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Question 1

Pugh v Don

Products Liability

Products Liability exists when a manufacturer or seller allows a product to leave its facility in a defective condition, making it unreasonably dangerous to a user or consumer. When it causes damages to a user or consumer, strict liability will apply. This can be analyzed under six different theories: Negligence, Breach of Express Warranty, Breach of Implied Warranty, Manufacturing defect, Design Defect, and Failure to Warn. If the facts of the case meet any one of these, the company will be strictly liable for the damage caused, absent a defense.

Don was the manufacturer and seller of this product so if liability can be established under one of these theories, he will be the person liable.

Negligence

Negligence is the creation of an unreasonable risk of harm to a foreseeable person. It requires the breach of a duty owed, and that breach must be the actual and proximate cause of actual damages. A duty is an obligation to behave carefully enough that you use reasonable/due care towards a foreseeable person. A breach occurs when there is a failure to meet a duty or obligation by doing something that a reasonable person would not do. Actual cause is cause in fact and can be determined by utilizing the but/for test for a single cause of harm, and the substantial factor test for multiple potential causes of harm. Proximate cause is legal cause and requires a sufficiently or reasonably close relationship between the careless act done and the harm caused. The

chain of proximate cause can be broken if the harm caused was too remote, was an unforeseeable type of damage, there was a superceding intervening act, or public policy dictates it so. There must be actual damages caused by the careless act.

In this case Don manufactured speakers with short cables to hook into a person's computer. He had a duty to manufacture them in a safe manner so that they would not create unreasonable risk of harm to his foreseeable customers. It appears that don may not have breached this duty because Pugh altered the wire before plugging it into his computer. The wires could very well have been made safely with no creation of unreasonable harm. The wire did actually cause harm to Pugh and his computer, because but/for pugh plugging the wire in, he would not have been electrocuted when his computer shorted out. However, Don would argue that this was an unforeseeable type of damage because it was not foreseeable that a consumer would trim an electrical wire and expect it to work. It could also be argued that cutting the wire was a superceding intervening act done by Pugh. Either way the causal chain is broken and Don would not be liable under negligence. he did not breach a duty owed here and there was no proximate cause.

Alternatively, it could be stated that Pugh's act caused 100% of the damage and therefore Don would not be liable for any part of the damage under comparative fault.

No negligence by Don

Breach of Express Warranty

An express warranty is a statement made by a manufacturer or seller about the product that is intended to reduce reliance. Most jurisdictions will require that defendant actually relied on the statement in order for the strict liability to apply.

Don did put an express warranty on his product that stated the speakers were "safe for use with all personal computers." However this statement did not say that the speakers

were compatible for use with all personal computers. It does appear that Pugh relied on this statement because he thought that trimming the wires was acceptable, as he did so in order to plug in the speakers. However it would be argued by Don that the reliance in this statement was that he wanted customers to know that the speakers would not damage any type of personal computer they have. It was not intended that a person should rely that trimming an electrical wire and plugging it into the computer would be safe.

Therefore there would be no liability for breach of express warranty.

Breach of Implied Warranty of Merchantability

An implied warranty of merchantability comes with every product and is a guarantee that the product will be of fair to average quality and fit for its ordinary use. In order to prove a breach the plaintiff must show what the ordinary use was, that he was using it for that purpose and it caused the damages.

In this case Pugh was attempting to use this product for its ordinary use, however cutting the product was misuse because it was intended to be used as it. It was not a product that ordinarily could be cut and then used. The misuse was not foreseeable because an ordinary person would not think it was okay to cut an electrical component and then plug it into something.

P would not recover under this theory as he misused the product in an unforeseeable way.

Manufacturing Defect

A manufacturing defect occurs when the overall design of the product was safe but something occurred during the manufacturing process that caused the product to become defective and leave the facility in an unreasonably dangerous condition.

In this case there is no indication that this product was manufactured incorrectly. P altered the product before using it, so he could not show manufacturing defect. No liability here.

Design Defect

A design defect is when a product has been manufactured according to design, but the design in itself caused the product to be unreasonably dangerous to the consumer when it leaves the facility. In this case the plaintiff must generally show that the product could have been designed more safely and the court will determine this using the risk v. utility analysis by weighing the likelihood and degree of risk against the cost to improve it and utility of the product.

In this case Pugh could possibly argue that there was a design defect because it did not fit his computer. However that only means it didn't fit the type of computer he had and not that it was actually designed in an unsafe manner for computers that it would fit into. This product would have been designed fine for the computers it fit.

There would be no liability here.

Failure to Warn

Failure to warn occurs when the manufacturer or seller fails to put a proper warning of a known danger on the product, thereby making it unreasonably dangerous when it leaves the facility.

There is a chance that P could recover under this theory because there was no warning on the product stating that it should not be trimmed before use. By saying it was safe for use with all computer it is possible that P could argue it should have come with a warning that it should not be cut to fit all computers. However this is not

something a reasonable person would do, so it could be argued that it was not a known danger that someone would cut the wire and then be electrocuted so there would still be no duty to warn.

There is a slight chance P could recover under this theory but unlikely.

Overall, P could most likely not recover under this theory because his trimming of the usb wires was a superceding intervening fact and this would be a defense for D.

Malicious Prosecution-Criminal

Criminal Malicious prosecution occurs when five elements are met: 1) the def instigated or continued a criminal proceeding against the plaintiff, 2) the proceedings were terminated in favor the plaintiff, 2) there was no probable cause for the proceedings, 4) def had malice, and 5) emotional damages will be presumed and plaintiff can also show pecuniary damages, including attorneys fees for the criminal prosecution.

In this case Don was angry that Pugh would not retract his blog about Don and his business. This establishes that Don had malice toward Pugh. Don called the police after he hung with Pugh and made a false claim that Pugh threatened to kill him, which was an instigation of a criminal proceeding. Pugh had to make two court appearances so the proceeding were instigated. Don knew this was a false accusation so there was no probable cause. The proceedings were terminated in favor of Pugh because there was no evidence to show he had committed the crime. This meets the above four elements and because this is criminal and not civil, damages will be presumed for emotional harm caused. If Pugh suffered pecuniary loss or paid out of pocket for the criminal proceedings defense, he could recover that too.

Don has no defense to this tort. He might argue that he was justified because Pugh had potentially committed torts against him, discussed infra, but he would fail in that argument.

Don will be liable for malicious criminal prosecution against Pugh

Defamation

Don v Pugh

Defamation-Libel

Defamation occurs when the defendant publishes a false statement about the plaintiff to a third party, and that statement is interpreted to be defamatory by the third party and the third party interpreted the statement to be about the plaintiff. The defamatory statement must cause the plaintiff reputational harm. Defamation has two forms: Libel, which is def. that is written or preserved, and slander, which is def. that is oral. Damages will be presumed in the case of libel and slander per se, but must be proven in regular slander.

In this case P did make a false statement about Don's speakers. He said they are designed to electrocute people, but that is not a true statement. They only electrocuted P because he cut them. He also said he interviewed Don and don laughed, which is also untrue. Don lost business as a result of this which would indicate that he suffered reputational harm. People read this information about Don and his speakers and stopped shopping there which would infer they no longer trusted Don to make a safe product. This would be libel as it was written on the internet. As this was a private vs private claim, Don would not need to prove fault, meaning he doesn't need to prove that P knew the claim was false. Damages will be presumed.

Don will recover for defamation.

False Light

Placing a person occurs when the defendant utters statements to a third party that places a person in a false light, and it would be objectionable to a reasonable person.

Unlike defamation, reputational harm is not required for false light.

In this case the statements discussed above did place Don in a false light to a third party. A reasonable person would find it objectionable to have it said that he laughed off the fact that his product could cause electrocution, as well as that he made a product designed to do such a thing.

Don would also be able to recover for false light.

Injurious Falsehood

An Injurious Falsehood occurs when the defendant utters a false statement to a third party about a pecuniary interest of the plaintiff, that is calculated to cause the plaintiff damages, is done so with malice, and the plaintiff suffers damages.

In this case P did utter a false statement about Don's speaker, which was disparaging about the quality of his product. It was not true. P was angry that he had been electrocuted when he plugged the speaker in, so he had malice and as he published the statement on his widely read blog it would appear he was hoping people would read this and stop buying Don's speakers. People did stop buying Don's speakers, so if Don could show that it was because of the blog that he lost customers, he would recover.

Don would most likely recover for this tort.

Interference with prospective economic advantage

This tort occurs when a defendant interferes with a prospective economic opportunity of the plaintiff by doing a wrongful act, and causes economic damages.

As discussed above, the statements were made about Don's business and it can be inferred that it was done so to cause Don to lose business. publishing false statements

to the public is a wrongful act, and D suffered damages.

REcovery would be had here as well.

Prima facie Tort

This tort occurs when the defendant does an intentional act without just cause or excuse that is calculated to cause the plaintiff pecuniary loss, and actually does cause the plaintiff damage to business or trade.

For same reasons discussed above, Don could potentially also recover under this tort.

For all of the above torts, P would argue a qualified immunity that he had a duty to warn the public about a dangerous product. However he would likely not be afforded this immunity as his warning was false and was done so with malice. He could argue justification as well but would likely lose for the same reasons.

Question 2.

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Prof. Pert (P) v Prof. Dunn (D)

Is D liable for intrusion?

Intrusion is prying or intruding into the seclusion or private domain of the plaintiff in a way that is highly offensive to a reasonable person.

Here, D hid a listening device in P's office - and act that not only intrudes, but prys into the privacy of another. Any reasonable person will come to the conclusion that his act is highly offensive. D may argue that the office is not a place of solitude or private domain, for it is on the campus in which they instruct at. P most definitely can enjoy the expectation that no one is listening in on him behind closed doors with a hidden listening device, and D will be liable for intrusion.

Is D liable for public disclosure of private facts?

Public disclosure of private facts occurs when there is a wide dissemination/publication of private information that is highly offensive to a reasonable person.

With the hidden listening device D intruded into P's office with, D obtained information that P had a mildly enlarged prostate. With this private information, D sent an email to 18 of their colleagues providing false information that P had an enlarged prostate, and they P may require a prolonged leave of absence. This is undoubtedly highly offensive. D may argue that the publication of this false information was not widely disseminated,

and that it was only gossip to a small group of people. It may be a jury question as to the number of persons required for this tort - further information may help as to the number of colleagues the two professors have - if the 18 was a small fraction of colleagues, the defense may work in D's favor. Without this information, D may be liable for public disclosure of private facts.

Is D liable for false light?

False light is the publication of information that places the plaintiff in a false light that is highly offensive to a reasonable person.

The email sent out by D was certainly false information that placed P in a false light that is highly offensive. The false information that P may need to take a prolonged medical leave puts him in a category of false light that is injurious and causes reputational harm. D may attempt to argue that he was disseminating the truth, however, the exaggeration of enargement, and a prolonged medical leave will viciate this attempted defese. The burden of proof may shift back to P, who may produce medical records to the contrary. For these reasons, D will be liable for the tort of false light.

Is D liable for Injurious falsehood?

Injurious falsehood is a malicious false statment made about the plaintiff in a calculated manner to produce a pecuniary loss where there are damages.

It is stated in the facts that D did not like or trust P, which malice may be able to be inferenced from - there is an false statement, but it comes down to if the dissemination of P's private facts were calculated to cause pecuniary loss. There are not facts that support pecuniary loss, or damages (other than reputational harm), which is why this cause of action will fail.

Is D liable for Defamation?

Defamation is liable under slander and libel. Slander is the utterance of a false statement to a third party where there is reputational harm - damages need to be proven for slander not concerning a crime, business/professional matters, a loathsome disease, or malicious sexual conduct (slander per se). Libel is the writing or production of false information that has a lasting impact on the plaintiff's reputation where there are presumed damages.

Here, the email was a false statement, in the form of an email publicized to 18 colleagues. Damages are presumed when in written form because of the lasting impact they have. D may attempt to argue that he was disseminating the truth, however, the exaggeration of emasculation, and a prolonged medical leave will viciate this attempted defense. The burden of proof may shift back to P, who may produce medical records to the contrary. D is liable for defamation in the form of libel.

Prof. Dunn (D) v Prof. Pert (P)

Is P liable for trespass to chattel?

Clever
Trespass to chattel occurs when one intentionally diminished the quality, value, or condition of another's chattel, interferes with another's right to possess chattel, or causes injury to the plaintiff's person.

Here, the worm diminished the quality and condition of P's soda, rendering the soda

unconsumable (to a reasonable person), thus P is liable for trespass to chattel.

Is P liable for assault?

Assault is intentionally placing one in fear or apprehension of receiving imminent bodily harm.

P placed a worm in D's soda which was unknown to D. Upon taking a sip, D pulled the worm out of his mouth. Because D was not placed in imminent fear of having a worm in his mouth, P will not be liable for assault.

Is P liable for battery?

Battery is the unconsented to harmful or offensive touching of another.

P intentionally placed a worm into D's soda, with reasonable certainty, P could foresee that D would drink it. This would be highly offensive to a reasonable person. There is nothing in the fact pattern that D consented to P placing the worm in the soda, and battery is further supported by P's transferred intent in the trespass to chattel cause of action. P is liable for battery.

Is P liable for Intentional infliction of emotional distress (IIoED) for the worm?

IIoED is the intentional outrageous conduct of the defendant that causes severe emotional distress (damages).

P placing a worm in D's soda is over the top, however, it may not be viewed as outrageous. The court will leave it up to the jury as to if this conduct is outrageous, but

the cause of action will fail due to the lack of damages. Although D was disgusted by the worm, it did not cause severe emotional distress. P will not be liable for IloED.

Is P liable for Intentional infliction of emotional distress (IloED) for the bat?

IloED is the intentional outrageous conduct of the defendant that causes severe emotional distress (damages).

P knew that D was afraid of bats, and with this knowledge, captured one, and took it to D's office. Here there was resulting damage that is addressed, *infra*, however, there is no mention as to severe emotional distress. P will not be liable for IloED.

Is P liable for a negligence cause of action?

Negligence is the creation of an unreasonable risk of harm to a foreseeable plaintiff is comprised of four elements: duty, breach, causation - both actual and proximate, and damages - in strict liability the later two elements are addressed.

Here, P captured a bat, and brought it to D's office. A strict liability claim can be made, for a bat is viewed as a wild animal. This wild animal, who was in the control of P, escaped as P opened his towel to show D. But for P taking the bat to D's office, and opening the towel, the bat would not have escaped. P is the actual cause of the result of D being scratched on his head. A further proximate cause analysis should be addressed in regards to D shrieking and causing the bat to fly around. A scream would be expected from a reasonable person with a known propensity to be scared of bats. This eliminates any potential break in proximate cause, due to it being foreseeable, and not a superseding intervening act. P will be found liable under a negligence cause of action.

Is P liable for Injurious falsehood?

Injurious falsehood is a malicious false statement made about the plaintiff in a calculated manner to produce a pecuniary loss where there are damages.

Because D decided to resign, he was no longer employed. D attempted to obtain another position as a professor, however, P set up a fake email account pretending to be D and sent 100 emails to D's prospective employer that was considering D as a candidate. P's act would be viewed as malicious to a reasonable person, and sent 100 false statements pretending to be D, which was in a calculated manner. It can be inferred that P's intent was for D to not be offered the position which comes to a turning point in this cause of action, because D is a candidate, not yet employed, or we do not have facts showing that D is being paid; the element of pecuniary loss balances on if D was going to be offered, or was just in consideration. But fore these facts missing, it is difficult to say that D suffered from a pecuniary loss. P may not be liable for injurious falsehood.

Is P liable for Appropriation of another's name or likeness?

Appropriation of another's name or likeness is when the defendant uses plaintiff's name or likeness for a personal or commercial use that results in damages.

Here, D used a fictitious email address pretending to be P. Because D reached out to a perspective employer and indindated 100 emails, D was not offered a job. The elements are mainly met for this cause of action, however, the damages are not certain the above analysis. P may be found liable for this cause of action.

not likely due to lack of commercial benefit

Is P liable for interference of future economic advantage?

Interference with future economic advantage occurs when the defendant knows of potential business opportunity and interferes in a wrongful way, resulting in damages.

P knew that D was applying to a position elsewhere and took it upon himself to wrongfully interfere with the potential business opportunity. He will be found liable for this cause of action.

Is P liable for Intentional misrepresentation?

Intentional misrepresentation is the utterance to a third party a false statement about a past or present fact, to induce reliance, where there is actual and justified reliance, and damages.

Although P intentionally misrepresented himself as D, and conveyed 100 false statements, in an attempt to induce the potential business opportunity to further consider him as a candidate (present fact). There is a question as to if this induced reliance on the behalf of the prospective business opportunity. For lack of facts here, this cause of action will fail.

Is P liable for the Prima facie tort?

The prima facie tort occurs when there is an intentional act calculated to do damage, causes damage, without justification or excuse.

This is the tort that this set of the fact pattern most

===== **End of Answer #1**=====

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