

80

Blue Book

NAME

SUBJECT *Torts*

INSTRUCTOR *Gould*

EXAM SEAT NO.

SECTION

DATE *4/22/10*

GRADE

Q2

#1 of 1

10^{7/8} x 8^{1/4}

50 - 16 PAGE

Herb v. Jim, Fred, and Kelly

Joint Venture

Because Jim, Fred, and Kelly were carpooling together on a regular basis, sharing driving duties and expenses, they were engaged in a joint venture. This may spread any possible liability to any or all of them.

Negligence

Negligence is a failure to act in the manner in which a reasonably prudent person would given the circumstance.

It requires a duty, a breach, actual and proximate cause, and damages.

Duty

Jim, Fred, and Kelly had a duty to obey traffic

laws, which are designed for the safety of all
motorists. One has a duty to operate the car
safely.

Breach

The facts state that Fred was driving at a
negligent rate of speed. This is negligent
in fact. The breach of his duty happened when
he collided with Herb's car.

Actual Cause

"But for" Fred driving negligently at a high
rate of speed, the accident with Herb's car
would not have occurred.

Proximate Cause

A natural and foreseeable consequence of fast

driving is an accident. There were no unforeseeable

acts which intervened. Fred (as well as Jim and

Kelly) are the proximate, or legal cause, of the collision.

Damages

An action for negligence must have damages. Herb's car sustained \$1,500 worth of damage, directly

attributable to the accident. Herb also broke his

left leg, which cost \$7,000 in medical bills,

and three weeks of lost wages (\$800/week), which

is \$2,400. Since the insurance company of

Herb paid the \$7,000 in hospital costs,

Jim, Fred, and Kelly would owe \$3,900

(\$1,500 car damage plus \$2,400 lost wages) to Herb

for their negligence. The three of them will

be held to be joint and severally liable, which means

that Herb may collect from all three, or wholly from

one, so long as his payment is no more than

\$3,900.

Defenses

Jim and Kelly will argue that it was Fred

who was driving at the negligent rate of speed,

not them. However, because Jim, Fred, and Kelly

were sharing duties and costs they were operating

in a joint venture. Had they been responsible

Carpoolers, they would have advised Fred to operate the vehicle in a safer fashion. They did not. Therefore, all three are liable to Herb for negligence.

Herb v. Dr. Newby

Negligence

Negligence is defined supra.

Duty

Medical professionals have a duty to care for their patients. They are judged according to those with like knowledge, skill, and training. In addition, doctors are held to the same standards as those in their community, although that has shifted

over the years to include the standard of whatever
particular standards apply in licensing, be they
state or federal. ~~that is the standard~~

Breach

Dr. Newby improperly set Herb's leg, causing permanent
range of motion limitations. While he was unlicensed,
he would still be held to the community standard
(at least), which would unlikely allow for improper
leg setting procedures.

Actual Cause

"But for" Dr. Newby's ~~improper~~ improper medical treatment,
Herb would not have permanently damaged his leg.

Proximate Cause

Medical malpractice is always foreseeable. While

Jim, Fred, and Kelly set the stage for Herb to

arrive ~~there~~ in Dr. Newby's cave, the doctor

must take the patient as he finds them. "First,

do no harm" is the old medical maxim. Dr.

Newby is in no way liable for the accident, but

he is liable for the permanent damage to

Herb's leg. Therefore, he is the proximate or

legal cause to Herb's permanently damaged leg.

Damages

The cost of the lost wages and damaged car

do not fall on Dr. Newby. However, the limited

range of motion suffered by Herb could result
in ~~the~~ compensatory or punitive damages to
be paid. Should a jury find that because
Dr. Newby was operating negligently and without
a medical license, the punitive damages could
be quite severe. In addition, Jim, Fred, and
Kelly may also be liable due to the foreseeability of medical
malpractice. They put this action into motion, with
no unforeseeable intervening acts, so their liability
to compensate Herb for his injuries and auto damage
may also be compounded by their liability to
Herb's permanent leg damage.