

DEFECTIVE PRODUCT: SERVICE V. THE PRODUCT

Fact Pattern:

Mr. McCall underwent surgery for the implantation of a mandibular prosthesis. It was later discovered that this device was defective. A complaint was filed against the hospital in which the operation took place and the physician on the basis that all defendants sell, provide or use the devices and should be held liable. The complaint also alleged that the prosthesis was defectively designed, unsafe for its intended use and lacked adequate warnings.

Question:

May a hospital and physician be held strictly liable under Restatement of Torts section 402 for defects in a product supplied incidental to the rendering of medical services?

Rule

A hospital and physician may not be held strictly liable under Restatement of Torts section 402 for defects in a product supplied incidental to the rendering of medical services. Only negligence principles would apply to a physician/hospital provider.

Discussion

The issue here is whether the hospital and the physician were in fact sellers under Section 402A and whether liability be extended to a hospital or a doctor based on a theory of product liability. Restatement of Torts (Second) section 402A provides:

- (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
 - (a) the seller is engaged in the business of selling such a product, and
 - (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.



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The determinative issue here is not whether the defective product was for sale or whether or not a price was charged for the product, but whether a medical service is being performed. Such services are not affected by the application of section 402A.

The Question of Hospital Liability:

The public has the right to expect, in the case of products which it needs and for which it is forced to rely upon the seller, that reputable sellers will stand behind their goods. Public policy demands that the burden of accidental injuries caused by products intended for consumption be placed on those who market them. Further, the consumer of such products is entitled to the maximum of protection at the hands of those who market the products. A hospital is not a purveyor of products or goods; it is a provider of services, an intermediary in the distribution chain of a product. The use of the implant device was incidental to the hospital's primary function of providing medical services. The safety of the product depends not on the judgment of the physician or the hospital administration, but on the judgment of those connected to the research, development, manufacture, marketing and sale of the product.

The Question of Physician Liability:

Physicians, like hospitals, are providers of health care services. The physician's expertise lies in the diagnosis, treatment and cure of illness, not in the research or development of prosthetics or devices used to aid medical diagnosis or treatment. A physician is not in the business of selling products, but rather is in the profession of providing medical services. Products such as the prosthetic device in this case are supplied and utilized only as needed to deliver the professional medical service. They are incidental, or integral, to a physician's service, but they are not the focus of the physician's delivery of health care.