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Subject Area - Law

Consumer Protection Act (CPA)

This case study concerns the liability of a manufacturer of a product for harm which is suffered by the “ultimate consumer” of that product. It is important to consider the remedies that would be available in contract and under the doctrine of tortious liability for defective goods.

There is privity of contract in the relationship between Pamela and Cooks Stores and, therefore, in contract a remedy would be available to Pamela only. To invoke such a remedy under contract, Pamela should be able to rely on the terms implied into the contract by the Sale of Goods Act 1979, such as provided under s. 14 (2B) by which goods are not of satisfactory quality if they are unsatisfactory in terms of safety and durability, according to the standards of a reasonable person. The SGA provides recourse to a seller and, therefore, this act should enable Pamela to reclaim the £175 purchase price of the food processor from Cooks Stores.

According to the “narrow rule” in *Donoghue v Stevenson* a manufacturer owes a duty to the customer to take reasonable care when he sells goods in the form in which he intends them to reach the ultimate consumer with no reasonable possibility of intermediate examination. This rule is a variety of negligence and creates a regime of fault-based liability on the part of manufacturers, which will include retailers, such as Cooks Stores, alongside Price (UK) Ltd.

Both Pamela and Rose are potential claimants since here they are both “ultimate consumers” and the rule covers those who receive goods as presents and bystanders. To bring an action in tort Rose, as the claimant, would have to show the existence of a duty of care, breach and causation.

Rose might have a cause of action against Price (UK) Ltd as manufacturer, if she can show that there has been a failure in the production process, for instance. The doctrine of *res ipsa loquitur* may be useful here, as developed in *Scott v London and St Katherine Docks Co.*, which, it has been argued, creates a rebuttable presumption of negligence on the part of the defendant. Following *Erle CJ* Rose would have to show that the accident was of the kind that does not normally occur in the absence of a want of care, that the defendant had exclusive control over the thing which caused harm and that the defendant cannot offer any plausible alternative explanation of what caused the accident. Although these would be evidential questions, they might help Rose to determine whether or not Price (UK) Ltd has breached its duty of care, which is important since experts are unable to identify the precise reason for the incident.

It is important to consider the possibility of intermediate examination and whether Rose was using the food processor properly. While it is stated that Rose followed the operating instructions carefully, it should be noted that Pamela has used it previously – if not frequently – without difficulty. This leaves open the possibility that consumer misuse is at the root of the problem. Further, the manufacturer might be exonerated if another person can reasonably be expected to inspect their product.

From the facts as presented it is unclear whether the food processor could reasonably be subject to an intermediate investigation, as was argued unsuccessfully by the defendant in *Grant v Australian Knitting Mills*. If this reasonable expectation arises the tester could be regarded as the cause of the harm, and therefore, Cooks Stores might be found

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to have contributed to the negligence of Price (UK) Ltd. It is, however, unclear whether a retailer can reasonably be expected to test every appliance that it sells. This defence would be unlikely to allow Price (UK) Ltd. to deflect all the blame on to Cooks Stores.

The burden of proving the causal link between any breach of duty by Price (UK) Ltd and/or Cooks Stores and the harm suffered by Rose rests with Rose herself, as confirmed in *Foster v Biosil*. Should she fail to satisfy the burden of proof in this respect, her action will fail. Should Rose be successful, following *Aswan Engineering* she would be able to recover "non-integral" damage caused by the defect in the food processor, such as the vase. She would also have a claim for loss of amenity in respect of the personal injury to her hands and face, with a quantum to be evaluated.

The regime introduced by the Part I of the Consumer Protection Act (CPA) 1987 would provide Rose with an alternative, since it purports to create a system of strict liability in respect of defective products that cause physical harm to a person or property. The CPA 1987 makes a producer, i.e. Price (UK) Ltd., responsible for the defectiveness of their product, however, according to CPA 1987 s. 3(1) regard may be had to any warnings which had been provided. The status of any such warning remains unclear. The CPA 1987 s. 3(2) allows a court to consider how a product might reasonably be used. It remains to be seen whether Rose was using the food processor for the correct purpose, even if she was attempting to follow the instructions. It is clear from CPA 1987 s. 6(4) that the defence of contributory negligence will apply to a defective product and any damages awarded to Rose may be reduced dependent on her blameworthiness.

The CPA can be invoked against anyone involved within the chain of manufacture and distribution and liability is joint and several, so Rose would be best advised to sue whoever has the greatest financial resources. Cooks Stores, as a supplier, is however only liable to name their supplier and, accordingly, Price (UK) Ltd. will be Rose's target for any damages. The CPA covers personal injury, but no damage to property under £275 and, therefore, under the guise of this act, Rose would be unable to claim for the damage to her vase and would be advised to rely on tort.

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