setting | Harm |
|-------------------|---|--|---|
| Fraudulent | Knowingly or recklessly misrepresented material fact to induce reliance | Any setting | Justifiable reliance caused pecuniary loss |
| Negligent | Negligently provided plaintiff false information | Commercial setting or setting with risk of physical harm | Justifiable reliance caused pecuniary loss <i>or</i> physical harm |

To recover for **fraud** (ie, intentional misrepresentation or deceit), the plaintiff must show that:

the defendant knowingly or recklessly **misrepresented a material fact** with the **intent to induce** the plaintiff's reliance *and*

the plaintiff **justifiably relied** on the defendant's misrepresentation and suffered **pecuniary loss** (ie, monetary loss).

Here, the seller knowingly misrepresented that the boat had never sustained significant damage with the intent to persuade the buyer to purchase it. Since the seller had cosmetically repaired the boat's damaged hull, the buyer's reliance on that misrepresentation was reasonable. The buyer then suffered a pecuniary loss when he paid a fair price for a boat in good repair but received a badly damaged one. Therefore, the buyer will likely recover for fraud.

(Choice B) Intentional endangerment (conduct that is likely to cause death or serious bodily harm to another) is a theory of criminal liability—not civil liability.

(Choice C) Negligent misrepresentation occurs when a defendant negligently provides the plaintiff with false information in a transaction where the defendant has a pecuniary interest (ie, a commercial setting). Although the seller had a pecuniary interest in the boat transaction, his misrepresentation was made knowingly—not merely negligently. As a result, negligent misrepresentation is not the best theory of recovery.

(Choice D) Strict products liability is only imposed on a commercial supplier (eg, manufacturer, distributor, retailer)—not a casual seller (eg, an individual selling a car to a friend). Since there is no evidence that the seller is a commercial supplier, the buyer is unlikely to recover on this basis.

Educational objective:

Fraud (ie, intentional misrepresentation or deceit) liability arises when (1) the defendant knowingly or recklessly misrepresents a material fact with the intent to induce the plaintiff's reliance and (2) the plaintiff reasonably relies on that misrepresentation and suffers pecuniary loss.

References

Restatement (Second) of Torts § 525 (Am. Law Inst. 1977) (fraudulent misrepresentation).

Restatement (Second) of Torts § 552 (Am. Law Inst. 1977) (negligent misrepresentation).

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