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“Are you Seriously Telling Me?”

The screwdriver produced by CCT is an unreasonably dangerous product. Miller states that, “[an} unreasonably dangerous product [is] a product that is so defective that it is dangerous beyond the expectation of an ordinary consumer or a product for which a less dangerous alternative was feasible but the manufacturer failed to produce it” (Miller 364). When looking at the screwdriver at face value, there is no blatant product harm. But from this case, it was shown that it was “unreasonably dangerous due to a flaw in the design” (Miller 364). The conditions of a design defect is defined as “(1) the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of reasonable alternative design and (2) the omission of the alternative design renders the product not reasonably safe” (Miller 365). For the first condition, there was foreseeable harm that could have been caused by the plastic handle. The people who purchase this product will be utilizing it in projects that require manual labor. For example, this could be in home repairs, construction, plumbing or etc. Clearly in each of these scenarios, plastic proposes a certain risk towards the user. Plastic is easily broken, and when shattered, it can cut easily through skin or other externalities. The reasonable alternative design would be a rubber handle that would not be shattered in harsh situations. This directly leads to the second condition, revealing that the omission of the plastic handle deems it dangerous.

Jimmy’s misuse of the screwdriver is a foreseeable misuse of the screwdriver. In scenarios that require manual labor, it is foreseeable that a person may use one tool to complete the function of another. For example, if someone does not have a phillips screwdriver, they could easily use a flat head to do the job. In some cases, people can be too lazy to grab another tool and

fall into this method. But in some situations, it ends up poorly in the favor of the consumer. Clearly, these examples reveal a foreseeable risk of harm that a user might commit. A defense that may be used by the plaintiff is product misuse, which would argue that the points made before are unforeseeable. Product misuse “occurs when a product is used for a purpose for which it was not intended...only when the particular use was not reasonably foreseeable” (Miller 366). The company could argue that a customer using their product in a complete opposite manner than designed would be product misuse. Clearly a screwdriver is used to rotate a screw (which has spiraling metal) into place, not to force them in. Another area of defense that could be used is comparative negligence. This defense would be used to limit liability since “the plaintiff’s conduct was not a defense” (Miller 367). It could be defended that this customer did misuse the product to some degree, and contributed to their injuries. The last defense that could be made is the assumption of risk. This states that “(1) the plaintiff knew and appreciated the risk created by the product defect and (2) the plaintiff voluntarily assumed the risk, even though it was unreasonable to do so” (Miller 366). In this situation, the user accepted the risk of using a plastic handle to hammer in the screw. Using a product in this fashion multiple times, as the plaintiff did, revealed multiple situations of assuming risk.

To defend our product, I stated “any reasonable person would know not to use a screwdriver that way”. This statement is untrue, because according to Miller “a seller must also warn consumers of the harm that can result from the foreseeable misuse of its product” (Miller 366). My statement only covers those who are “reasonable”, but does not cover the unreasonable person. Since I said this, I posed it as a “foreseeable risk” which a reasonable person would not do. According to the topic of inadequate warnings “A product will be considered defective when

(1) the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings and (2) the omission of the instructions or warnings renders the product no reasonably safe” (Miller 366). From this definition, there needs to be a warning against situations like these which are foreseeable, especially for unreasonable people. For example, a warning could state that, “the product is not intended for other tool functions including, but not limited to, hammering, cutting, etc.”.

Micah’s use of the screwdriver is a foreseeable misuse of the product. The general idea of throwing a screwdriver may be common in certain environments. For example, when a worker asks another to pass them a certain tool, the other worker generally tosses it to them. This general idea of throwing would consist of a foreseeable misuse that would cover “throwing it as a knife”. To add, there should be additional warning to keep this product out of the hands of children. On the defense side of things, since this is a child who was “unaware” of what happened to his father, assumption of risk could not be defended. To add, product misuse could not be applied because it is “foreseeable” that a child would act wrongly. Although this might be true, this situation could be defended using comparative negligence. This defense could be made to place some liability on the plaintiff for throwing the screwdriver within the proximity of a bystander. In most situations, there can be no defense made that we are not liable for the bystander. As stated by Miller, “Almost all courts extend the strict liability of manufacturers and other sellers to injured bystanders” (Miller 366). Clearly, liability is still placed on the manufacturers.

There isn’t an apparent need to warn users about using the screwdriver as a throwing knife specifically, but there is a need to warn against the general act of throwing/tossing the tool. This product may be deemed defective because the “omission of the...warning renders the

product not reasonably safe” (Miller 366). If we did not warn against this reasonable possibility, it would be easy to sue CCT. In addition, there is an apparent necessity to warn users about this product getting in the hands of children. This act was caused not only by the design flaw, but from the child’s immaturity. Although some warnings may seem obvious, the warnings do protect businesses from cases like these.