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**Vicki v. Garth**

**Is Garth liable for defamation?**

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Vicki must prove that Garth made a **false and defamatory statement about and concerning her** and that he **published it intentionally or negligently to a third party** and that the third party(ies) **would infer that it was about her**, that it would cause damage to her **reputation resulting in damages.**

**Because Vicki is a prosecutor in a small town and this is her first case, even though she has not thrust herself into the spotlight, she is a public official in her role as prosecutor.**

When Garth stated that V was a pot user followed up by claims that she had her very own medical marijuana card that was well used he was making a false and defamatory statements, as we know that V had never smoked pot or possessed such a card. Although she was not specifically named in the editorial, any reasonable reader would know in the small town who was the prosecutor in Avery's case and therefore that would satisfy the element of it being of and concerning V and that readers would know that it was about V. Some of the other statements, although bad, may not rise to defamation because they are opinion but stating she used pot and had a pot card are certain false claims.

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business

Whether Garth negligently or intentionally published the falsities is important because a public official against a media D, V must prove G did so with actual malice. This is probably a matter of public interest because it seems to be a big deal in a small town and trials are often written about in small towns and big cities alike. If G had any serious doubts about the truthfulness of the facts he presented and did not seek to verify if they were true, he can be shown to have acted with actual malice. Actual malice is the intentional dissemination of false information or doing so with a reckless disregard for the truth. NY Times v Sullivan, held that proving actual malice is required if the P is a public figure or public official. Garth certainly could have done some research or used more caution in his position when publishing such accusations. G's actions rise at least to the level of negligence in that he was just used to spouting wild things as a crazy liberal and failed to use due care in checking his facts or even thinking twice about his duty to be accurate in his reporting. However it can hardly be inferred here that he had any reason to believe she was a pot head herself and therefore there was probably some doubt - he acted with reckless disregard for the truth so

parody?

G may be liable to V for defamation as it appears she may have proven here that he acted with actual malice (constituttional malice). If actual malice is proven her damages are presumed and punitive damages may be leveled against G. V may lose respect in her business for this.

Garth's defenses are that he has a Constitutional Privilege that allows free speech. Although that is true, it does not give him license to defame. His opinions of her ego and criticism of it is an opinion that he is allowed to share under this privilege. His defense here may fail because V can prove she has never smoked pot apparently.

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His other defense will be opinion, which will only fly for part of the language in his piece.

Garth will also assert the Fair Comment privilege - but that is a qualified privilege that will be lost if it is not used in good faith. It seems wild Garth has a history of flying off the cuff and because he seems to have done this will a bit of ill will towards V - he may lose his qualified fair

opinion  
parody  
defamation  
actual malice

comment privilege.

His last ditch effort may be to drag his employer in the Frontier Tattler for vicarious liability in some way, but if so they may seek indemnification.

Libel per se: Because G is making false statements about how V does her job - her business, he may be liable for libel per se.

### **False Light - privacy tort**

Publishing false information about a person that paints them in a negative light and damages their dignity.

Because Garth's information was false and he coupled the false information with derogatory statements about V and how she does her job, this could make some of her co-workers, bosses and the people of the town lose faith in her or think badly of her. Because her dignity is ruined if people think she is a hypocritical pothead prosecutor, she may suffer damages. If she can prove damages and that Garth acted with actual malice supra, she may be victorious in her action against him for False Light.

### **Garth v Vicki**

#### **Is V liable for Intrusion into his seclusion?**

Intrusion is an invasion of privacy resulting from a party invading a place where the P would have a reasonable expectation of privacy and that the invasion would be highly offensive to the reasonable person.

When Vicki climbed the tree to peep on G, she was peering into a space that G would consider within his reasonable sphere of privacy - his own armchair in his own home. G is probably a semi public figure in the small town, however in his own home, unless he was standing at a window that was easily viewed from the street he should expect privacy. Because V had to climb a tree and use binoculars, she was invading his privacy that is protected.

In defense V will say she was acting with public authority in the scope of her employment as an officer of the law or court. She will also assert that she has immunity as a public official. Neither of these defenses would warrant doing something in bad faith just to try and get a guy she is mad at busted for a crime.

#### **Malicious Criminal Prosecution:**

Misusing the legal system to harass or cause hardship on another - initiating a case; the person is excused and there was no probable cause.

When V trapped Garth into calling back and then used his calls to get him arrested and charged when she knew he was innocent and that she instigated it, she was harassing him through a criminal proceeding. This was done with ill will and because he was found not guilty, V will be liable for malicious prosecution (criminal proceeding).

#### **Abuse of Process:**

when one is in a litigation - using the system to harass or bring hardship on another

**Intentional Misrepresentation -**

False statement or conduct by the D that induces reliance in the P; the P reasonably relies and it results in damages.

When Vicki kept calling Garth and asking him to call her back, her conduct could be considered giving him the false reliance that she was going to give him a scoop on the story for his column. Instead she was just using it to get him arrested. G reasonably relied - it is reasonable that people play phone tag and therefore calling her back as she requested and leaving a message was very reasonable but it resulted in him being damaged by a Malicious Prosecution and False Light.

V may be liable for intentional misrepresentation.

**False Light:**

See supra:

When V had criminal charges brought against G - because trials are public information - she was painting a picture to the community that he was a bad guy, when in fact he was innocent and she knew it. She published with intent to the community and with ill will, because she knew the charges were false.

G's dignity may be damaged by this therefore V may be liable for False Light in the accusations.

2)

**Spanky v Bubbles Inc.**

**Products Liability - (402a) when a commercial seller and those in the chain of distribution place a defective product into the stream of commerce they are strictly liable for all consumer-user's injuries that are not a result of a foreseeable misuse.**

No battery issue. no intentional act by Bubbles

**Is Bubbles liable for negligence?**

Negligence is the failure to use due care that results in an unreasonable risk of harm to others with duty, breach, causation and damages.

A commercial seller/ manufacturer of a product has a duty to all consumers and/or users of it's product that it will be safe to use and will not result in great harm or death.

Bubbles breached that duty when as a result of using their product, Spanky was seriously injured by an electrical problem and died. As will be discussed below the breach may have been in the design of the hot tub, in the manufacturing, in the failure to warn or the breach is res ipsa loquitur - without a breach by Bubbles or its workers, something like the electrical shock would not have happened.

**Breach of Express warranty theory:** an express warranty is a promise by the seller that the product will have certain distinct qualities. Here Bubbles brochure expressly stated that the electrical system was short proof and that the wiring was insulated and SAFE. Although it was buried on page 6 of the brochure, it was still in the material and we can infer that consumers will rely on this promise regarding the information about the hot tub. One does not have to be in privity even though Spanky is.

When the insulation failed and the wiring caused a deadly shock, the express warranty was breached.

**Breach of implied warranty** - implied assurance from seller that the product is merchantable - fit for its ordinary use. Here the assurance that the hot tub was fair in quality to other hot tubs is not so as a standard hot tub is expected to hold water and have a light and is not expected to send electricity through the water and injure a user.

Breach of Implied warranty - supra - fit for its intended purpose. Here the hot tub as discussed above is intended to have water and electricity contained within and Spanky was using it as a normal consumer would and it malfunctioned and harmed him.

Bubbles may be liable for breach of implied and express warranty.

#### **Manufacturing Defect Theory - Strict Products Liability (SPL)**

A manufacturing defect is when a product leaves the manufacturer not up to the standards of assembly or in the intended condition, but with a flaw in the making. If there was something about the way the underwater lamp was put into the hot tub that made only this particular hot tub faulty, then it could be found that it was a manufacturing defect on the part of Bubbles.

There would have to be an analysis of whether there was a problem on the assembly line or with the parts themselves not fitting properly and look to the lamp makers to see if there is any liability on their part for defective parts. The lamp being able to be so easily knocked loose suggests it may have been improperly secured. Therefore Bubbles may be liable for manufacturing defect.

#### **Design Defect Theory: - SPL**

A defectively designed product leaves the manufacturer as it was intended to be constructed, however the design itself is flawed making it unreasonable dangerous to the user.

It appears that a lamp pocket that is not protected from water leakage by some sort of emergency container department may be faulty in design. In addition, the slippery bottom may make users lose their footing regularly and have to slip around on the bottom until they regain it. Slipping will cause someone to bump into the lamp with force which if dislodged the lamp will leak water into electrical wires which is a very dangerous combination. Keeping the water from reaching the wires is the only way to make the product safe enough for users. If there was an easy and non cost prohibitive way for Bubbles to redesign the bottom of the hot tub to prevent the lamp being broken - like putting the lamp on the side and not the bottom and not making the bottom so slick, an emergency container that divided leaking water from the wires (kind of like the Titanic was supposed to have) then Bubbles must make their product more safe. The risk of a hot tub electrocution outweighs the utility here.

Bubbles may be liable for a design defect in its product.

**Failure to Warn:** The warning to consumers must not only be apparent, but it must also be adequate to avoid creating a possible misuse by the user which could result in harm.

Here it's true that Spanky was warned not to jump into the tub however the warning was buried on page 9 of the brochure - that is not apparent enough. The reason this warning is inadequate is that it is too small (brochure type) and too far away - page 9. To make the warning more effective it should be on the hot tub itself or in big letters on the front of the brochure.

The warning is there but inadequate therefore Bubble may be liable for failure to warn.

**Actual cause** - but for the electrical problem with the hot tub, spanky would not have been shocked and hospitalized.

Proximate cause is the natural uninterrupted flow from the breach to the damages. Spanky dies as a result of pneumonia brought on by being in a coma from the incapacitation. That would be considered a foreseeable intervening possibility much like going to the hospital may result in malpractice. Because this kind of injury that results in death is a foreseeable in the flow from a breach of electricution to the death, its likely proximate cause will be found in Spanky's case.

### **Is Bubbles liable for simple negligence?**

See duty breach supra.

Here it does not appear that they had any reason to know of the potential problem - there was no consumer report showing they negligently put a product on the market. Therefore their liability rests more in strict products liability as discussed above.

Bubbles defenses to the action:

**Express warranty:** Bubbles will claim that it was just puffing and that a brochure is not a warranty it is only a sales tool. Because they induce customer reliance on a specific quality that the product should have this defense will most likely fail.

**Failure to warn:** They will assert they warned of the slippery bottom and for people to not jump however as discussed above it was probably not adequate.

**Comparative Fault:** Spanky was partially at fault by his own negligence of drinking too much and jumping in against the warning. If it is found that he was negligently at fault his heirs or estate may not be able to fully recover on his products liability action. comparative fault is a defense in strict products liability. Not heeding a warning and drinking too much wine may constitute comparative fault and the jury will decide what percentage was Spanky's. In addition quickly scanning the brochure was negligent.

However, it is foreseeable to Bubbles since that users will not read the brochure carefully from front to back and that they will not jump into a hot tub. Therefore he may not be found to have any fault.

**Assumption of the Risk:** when a party is aware and can fully appreciate the risk and voluntarily decides to take it is an assumption of risk that Spanky may have taken. He can read we assume, and he can read but he only scanned the brochure and warning and again - this foreseeable misuse may make this no defense for Bubbles and especially since it will be found the warning was not adequate. Spanky did not assume the risk of being electrocuted - any risk he did assume may have been a bump on the head or a scrape but not the severe harm he endured.

**Survival Action** - this will be brought by the estate of Spanky for the time he was lingering - until the time of death just as if it were for the decedent. This action will ask for pain and suffering damages (unless it can be shown he felt no pain in a coma); lost wages, special damages etc and those damages will be paid to the estate.

**Wrongful Death:** This action will be brought by the beneficiaries of Spanky (after his death) that are determined by state statute. They will have an action of their own for loss of Spanky's services, like financial services, replacement of services, loss of society, if any, and funeral expenses.

Misrepresentation: Intentional misrepresentation of the product

**END OF EXAM**