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Zena v Aaron

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Intentional Misrepresentation of the Airline Ticket

Intentional Misrepresentation is when the defendant makes a misrepresentation with scienter (knowledge of falsity or reckless disregard of the truth) about a material fact which is intended to induce reliance, does induce justifiable reliance and results in pecuniary harm.

When Zena approached the airline counter, she expressed that her purchase of the ticket to Pheonix was conditional on a guarantee by Aaron that she would not be bumped off the flight due to an important meeting. Aaron wrote the warranty down and paper and orally confirmed that she would not be bumped, understanding that Zena relied on it. When she was later kicked off the flight this was a breach of that express warranty for which she incurred pecuniary loss of her \$100,000,000 sale. The key element her is if he knew that flight to be overbooked and if he knew it when he stated it with falsity. Also, since this was a promise for a future event (that she wouldn't be kicked off) he may only be liable if his present intention at the time of selling the ticket was to kick her off. Seeing as how he had access to the the tickets being sold on the plane, making such a guarantee was likely either made knowing it was false or with a reckless disregard of the truth.

Zena may recover for Intentional Misrepresentation.

It is important to note that since only pecuniary harm was suffered for the airline ticket, she cannot recover in a negligence cause of action again Aaron for the sale.

Assault

Assault is an intentional act which creates in another a fear or apprehension of an imminent harmful or offensive touching. The defendant must have the apparent ability to carry out the act.

When security officers approached Zena for forcibly pull her off the plane, she was aware of the act and apprehending the touching by the officers.

As the owner of the company, Aaron will be vicariously liable for the acts of his employee's done in the course and scope of their duties. Here, it is a question of whether the security gaurd was acting in a discretionary function or a respect that could possibly discharge liability, however, it is not likely and it seems more apparent that he was acting within the policies of the company. Therefore, he will be liable for the tortious acts of his employees.

Aaron is liable for assault.

Battery

Battery is the harmful or offensive touching of another without consent.

Here, the security officers placed their hands on Zena without her consent and dragged her down the aisle which created an intentional harmful touching.

Aaron is liable for battery.

Products Liability

When a product is entered into the stream of commerce by one in the business of doing so in a defective condition and bodily harm or property damage result, the manufacturer or seller may be liable. Products liability will be analyzed under six different theories: Negligence, Breach of Express Warranty, Breach of Implied Warranty, Manufacturing Defect, Design Defect and Failure to Warn.

Prior to beginning the analysis it should first be established that the defendant was in the business of entering a product into the stream of commerce and is not an occasional seller. Here, Aaron Air manufactured airplanes. Under 402a it will also need to be shown that the product defect caused the harm and that the harm existed at the time it left the defendant's control. Here, the poorly constructed latch was the actual cause of harm. But for the latch being faulty, the luggage would not have fallen onto Zena. It was also in the control of the manufacturer and went through the normal stream of commerce without alteration so the causal connections have been met.

Negligence

Negligence is the creation of an unreasonable risk of harm to a foreseeable plaintiff. Duty, breach, causation and damages must be established. Aaron Air had a duty to act as reasonably as another person would in the same or similar circumstances. This means to create a product free of foreseeable defects or take due care to make sure each product leaves the facility without defect. Aaron Air breached the duty when it allowed consumers to board and use a plane that had a latch which was poorly constructed. The latched construction was the actual cause of the luggage falling and causing the plaintiff a concussion. Defendant may claim that proximate cause was not met because of the commotion causing the latch to open, however, commotion on a plane (particularly when caused by the defendant themselves) is foreseeable and will not be a superseding act. The defendant sustained physical injuries.

Aaron is liable for Negligence.

Breach of Express Warranty

Breach of an express warranty is a statement made by the manufacturer which is intended to induce reliance and the consumer does justifiably rely upon that was a misrepresentation and causes damages. Here, there was no express warranty relating to the latch on the plane so this will not apply.

Aaron is not liable for breach of express warranty.

Breach of Implied Warranty

Every product comes with a warranty that the product will be reasonably safe for ordinary use. Here, there is an implied warranty that the plane will be safe to

reasonably conduct oneself free of harm. The storage bin has an implied warranty that it will latch and not cause be used for the purpose of securely storing the luggage. Here, it did not meet that standard so a breach has occurred.

The question here is if Zena was in the line of horizontal privity to be able use this theory. Since she is not the purchaser but is a user the defendant may say this will not hold. However, since it is a common carrier, this may extend to the passengers.

Aaron may be liable for breach of implied warranty.

The next three theories of liability are strict liability meaning liability without fault:

Manufacturing Defect

Manufacturing defect is a unique flaw in the particular product which was not intended by design. If the poor construction of the latch was due to an occurrence in the assembly of the plane and it does not meet the design, the manufacturer will be strictly liable for its defect.

Aaron may be liable for manufacturing defect.

Design Defect

Design defect is a product designed with an unreasonable risk of harm so that it is defective when it is manufactured. If the overall design construction of this latch was made so that it was unreasonably safe and it was known (or should have been known) that it could not latch and come open then there will be strict liability for the design defect. The plaintiff may be able to show an alternative design which would eliminate risk.

Aaron may be liable for design defect.

Failure to Warn

When a manufacturer knew of, or should have known of a risk and failed to provide an adequate warning the product will be deemed defective. Here, if it was known that the latches could pop open and was not completely secure then there should have been a warning stating such and failure to do so in a design defect.

Aaron is likely liable for failure to warn.

Defenses

Aaron may assert that since Zena refused to depart the plane and was forcibly removed that she contributed to the commotion that caused the latch to pop open. Since the latch was stated to be "defective" this is not a valid defense. However, if the jury finds that Zena did play a part in bringing about the harm they could reduce her recovery under a comparative fault theory.

False Imprisonment

False Imprisonment is the intentional restraint of the physical liberty of another by duress, threat or force. Plaintiff must have been aware of restraint or harmed by it.

Zena once removed from the plane was forced to stay with Aaron and the security officers in a room. Since she was just subjected to a battery this confinement can be seen as being under duress and force and it was said that she was "held" which means it is likely she did not have a reasonable means of escape.

Aaron may assert authority because the commotion on the plane but no criminal act occurred by Zena so this is invalid.

Aaron is liable for False Imprisonment.

Defamation

Defamation is a false statement of and concerning the plaintiff uttered to a third party which causes reputational harm. Here, Zena is a private citizen against an airline company which will determine what she must prove in order to recover.

Here, Aaron made an oral statement (slander) about Zena when she said her company sold and forged paintings. He also lied when he said he didn't know the plaintiff but this statement alone would not cause reputational harm. The statement about the business will rise to the level of slander per se as he is imputing that the plaintiff has committed a criminal act and they are words likely to affect one's business or profession. In this case, damages will be presumed and no fault need to be shown when he uttered the statement to the crowd (third party) at the gate which seems to have no factual basis. If the statement is in fact false, then Aaron will be liable.

Aaron is liable for defamation.

Injurious Falsehood

Injurious falsehood is a false statement maliciously made about an individual's business which is intended to and does cause pecuniary harm.

Aaron made a false claim which he had absolutely no basis for about Zena's business in art sales. It is said that her business declined due to the rumor Aaron started about the forged paintings which was a pecuniary harm.

Aaron is liable for injurious falsehood.

False Light

False Light occurs when the defendant published a statement to a third party which creates an untrue perception of the plaintiff.

When Aaron made the assertion that Zena sold forged paintings, he was making an impression that she was not an honest business person and that she was a scammer. This is a dignitary tort and harm need not be proven.

Aaron is liable for false light.

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Pongo v David

Negligence

Negligence is the creation of an unreasonable risk of harm to a foreseeable plaintiff which causes either personal injury or property damage. Four elements must be satisfied: duty, breach, causation and damages.

Duty is a standard of conduct which one is obligated to conform to in order to refrain from an unreasonable risk of harm to others. David was a business owner of a scuba diving company on a lake he owned. He had a duty when he was conducting a dive with customers to conduct himself as carefully as a reasonable person would in the same or similar circumstances. Additionally, as a land owner of the lake he had a duty

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Duty is a standard of conduct which one is obligated to conform to in order to refrain from an unreasonable risk of harm to others. David was a business owner of a scuba diving company on a lake he owned. He had a duty when he was conducting a dive with customers to conduct himself as carefully as a reasonable person would in the same or similar circumstances. Additionally, as a land owner of the lake he had a duty

to the invitee (pay customer) to warn of an inspect for any harmful conditions on the land.

Breach is the failure to conduct one's self as carefully as a reasonable person would in the same or similar circumstances. Here, David took his first customer on a dive without having first explored the water's himself which was not wise conduct and not likely conduct that another person would do in the same circumstances. He then instructed Pongo to swim into a submerged tree trunk without knowledge of what was in it which was a careless act. He owed a duty as the dive instructor to conduct the dive in a careful manner and breached in by instructing Pongo to swim where he himself wasn't familiar or aware of the harms. He breached his duty as a landowner by not properly inspecting the lake for harms and for not warning the customer against them but instead directing them into harms way.

Causation is a causal link between the careless act and the plaintiff's harm. Actual and proximate cause must be proven.

- Actual: But for David instructing Pongo to swim into the trunk, he would not have encountered the catfish which caused his injuries.
- Proximate: a close causal relationship between the careless act and harm that is not too remote in time or distance and there are no superceding intervening acts. Here, David's instruction on where to swim put Pongo in a place of danger. He will say that the catfish biting P and him hitting his face on a branch was a superceding intervening cause that breaks the chain, however this will likely fail because it was foreseeable that telling someone to swim in a precarious place you are not familiar with may results in a encounter with a fish that could cause harm.

Damages are shown by the physical injury Pongo sustained to his face.

Defenses: D will try to assert assumption of the risk. Here, is does not state that P signed a waiver of any kind. He did, however, implied assume the risk when he voluntarily acted, knowing that D had not swam in the lake before, and was aware of the risk and magnitude as he was an experience scuba diver. When D instructed him to swim in the trunk, while he was apprehensive he volitionally swam into the trunk knowing that harm could occur. It is likely that P impliedly assumed the risk. In a contributory negligence jurisdiction, this will be a complete barr to recovery. In comparative fault, it will reduce his recovery.

David is not liable for negligence.

Assault

Assault is an intentional act which creates in another an apprehension of an imminent harmful or offensive touching. The defendant must have the present apparent ability to carry out the act.

When David and Pongo ran into eachother at the post office, David said "I'll sue you" while pointing his finger at Pongo's face. While this is certainly rude behavior, his threat is not to physically harm P. A jury however may find that the words coupled with the finger in the face may raise to an apprehension of imminent harm but this is a stretch..

D may be liable for assault.

Intrusion

Intrusion is the invasion into a place, conversation or matter where the plaintiff has an objective expectation of privacy which would be highly offensive to a reasonable person.

David used binoculars to peer into the private bedroom space of Pongo. Looking into the personal space of another by means of binoculars inside their own home where they have an expectation of privacy will satisfy all of the elements.

David is liable for intrusion.

Trespass to Land

Trespass to Land is the intentional unauthorized entry onto the land of another.

David went into the home of Pongo without his consent. The only intent needed is to enter which D does voluntarily.

D will assert the defense of recovery of property but this will not be valid as one must be in hot pursuit which he is not here.

D is liable for trespass to land.

Trespass to Chattel

T2C is an intentional act which 1) impairs the quality or condition of the chattel, 2) interferes with another's right to possess chattel, or 3) injures another person, personal property or something they have a legally protected interest in.

David interfered with Pongo's possession of the belt buckle when he took it from his home which was a substantial dispossession. However, if the belt buckle is in fact David's then he will have a claim of right and not be liable as the chattel is truthfully his own.

Conversion

Conversion is an intentional act which creates a complete or very substantial interference with another's right to possess the chattel.

See analysis supra for T2C. This is a complete dispossession but he may have a valid claim of right.

D may be liable for T2C and Conversion depending on the true owner of the chattel.

David v Pongo

Trespass to Chattel and Conversion

See definition supra.

Even a bona fide purchaser of stolen property may be liable when they claim dominion over the property of another which was wrongfully taken. If the belt buckle is Davids then P will be liable even though his intent wasn't to take but his intent to hold the property if stolen is enough.

P may be liable for T2C and Conversion.

Assault

See definition supra.

Pongo told David in the post office that "i'm going to hit you." While these are words saying he will harmfully touch D, mere words are insufficient. Since P was standing still and there was no action this will not rise to the level needed for assault liability.

P is not liable for assault.

Defamation

Defamation is a false statement of and concerning the plaintiff uttered to a third party which causes reputational harm. When a defamatory statement is in writing or preserved as it is here by the newspaper, the damages will be presumed. However, since the statement made P to the newspaper about his experience was not fault and his advise not to dive with D is just opinion, he will not be liable for defamation.

P is not liable for defamation and truth is a complete defense.

Appropriation of another's name or likeness

Appropriation of another's name or likeness is the unauthorized use of another's name or likeness for the benefit, commercial or otherwise, of the defendant.

Pongo used the picture of David to go along with a commercial advertisement of his chips to benefit his business. This will satisfy all of the elemnts of this tort and since it is a dignatory tort, damages need not be shown.

P is liable for appropriation of another's name or likeness.

Prima Facie Tort, False Light, Injurious Falsehood and Interference with Economic Advantage

Since all of these torts require either falsity or malicious conduct, Pongo will not be liable for his truthful depiction of his experience with David diving even though it may cause him economic or reputational harm.

END OF EXAM