

1)

Ann (A) v. Jim (J)

Negligence

38/42
great job —

③ Negligence is the act or omission to act that breaches a duty and is the actual and proximate cause of injury to the plaintiff. J had a duty not to subject others to unreasonable risk of harm and his duty was breached since he was not an actual tour guide and did not have extensive knowledge of plants, but still pretended to for the guests. His breach of duty was an actual cause of harm to A, since she reasonably and foreseeably relied on J's statement about the plant being a cure for cancer and ate it. This caused her damages since she was gasping after eating the plant. J's negligence was an actual cause of A's eventual death, but J may be a joint tortfeasor or her liability would be lessened by other intervening causes (discussed supra). J could be relieved of liability if his actions may be accurately classified under respondeat superior, leaving the employer liable.

A v. J

Misrepresentation

② Misrepresentation is the misrepresentation of a material fact that is relied on by the plaintiff to their detriment. A relied on J's statement regarding the plant having anti-cancer properties. This was a material fact about the plant, specifically for A since she was recently diagnosed with terminal cancer. She relied on this to her detriment since it caused her injury. J would be liable for misrepresentation.

A v. Sue (S)

Negligence (supra).

3 Sue had a duty not to subject her guests to unreasonable risk of harm. She breached this duty by not ensuring that her employee had adequate training to be able to give tours and show and teach hotel guests about the surrounding plants. By breaching her duty as the hotel owner, S caused damages to A since A took J's statement as the truth and consumed the plant she thought would treat cancer, that was in fact toxic. S was damaged by consuming the plant. S's negligence was an actual cause of A's eventual death, but S may be a joint tortfeasor or her liability would be lessened by other intervening causes (discussed supra).

8 Since there was a state law in existence at the time, negligence per se may be invoked to prove duty and breach if the injured party was in the group of people the statute was designed to protect. Since the statute says "To preserve the pristine desert environment..." this would imply that the safety of guests and the prevention of them consuming plants was not considered in the implementation of the statute, so negligence per se may not be appropriately used.

3 S may be liable under respondeat superior. Respondeat superior is a vicarious liability theory that holds an employer liable for the acts of their employees while acting under the course and scope of their employment. J was acting under the course and scope of his employment since he was designated by his employer S to be a tour guide and told to study a slim paperback book of plants. S may be held liable for any injury to A, since she was negligent in hiring him as a tour guide, since she knew that he did not have special knowledge and could not have reasonably expected him to become an expert from a thin paperback book after one day (or five weeks).

S would be liable for negligence.

A v. S

4 Misrepresentation (supra).

S advertised The Palms in her brochure as luxurious and advertised J as a world renowned herbalist. Since A may have relied on this material fact of J being

knowledgable about plants to her detriment, A would likely be liable for misrepresentation.

Lynn (L) v. Storm

Battery

3

Battery is an intentional unprivileged harmful or offensive touching of another. By pushing L out of the way, Storm would be liable for a battery since this would likely have been harmful or offensive to the reasonable person.

A v. Storm

5
2
401
*

Negligence (supra). Storm had a duty of a reasonable person not to subject others to harm, and breached this duty by shoving a retired paramedic out of the way when they were trying to render aid to A. Storm's act was an actual cause of A not receiving help, but would not likely have been the proximate cause, since there was a superseding and intervening cause that followed. If Storm is held liable he would likely be a joint tortfeasor.

A v. Storm

2

Battery (supra). Storm began to massage A's feet while she was unconscious. A might see this as an offensive touching since this did not help revive her. However, Storm would argue that it was justified since he was trying to help revive her and it was done in necessity. This defense might fail since Storm pushed L out of the way when she would have been more qualified to help A.

Storm L A v. J

(6)
 Negligence (supra). Jim had a duty not to subject people to unreasonable risk of harm and breached this duty when he knew his brakes needed to be fixed and forgot to get them fixed. This was an actual cause of injury to Storm, L and A since they would not have been hit by the fan but for J's negligent conduct. J's breach of duty was a substantial factor, but he would likely be a joint tortfeasor with the other guest since his actions would constitute a superseding cause that could break the chain of causation between J's negligent conduct and the injuries to the plaintiffs. If the injuries are indivisible then J would be jointly and severally liable with the Guest (supra).
 the drunk

Storm L A v. J

Battery (supra) Jim struck Storm, L and A which would constitute a harmful or offensive touching.
 intent

Storm L A v. J

False Imprisonment

FI is the intentional restraint of another without consent or justification. Storm, L and A were held in a bounded area of the van when J loaded them in there and they would probably not have been able to get out, but it seems as though there would be implied consent or justification, since it appears J was doing this to get them to the nearest town for help. He would not be held liable for FI.
 2 strokes

Storm L A J v. Guest

Negligence (supra). The hotel guest had a duty as a reasonable person not to subject others to unreasonable risk of harm. He breached this duty by consuming 8 cocktails before spinning circles in his truck and it would be foreseeable that this would harm someone else that would be on the road. His negligent conduct was the actual and

proximate cause and may be an intervening superseding cause that would break the chain of causation, lessening the liability of S, J, or Storm.

4

G would argue that J's driving was also negligent, since he was driving "madly" and he failed to use reasonable care, which was also an actual and proximate cause of the accident causing the death of all five. If both were negligent and caused the accident to occur then there may have been comparative negligence. If the injuries to the parties are not divisible, then Storm, L and A would have actions against J and Guest, who would be held jointly and severally liable as joint tortfeasors.

Storm L A J v. S

2

Negligence (supra). S might be liable for negligence since the guest was staying at her hotel and consumed alcoholic beverages before driving. If S had reason to believe he ^S would subject others to harm and she continued to give him drinks, she could be liable for negligence. *possible statute -*

Guest v. J

Negligence (supra).

?

G may also argue J's negligence (discussed supra). J's estate may bring action against J under the survival statute to recover for Guest's pain and suffering during the accident, and the wrongful death statute for those that relied on Guest and were wronged by his death. ?

Estates of Storm L A v. J S Guest

41

The estates of the deceased parties would bring action under the wrongful death statute and the survival statute.

2)

Rick v Nan

*Outstanding -
Dare*

41 4/42

Interference with a business/Abuse of legal process

Abuse of legal process is the wrongful use of a legal process where an individual has an ulterior motive.

Here, N told R not to sell anymore botbikes or she might shut him down. N's motive for this action was that her brother owned a competing bike shop, presumably not as big as R. N was abusing her legal process to threaten to shut R down, not because of any legitimate violation, but because of her ulterior motive that her brother owns a bike shop.

Interference with a business - when a person knows a business and takes steps to interfere with the business that is offensive to a reasonable person.

N was aware of R's business, and took steps to interfere with said business by using her guise of city law to threaten shut him down if he sold anymore botbikes. This would be offensive to any reasonable person as a person abusing their power in government to shut another down because they are competition to that persons family member is absurd.

1983 is violation of an individuals civils right by state actor. 1983 statutes allows an individual to recover should their constitutional rights be abridged by someone using guise of government law to do so. They only need to prove their constitutional rights

were taken away because of their class by someone using authority of law to wrongfully do so.

Here, R's due process was stripped by N. N discriminated against R because R is her brother's competition. R wrongfully use authority of law to infringe upon R's civil and constitutional rights when she forbid him to continue selling bobtikes by threatening to revoke his license. This is a violation of R's due process.

N will be liable.

~~STUBS~~ OK!

Residents v Rick

Nuisance

Nuisance is the non-trespassory, interference with the enjoyment and use of one's property.

(4) The sign on top of R's building was so bright that neighbors could not open their apartment drapes at night without being blinded. The neighbors were prevented from the enjoyment of their property due to the sign. R certainly is not intentionally interfering with their right to enjoy their property, but R should know with substantial certainty that he probably is interfering with their property right. R has many ways to advertise and a big blinding light is not necessarily required. Unless the residents have already talked to R about the sign, they may be able to file an injunction to stop the light.

R will be liable for nuisance.

Stella v Ted

Misrepresentation

Misrepresentation is the misrepresentation of a material fact that the defendant knew or should have known was misrepresented and was reasonably relied upon by the plaintiff to their detriment.

Good

71
S purchased 200 bikes from T. T however did not reveal the misrepresentation of the potential dangers that may occur from the safety flaws. This was a material fact that T did not disclose to S, and S relied on T's representation to her detriment when she ordered a massive amount and was thrust into the news paper as being aware of the dangerous bikes.

that's her damages? nah

T will be liable.

Jill v Ted

Bobku
Products Liability

Manufacturers of commercial products may be held strictly liable for products released into the stream of commerce having manufacturer defects, design defects, inadequate warnings, or breach of express warranties. Duty and breach are implied via the manufacturer introducing the defective product into the stream of commerce, causation and damages must still be proven.

8
J will likely be able to bring a design defect theory of products liability against T. T was aware that of the lingering safety concerns that could occur on warm days and going up hills, that the heat from the bikes electric motor would be affected by the functioning satellite mapping and steering units. The bike was manufactured by T's company as suggested by the facts, and the bike left the manufacturer in a defective condition when it reached the foreseeable user, J. J also used the bike in a reasonable and foreseeable way. T was fully aware of the risk that could occur, but highly disregarded it. T also disregarded adding an emergency brake feature. All of these omissions lead to J being propelled through traffic to a point she could not stop or steer the bike. Because she could not stop, she was ultimately hit by a police officer who gave chase. But for T's design defect, J would not have been injured. T's design defect is the proximate cause as well as nothing interrupts the sequence of events from the flawed design to the foreseeable harm that T was aware of. T will claim that the police hitting J was a superseding act to relieve him of liability, but the inclusiveness of products liability leaves manufactures strictly liable for defective products put into the stream of commerce.

nicky phoned

If this line of reasoning does not work, J perhaps could bring a claim under inadequate warning. As T knew of a risk, yet failed to warn anyone about the dangers. There was not even the smallest warning. Nothing indicated that a person should not go up hill on a sunny day, and even if it did, it would still be flawed as a product that malfunctions in such a way should not be released into the stream of commerce.

T will be liable.

All those injured v T

Products liability supra.

Everyone who purchased a botbike will likely be able to prevail on a products liability cause of action for the multiple collisions and injuries they suffered from T's flawed product. But for T's design defect, consumers would not have been hurt from their reasonable and foreseeable engagement in the product. T will claim that he hit the ONO button to further stop the chaos, but the inclusiveness of strict product liability holds manufacturers strictly liable regardless of fault or level of care used.

T will be liable for their injuries.

but caused more

neg? resp?

Everyone injured v T

Negligence

Negligence is the breach of a duty that is the actual and proximate cause of harms to other.

T owes a duty not to subject others to unreasonable risks of harm. T breached this duty when he was fully aware of the lingering safety concerns and recommendations from his engineers, but consciously disregarded them. T's breach was the actual and proximate cause of damages to all those who were injured as nothing interrupts the sequence of events from T's constructive knowledge of a possible hazard and omission of that knowledge to those who were harmed from riding the bike. T not including a brake was unreasonable in every conceivable way. T was fully aware that

going up hills on warm days may cause unpredictable results, yet still continued on with his product. His failure to disclose these facts was beyond irresponsible.

T will be liable for negligence

Jill v Police Officer

Negligence

Police have a duty not to subject others to unreasonable risks of harm. Police breached this duty when he was following too close to J and ultimately hit her. P's breach is the actual and proximate cause of injuries to J as it is the most direct, closest harm without interrupting the natural sequence of events.

4 Police will claim that T's act of hitting the emergency brake was a superseding act that would relieve them of liability. It is unlikely that they will have to even go that far as they could assert the defense of Authority of Law. The facts state the police car was following closely attempting to rescue J and was unable to stop as quickly since they did not maintain a safe distance. However, due to the chaos that was occurring from all the bikes acting out of control, the Police seemed justified in their action. The police, in their scope of employment, are to give chase to those vehicles that do not stop. It does not seem they breached this duty by following closely as they are given a higher consent by the law to protect the public.

Police will not be liable for negligence.

Stella v Politics Reporter (PR)

Defamation

Defamation is an unprivileged, statement of fact published to a third party that tends to diminish a P's reputation in their community.

PR wrote and published a statement of fact that "Representative Stella gives the state contract for killer bikes to major donor! Private Relationship rumored", a statement that is false, and ultimately defamatory. The statement is false as S did

indeed give T the contract, but S did not not know about the dangers of the bike and she had no personal relationship with T as the paper suggest.

Because S is a state representative, she arguably is a public figure/official as people in the state would tend to know their representative. The issue would also be of public concern, as the public would be concerned about their representative. Therefore, NYT will apply, which holds a finding of actual malice.

Actual malice is when a D knew the statement to be false or acted with a reckless disregard to the falsity or truth of the statement.

8 The facts do not state much about PR only that he refused to talk to S. Whether or not he acted with actual malice is an issue. Did PR have a substantial reason to doubt the truth of the statement? PR's information came by buying drinks from S's staffers. Though staffers may contain reliable information, was it reasonable to believe what they told him especially after they were drinking? It would seem that PR did act with a reckless disregard to the truth or falsity as he did not validate the information he received and simply published it.

PR will be liable for defamation.

Stella v Newspaper

Defamation supra

✓ The newspaper will be held liable for defamation, not under respondent superior, but for republishing the story as secondary publishers are liable for their publishing of false statements.

Stella v Photographers

False light is a published misleading statement designed to portray the Plaintiff in a false light in the eye of the public.

Intrusion into Seclusion (invasion of privacy) is the invasion of an individuals private matter, conversation or matter that is not of legitimate public concern and is offensive to a reasonable person.

Here, the newspaper used a high tech camera to take photos of S and her fiance in their bedroom. This is an invasion of S's privacy as a bedroom is a place where most people the safest, and to have an unbeknownst photo taken in the privacy of your own room is highly offensive to any person.

5 The photo then was used to publish a photo that "S snuggles in love nest as her chosen bikes maim riders". The article is making it seem that S is all cozy at home and okay with the fact that her bikes are going around killing people. The photo is construed in a misleading way that portrays S as a monster who is okay with bikes killing people as she relaxes at home.

The newspaper will be held liable under respondeat superior as they hired the photographers, and they committed these acts and even encouraged them within the scope of their employment.

Both will be liable.

END OF EXAM