

Question 1:

**Pete v. Dudes**

Negligence

- Vicarious liability re: employee Don.
- Even if Don had no duty initially, he undertook to spot and had to do so reasonably, then breached by walking away.
- Express assumption of risk
- Did Pete expressly assume risk of injury via negligence of Dudes by entering into hold harmless agreement?
- Did Don's behavior constitute reckless conduct of gross negligence that would place Pete's injury outside the provisions of the hold harmless agreement/express assumption of risk?

Strict liability

- Dudes not a seller in chain of distribution, thus no strict liability

**Pete v. Ibex, Inc.**

Negligence

- Breach of duty of due care for designing machine such that hooks were not low enough to allow lifter to protect himself from the weight.

Strict products liability

- Breach of implied warranty of merchantability (same reason)
- Design defect (same)
- Failure to warn that without spotter weight may overwhelm lifter leading to injury
- Good actual cause issue through re: failure to warn. Even if warning, wouldn't Pete have been injured anyway because he did have a spotter, but the spotter walked away?

## Question 2

### **Paul v. Dottie**

#### Private Nuisance

- Feeding of bears caused non-trespassory interference with Paul's use/enjoyment of his land.

#### Negligence

- By drawing the bears in with unreasonably unsafe feeding of them, even after warning, Dottie likely breached a duty of due care to her neighbors, actually and proximately causing Paul's damages.
- Damages would include Paul's emotional injuries even though he was not physically impacted when the bear entered.

#### Strict liability

- Was Dottie the keeper/possessor of wild animals, subjecting her to strict liability, or was she merely behaving unreasonably with local wild animals she neither kept nor possessed? If it's the latter, no strict liability.

#### Defamation

- Dottie's letter is likely a private v. private form of libel, and probably not a matter of public interest, even though it involved a claim of adulterated food sold to the public. Even if Gertz does come into play, Dottie knew she was lying so she possessed constitutional malice, which more than satisfies the fault required under Gertz. That Paul would put cat meat in his hamburger is injurious to his reputation.

#### Injurious falsehood

- The claim is wrongful and certainly is harmful to the public's perception of Paul's hamburger.

#### Interference with prospective economic advantage

- Again, the false claim is wrongful and Paul's declining business may be sufficient to show that prospective customers were dissuaded from purchases due to the letter.

#### False light

- This is a throw in really. Yes, the falsehood would cast Paul in a false light, but the other available torts are preferable.

Prima facie tort

- This catch-all, wrongful-conduct-causing-pecuniary-loss tort is still viable in some jurisdictions.

### **Dottie vs. Paul**

Defamation

- Paul's letter to the editor was a form of private vs. private libel. That Dottie would laugh and yell as the bear destroyed Paul's property would likely be injurious to reputation, damages are presumed.

False light

- The letter if not injurious to reputation could certainly place Dottie in false light.