

31/38

1) *Alice 2nd*
All the Injured and Estates of the Deceased v. Tom:

Negligence Per Se:

Whether Tom is liable for Negligence per se for the violation of the statute making it unlawful for him to sell non-organic food as organic.

Negligence per se is the breach of a duty owed by a statute that is designed to protect a specific class of persons from a specific harm.

✓ Here the statute states it is unlawful to sell unverified foods as "organic." There is no mention of the class of persons the statute is designed to protect or the type of harm the statute is intended to prevent. If the statute is only to protect monetary interests of companies manufacturing and distributing organic foods fairly against those who are not, then this statute is not protecting coffee drinkers from potential side effects of non-organic coffee. Taken the state's interest in protecting its citizens from harmful food products, if the statute is designed to prevent contamination, then Tom's violation of the statute would satisfy negligence per se. Alice will still need to establish that there was a causation both actual and proximate of damages.

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But for Tom having sold non-organic coffee beans as organic to Joey, Alice's business would not have distributed the coffee which harmed her patrons and thereby, her business. Tom having done so is an actual cause of the harm.

It is likely that this is negligence per se.

but proximate cause is the essential Q here, no?

7

Negligence:

If not Negligence Per se, was it straight negligence?

Negligence is the breach of a duty owed to a plaintiff which is the actual and proximate cause of damages.

Tom had a duty to sell merchandise that was properly labeled in a way that would protect his customers. Tom breached this duty by storing non-organic coffee in a stack of organic coffee and gave it to Joey by mistake. Tom's backroom was too poorly lit for him to be able to reasonably differentiate between his own products and it is reasonable that a customer would trust the merchant to hand him the right materials when asked for.

Is it reasonably foreseeable that Tom's mistake would lead to the harm that Alice's patrons suffered? As a merchant, was Tom on notice that the urgency that the beans be organic was at such a dangerous threshold? Tom was neither informed of the severity of the risk of mistake, nor was he informed of the purpose of the purchase and he therefore had no way to reasonably predict the type of plaintiff that may arise from a mistake. His standard of care, therefore, was fairly low. Joey, however, knowing of the warning, presumably as he was an employee of Leap, had greater cause to make Tom aware and the facts do not indicate that he did so.

As above, Tom having sold the beans are both the actual and proximate cause of the harm that Alice's business suffered.

Tom is likely liable for negligently selling non-organic materials marked organic. However he may not be liable for the extent of the injuries that befell Leap's patrons, because they were not reasonably foreseeable plaintiffs [nor was the harm reasonably foreseeable.]

prior D argued 2021 practice - case

Misrepresentation

Here the facts indicate that Tom "mistakenly grabbed the wrong bag" and therefore it is unlikely that his misrepresentation was not intentional. The facts further state that he sold the products assuming they were, and charging the price as if they were, the organic beans. Therefore, Tom negligently sold a product that was mislabeled, which is a material misrepresentation of fact. This misrepresentation lead to the harm of Alice's patrons.

(then D neg) (more neg)

no intent evident

Tom v. Jill:

Defamation

Whether Jill defamed Tom when she made statements about his business practice and criminal record.

For Tom to prevail, he must establish that Jill's statements were false and defamatory statements made about him directly and published to another.

Here, the facts indicate that the statements were published by a press release. If it was in print, it would be an issue of libel. If it was a verbal press release, it would be slander, though modernly there is not much difference between the two legally.

The facts also indicate that Jill made the statements fearing a rash of lawsuits. This indicates that she had some malicious purpose to make them in order to make Tom seem more liable than her client.

(5)

The statements are about his business which falls under defamation per se, and damages would be presumed, since it is reasonable to assume it would impact his business.

slander

However, there is an issue of fact to consider. By the facts, what Jill said was not overtly factually inaccurate.

Here, Tom really had been a "violent" person as he was in a physical altercation with a neighbor and he really HAD violated health codes -- however, the statement, in its totality, is reasonably taken by a third party to mean that in THIS case, Tom purposefully harmed Jill's client's patrons.

Because the statements are not truly false, it is unlikely that Jill will be liable for defamation.

interesting phrasing

False Light

However, because the statements were truths made with the malicious intent to put Tom in a false light, (malice supra), it is likely that Jill is liable for False Light. False light is the statement of fact so made with the malicious intent to paint another in a false light. Here, the statement would reasonably impact Tom's reputation in the community and give Jill's client a better light than Tom. There is no evidence in the facts that Tom suffered any harm from these statements, however, it is reasonable to presume that it will as the nature of these comments are of the kind that are usually injurious to members of a community.

2

good back-up

Injured and Estates of the Dead v. (Alice)

Though Alice tasked Joey with getting the beans, under Respondeat Superior, Alice is liable for his unintentional torts providing they occurred within the scope of his employment.

Here the facts indicate that Joey was on duty at work and that he was acting directly within the scope of his employment and therefore Alice will be liable for his negligently purchasing the wrong bag, were he negligent in inspecting it for quality.

In this case, however, because Joey reasonably relied on Tom, who retrieved the bag from the back of the store room and gave it to Joey, it is unlikely that Joey was acting negligently in purchasing the bag and the plaintiffs will likely not prevail against him for buying the wrong beans.

rebuttal
+1

? 2 OK
yes!

Didn't Alice have duty to ensure relative safety of the bus

Alice v. Volcano Manufacturer:

Because Alice was liable above for the harm to her patrons, she will be suing the volcano manufacturer to cover her losses as well as the harm to her business.

Products liability:

Was there a defect in design which lead to the injuries of Alice's patrons and business?

For Alice to prevail in a cause of action for products liability, she needs to establish that there was a defect either with the design or manufacturing of the Volcano.

The volcano was solely in the control of the manufacturer, as there is nothing in the facts to indicate otherwise. The facts indicate that by design the machine would use lasers to make the coffee and that there were inherent "unpredictable effects" to be expected if there was a mistake in using the wrong beans. Though Alice used the

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wrong beans, despite the warning (infra), her failure to do so is the kind of simple mistake that Volcano manufacturers should have reasonably foreseen. By making a machine which by the very simple mistake of using non-organic beans turns the otherwise "and excuse me, damn fine cup of coffee" into a deadly opiate is an unreasonably dangerous design flaw and one which, by Volcano having put into the stream of commerce, is liable.

Volcano is not only likely liable to Alice but to all of the injured, and the estates of the deceased as a result.

If not a products liability issue, it is likely a straight negligence issue.

good book up

Negligence, Supra.

②

Volcano had a duty to make a product that was reasonably safe even when users thereof make minor mistakes using the wrong beans. They breached that duty by making a machine that turns coffee into a drug which lead to lethal side effects.

This failure lead to damages because but for this negligently designed device, Alice's patrons would not have been harmed

Failure to adequately warn

For Alice to prevail in a cause of action for products liability, she needs to establish that there was a defect either with the design or manufacturing of the Volcano. The design defect could also be a failure to adequately warn of potential risks of use or misuse reasonably foreseeable to the manufacturers.

③

Here, though there IS a warning expressly stating that organic beans and water. It further stated that there could be "unpredictable results." The warning as listed gives the impression that manufacturer had reason to suspect that there would be a less than optimal result and should be avoided if possible. The ACTUAL result of a failure to follow the warning was dire and, in fact, deadly. The language of the warning was unreasonably mild leading to a lowering of the level of attention given to following it. The results being what they are should reasonably warrant stronger language, bold print, additional warning on the machine, or, in fact, not manufacturing it because it is too dangerous because of the potential for human error, and other misadventure.

Because the warning did not reasonably put Alice and her company on notice of the severity of the harm, they did not go to greater lengths to prevent the mistake.

Therefore, though the company did supply a warning, it was not adequate to the circumstances.

All the Injured and Deceased v. Alice:

Negligence:

(Supra)

Alices had a duty to protect her customers from an unreasonable risk of harm.

The facts indicate that Alice tested the machine she purchased for some time prior to using it in her business and putting it into the public sphere. The tests went smoothly and the machine, which was marketed and designed for the purpose for which she bought it, seemed to be safely operational.

Seeing the warning, Alice alerted her staff to follow it and only use organic beans.

The nature of the warning was not to the extent that Alice could have reasonably predicted it would lead to drugging her patrons. Knowing only a reasonable standard of care, she followed it and therefore it does not seem that she breached her duty of care.

The injuries to her patrons were a result of Volcano's failure to warn (supra) or design defect (supra).

Alice is likely not liable under negligence theory.

However, under premises liability and being the merchant of the coffee that injured her patrons, Alice may be liable for damages and will likely recover from Volcano.

3

under Neg C/A? ?

Contributory?

Jim's Estate v. Boarders:

33/38

Assault

Assault is the intentional placing of another in reasonable apprehension of a harmful or offensive touching without privilege.

2

Here, the skateboarder threw a can narrowly missing his head. The facts do not indicate that he was apprehensive of this. Were he to be so, it would likely be an assault.

reasonable person?

Battery:

BAttery is the intentional harmful or offensive touching of another without privilege.

Here, the facts indicate that the skateboarders began "beating him senseless." This is generally considered to be both harmful and offensive.

3

Though Jim was in the act of committing a tort, it is unlikely that beating him senseless was a reasonable response as there were other means of stopping him from doing so that were not explored.

EXCESSIVE

Trespass to Land:

Trespass to land is entering upon the close of another without privilege either directly or constructively.

2 ✓

The facts here indicate that several times the skateboards of the kids went onto Jim's property. This is constructively entering his land. Further, because they repeatedly did so, one may infer from the facts that they physically entered the property to retrieve the boards each time this occurred. These are each ~~continued~~ trespasses.

2 ✓
4

When the first tattooed boarder opens the mailbox and spits in it, if the mailbox is considered part of his land, it is another trespass to land, it may also be a trespass to chattels, infra, but it is unlikely that the mailbox was NOT on his property and that he therefore had to enter Jim's land to touch it, which is another trespass to land.

Trespass to Chattels

3

the intentional interference with the chattels of another without consent or privilege.

Here the tattooed man spit into Jim's mailbox. Jim did not consent to this. Spitting is universally an offensive act and is therefore more than a passing interference with his mailbox (and any mail inside it) as he would have to come into contact with the boarder's bodily fluid--another universally unwelcome experience.

+1

It is likely that this is a trespass to chattels (unless the mailbox is considered a fixture in the real estate and in that case it is only a trespass to chattels on any mail inside of it.)

Invasion of Privacy

✓

Is it an invasion of Jim's privacy when the boarder reached above the fence-line and took a photo of Jim in his underwear?

Damages are presumed when the personal and private acts of a person are shared by another without privilege.

2

Here, Jim reasonably believed the fence in his yard (a tall fence) gave him adequate privacy to lie in his underpants. That privacy was interfered with when, without his consent, another reached above that fence-line and took a photo of him. It is reasonable that one's underwear is a private scene and the facts indicate it was unflattering. Giving the photos to a newspaper indicates that the boarder did this with the intent to humiliate or shame or embarrass Jim.

Jim's Estate v. Sue's Estate/Sue's Employer:

(Survival C/A)

Violation of a civil right.

Did Sue's promise to seek retribution against Jim if he did not stop calling her about his complaints violate his civil rights under 1983?

Sue is a county sheriff deputy--an agency of the state in which they live. As such, Sue is an agent of the state under respondeat superior as she was in the scope of her duties when she answered the call to Jim's house.

Jim has a legal right to seek police assistance when he feels his rights are being violated by a third party. Jim also has a legal right to due process. Here, Sue made threats that she would deny him his right to call for help or that were he to call for help, she would violate his right to due process by ticketing him whenever she sees him and by disturbing his domicile in an official capacity without reasonably or justifiable cause by ringing the doorbell at 2 am.

These are prima facie violations of his civil rights and as a state actor, she is likely liable and vicariously, the State may be as well.

Jim's Estate v. Paper:**Invasion of Privacy**

Is it an invasion of Jim's privacy to publish a photo of Jim in his underwear?

Damages are presumed when the personal and private acts of a person are shared by another without privilege.

Here, Jim reasonably believed the fence in his yard (a tall fence) gave him adequate privacy to lie in his underpants. That privacy was interfered with when, without his consent, another reached above that fence-line and took a photo of him. It is reasonable that one's underwear is a private scene and the facts indicate it was unflattering. Printing it in a newspaper indicates that the boarder did this with the intent to humiliate or shame or embarrass Jim.

Defamation

Though the paper printed an unflattering photo and made him bad publicly, did they defame him?

Defamation requires that there be a false statement that is defamatory.

Here the statement that he is an interloper is not factually untrue as he is new to the area and it is not defamatory as even if it were untrue, there is no harm in that reasonably. The statement that he is interfering with the youth is also neither clearly untrue nor defamatory.

It is likely not a cause of action for defamation.

False Light:

✓ However, because the statements were truths made with the malicious intent to put Jim in a false light--making him look like the instigator of the unrest between the skaters and himself, it is likely that the Paper is liable for False Light. False light is the statement of fact so made with the malicious intent to paint another in a false light. Here, the statement would reasonably impact Jim's reputation as it was coupled with an unflattering photo. However there is likely no damage to his reputation as he is new, retired, and not in business.

not a damage, true; would it be deemed highly offensive?

Boarders v. Jim's Estate:

Battery:

Battery supra

Was pouring oil on the street causing the borders to fall a battery?

Battery can be constructive. Causing something to touch a person or causing a person to fall and touch the ground or other objects or persons is a battery.

③ Here, Jim caused the boarders to contact the oil and therefore contact the ground. Falling to the ground is presumably harmful, and even the slightest touching when done in anger is presumed to be harmful. Moreover, the facts state some of them were harmed.

Each instance is likely a battery and each subsequent slipping and falling is a continued battery.

(I'd read the report incidents as consent / assumption of risk)

Sue's Estate v. Jim's Estate

Battery

Battery Supra

Whether Sue being hit by the ambulance is a battery attributable to Jim.

Here, Jim intended to commit a battery tort against the boarders. This intent is transferred to any subsequent tort or person resulting from this act. Because of his

pouring oil on the pavement, the ambulance speeding to the emergency lost control striking and killing Sue. Jim is liable for all subsequent injuries to all subsequent parties as a result of his initial battery on the boarders.

if Jim Neg. not if Jim's intent tort

(3)

Jim may claim contributory negligence, or comparative negligence because Sue was not wearing a seatbelt when she was struck and killed by the ambulance. The facts state that she only went through the windshield because of this failure to take reasonable precautions while operating her patrol car and it is likely that there is some comparative negligence on Sue's part in her death.

Jim is not only liable for the battery but all subsequent injuries and cause of action such as wrongful death toward Sue's estate which will be able to claim lost wages, etc. Jim may also be liable for survivor, pain and suffering etc while Sue was still alive prior to her death as a result of the injuries.

Sue's Estate v. Ambulance Driver:

Negligence;

Negligence is the breach of a duty owed to a plaintiff which is the proximate and actual cause of damages.

The ambulance driver owes a duty of care to all others on the road not to put them in unreasonable risk of harm.

Whether he breached this duty is a question of fact for a jury. The facts state that the driver was speeding to the rescue. Though Jim was liable for the oil being on the ground, if an expert witness testifies that but for the driver's speeding he should have been able to safely maneuver the ambulance and therefore avoid the accident, the driver may be proved to have breached this duty. If experts testify that his speed would not have made a difference in the accident due to the oil, he likely did not.

If there is no breach, there is no negligence claim.

Assuming a breach, his striking Deputy Sue is an actual cause of her death. Proximally, it would be a substantial factor to her death coupled with Jim's having poured oil on the road and together they would be jointly and severally liable.

It is unlikely, however, that the driver is liable given Jim's egregious and dangerous act of pouring oil on the ground and the driver had no reason to assume the viscosity of the road would be such that he would be unable to control his ambulance.

Jim's estate v. First driver:

Negligence

Neglegence supra

Was the driver negligent when he lost control and stuck and killed jim?

He had a duty to operat his car safely. Breached by crashing it?

caused by Jim's oil.

Contributorily negligent Jim oil s

D facts suggest driver was

(+1)
speeding to emergency call 2

(+1)

First Car Driver and Ambulance Drivers v. Jim's Estate

Battery

Battery supra

Whether Jim committed a battery on the driver of the first car and ambulance driver when his spilled oil caused them to crash into a boarder and police car respectively?

✓ Transferred intent (supra)

Because Jim intended the first battery and a second and third, etc, subsequently arose, Jim is liable for all injuries to all reasonably foreseeable plaintiffs as a result. Here it is reasonable that cars will drive on the road and by pouring oil on the road Jim is making it less safe. By causing the driver to make contact with his car into the person of another, it reasonably impacted his hands on the steering wheel and is therefore a contact that could reasonably be harmful or offensive.

2

or → Neg

Conversion:

Conversion is the interference with the chattel of another so that its essential value is lost to the rightful possessor.

Did Jim's causing the vehicles to crash destroy the value of their vehicles?

A car sliding wildly off road and into two people usually does damage. if it is damaged to the point that it is totaled, Jim's estate is liable for the value of the car.

The ambulance's essential value was to rescue persons in this immediate emergency--an essential value which was lost due to Jim's oil spill. Because the ambulance crashed head on to another car it is likely that it is damaged to the extent that it's essential value in the long term is also lost to the rightful owner and the ambulance company will likely also recover fro conversion.

If not conversion it was likely trespass to chattels.

Trespass to Chattels

END OF EXAM