

Question No. 1 – One Hour

Jerry had trouble sleeping for several years, so he was enthusiastic when he heard of a new non-prescription drug on the market, called “BestSnooze”, manufactured by Down Under. The drug was represented in its magazine advertising to cause drowsiness and sleep, when used as directed.

Jerry purchased a bottle of this medicine from Moon Drugs, a retail pharmacy, and he took the recommended dose that evening. He fell asleep, and in the middle of the night he sleepwalked and walked into the doorjamb to his bedroom, causing a gash over his left eye which required stitches at a cost of \$500.00 in medical bills. The next day Jerry read the warnings on the insert to the bottle for the first time and found no reference whatsoever to sleepwalking.

In addition to the gash, Jerry felt dizzy for three weeks after the incident, which prevented him from working as well as driving his children to school and doing some grocery shopping. Fran, his wife, took on the driving and shopping duties. Jerry would have lost \$2,000.00 in wages, but his boss paid him anyway as a favor for being a good employee.

Down Under admitted that it knew of the possibility of sleepwalking, but did not think it of sufficient concern to warn of it.

Discuss the rights and liabilities of Jerry, Fran, Down Under and Moon Drugs.

Question No. 2 – One Hour

Horace wished to purchase a piece of fine art, and went to the Minnerva Gallery for that purpose. He was met by Conrad, an employee of Minnerva, who showed him some pieces for sale. Horace took a liking to a piece entitled The Formula, and was told by Conrad that it was an original by a famous artist, selling for \$6,500.00. In fact, as Conrad well knew it was a copy valued at \$800.00. Horace bought the painting for \$6,500.00 and took it home.

The next day Jericho, one of Horace's friends, viewed the painting and recognized it as a copy. He suggested Horace immediately return the item and demand damages based on the "benefit of the bargain" rule. The Minnerva Gallery knew nothing of Conrad's dealings, and in fact was a reputable art dealer. Nonetheless, Jericho placed an ad in the local trade magazine describing Mr. Minnerva, personally, as a fraud with a long history of shady dealings.

Shortly after the ad appeared, Mr. Minnerva confronted Jericho and demanded a written apology. Jericho refused, and shoved Mr. Minnerva out the door. In doing so, Jericho broke a vase which Mr. Minnerva was holding.

Discuss the rights and liabilities of the parties.