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Peter v Dontools, Inc.

Product Liability

Product liability is a theory of strict liability where manufacturers and sellers who place goods into the stream of commerce are liable for harm to foreseeable consumers.

Negligence

Negligence is the creation of an unreasonable risk of harm to a foreseeable plaintiff. It is comprised of four elements: duty, breach, causation, and damages.

Duty is the obligation to act with due care to avoid harm to others.

Dontools, Inc. is a manufacturer of nail guns. Nail guns can pose a risk to personal injury or property damage should a gun be fired at an object not for the use of construction or home repair work. To limit the risk, as the manufacturer, Dontools, Inc. must make nail guns that don't create an unreasonable risk of harm. Peter purchased and used the nail gun. Dontools has a duty to Peter.

What if their system plus breach no product liability as option

Breach is the failure to act with due care.

Though Dontools has made the nail gun in such a manner as to prevent the firing of any nails when the safety is on, the safety was on when Peter was shot in the head with a nail from the gun. This establishes that the gun was defective, and because it was able to enter the stream of commerce where it caused harm to Peter there was a breach in Dontools duty to Don.

Causation is comprised of actual and proximate cause.

Actual cause is the factual cause of plaintiff's harm.

But for Dontools failure to prevent the defective nail gun from entering the stream of commerce, Peter would not have purchased it and would not have been shot in the head despite having the safety on.

There is actual cause.

Proximate cause the relatively close legal relationship between defendant's careless act and the plaintiff's harm.

Here, the defective nail gun manufactured by Dontools made it into the stream of commerce where it is foreseeable that it would be purchased and used, thereby making it likely that someone will come to harm. Peter purchased that nail gun and, while using it with the safety on the nail gun failed and fired a nail into Peter's skull. Thus, there is proximate cause.

Damages is the harm suffered to plaintiff's person or property.

Though Peter recovered, he was shot in the skull and suffered damage to his brain. There are damages.

Therefore, Dontools is liable for the negligent for Peter's damages.

Breach of express warranty

Where a manufacturer and seller makes a statements that a consumer relies on and suffers harm as a result of that reliance, there is a breach of express warranty.

Dontools nail gun came with a brochure which read "Safest nail gun in the west. Won't fire with the safety on." Peter's injury prevents him from remembering whether or not he read the brochure, so there is no guarantee that he relied on the statement's assurance of safety. Should he have read it and relied upon it though, he will be able to establish liability for breach of that express warranty.

Breach of implied warranty

Good

Implied warranty exists between the seller and consumer ensuring that either the good meets the standard for fair use and quality (merchantability) or that it is proper for the consumer's intended use (fitness).

The nail gun is made to have a safety measure in place to avoid undue harm to users or those within proximity of the gun. Because this safety issue is common to all types of nail guns, it is reasonable to infer that a merchantable nail gun has elements in place to prevent unintentional firing of the nail gun. Though the Dontools nail gun in this instance has a safety measure to prevent unintentional firing, it failed as discussed under causation supra. This failure establishes that the gun does not meet the fair use and quality of the type of good in the stream of commerce. Therefore, there was a breach of implied warranty of merchantability.

Manufacturing Defect

A good that causes harm as the result of its manufacture establishes strict liability under design defect.

The facts state that the nail gun was designed to not fire when the safety is engaged. Here the gun fired though the safety was engaged. This failure is attributed to a critical screw being inadvertently left out of the gun at the factory. Because the safety issue is the result of error occurring during manufacturing, there is a manufacturing defect issue.

Design Defect

Because the facts establish that the defect was caused by the gun missing a critical screw to enable the safety to function properly, design defect is not an issue.

Failure to Warn

Where a manufacturer fails to provide adequate warning of the potential dangers associated with the use of a good, they are liable for a failure to warn.

Because the issue is a manufacturing defect which breaches Dontools express and implied warranties, and a warning issue is not evident from the fact pattern, there is no issue here.

Dontools, as discussed above, negligently manufactured the nail gun by the failure to include a critical screw in its manufacture and its failure to catch the error prior to placing it into the stream of commerce, where Peter relied upon its assurances of safety or reasonably expected the safety to work, and was injured due to that reliance. Dontools is strictly liable for the injury caused by the nail gun.

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Defamation

Defamation occurs where the defendant makes a false statement of and concerning the plaintiff to a third party, which causes reputational harm.

Dontools issues a press release that states that Peter misused the product and suffers brain damage and mental illness. Because the product failure as discussed supra was not the result of misuse but a defect in manufacturing, and because Peter has fully recovered from the injury, Dontools made a false statement about Peter. Peter is named in the press release so any reader will know that the statement is made about Peter. The press release is specifically released to third parties who may or may not have read Peter's ad. The facts don't establish whether Peter suffered reputational harm as a result of the press release, so it is likely that a defamation action will fail to achieve the clear and convincing evidence standard for the cause of action to prevail.

False Light

False light is a statement made about plaintiff that places them in a false light - purports them to be something that they are not.

Should the defamation action fail, Peter may assert that the statements made in Dontools press release made him out to be damaged, ill, and attempting to recover from another for his own misuse of a good. This is not as Peter is, so he is likely to prevail under an action for false light.

Dontools v Peter

Defamation

defined, supra.

Peter's ad in the New York Times states that "Dontools products are all defective, all the time!" which is a gross generalization of Peter's one experience with a single product manufactured by Dontools, so it is false. Dontools is named in the ad, which is published in a widely read newspaper, establishing that the false statement was made to a third party of and concerning the plaintiff. As a result of this ad, Dontools suffers a five percent loss in business, which established reputational harm.

Because the defamatory statement is in writing, it is libel, which presumes damages. Dontools also has the option of establishing defamation under the theory of slander per se, because the false statement relates to the plaintiff's business. Slander per se also presumes damages.

This is a cause of action between private parties, so Peter will have the burden to prove that the statements made were true in order to rebut the defamation claim

Injurious Falsehood

Occurs where a false statement is made about the plaintiff to cause pecuniary harm and does cause harm.

Here, Peter's statement in the New York Times ad is false, discussed supra. The facts state that Peter did this out of anger for his injury, so it may be inferred that he intended to cause harm to Dontools business. Dontools did suffer financial loss in the wake of the ad, so the ad did cause harm. Thus, Dontools may assert injurious falsehood against Peter. Dontools may recover for the pure economic loss.

Interference with Prospective Economic Advantage

Interference with prospective economic advantage is the wrongful intentional interference in the business of another which causes pecuniary harm.

From the time that the ad was placed, Dontools suffered six months of financial loss. Thus, 5% of the business that Dontools would have expected to have for six months were forgone as a result of Peter's ad. Because Peter used false statements about the company to cause this loss, it was a wrongful intentional act. Therefore,

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Dontools has a cause of action for interference with prospective economic advantage.

Abuse of Process

Occurs where a party uses the process of litigation to place undue burden on the plaintiff.

Here, Peter intentionally served deposition notices to all 20 of Dontools managers, requiring them to appear over two consecutive days, which is a complete disruption of Dontools ability to operate a business. This disruption places an undue burden on Dontools. Because this is Peter's purpose for issuing the depositions, and not for the actual purposes of the litigation, Peter has abused the legal process.

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Penny v Dave

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Malicious Prosecution

Malicious prosecution occurs where defendant institutes litigation against plaintiff, which is dismissed in favor of the accused, and where there is not probable cause for the action.

Dave called the police and accused her of stealing money from the cashier, causing her to be arrested. The case was dismissed for insufficient evidence, so it ended in favor of Penny. And because Dave falsely accused her in spite of her plans to open her own grocery store, there was no probably cause for the action. Thus, Dave committed malicious prosecution.

Defamation

Occurs where false statement of and concerning the plaintiff to a third party that causes reputational harm.

As discussed above, Dave's statement about Penny stealing from the cashier was falsely given to the police.

Though Dave's statement was spoken, because it related to criminal allegations about Penny, slander per se will allow for presumed damages to Penny's reputation.

Thus, Penny has a cause of action against Dave for defamation.

False Light

False light is a statement made about plaintiff that places them in a false light - purports them to be something that they are not.

no; only const. matter must be proven using this standard

Should Penny's defamation action fail to meet the standard for clear and convincing evidence, she may pursue a cause of action under false light. Here Dave's statement about Penny stealing from her place of employment places her in the position of being seen as, at worst, criminal and, at best, untrustworthy. She did not steal from the cash register, so she is not what Dave purported her to be. She has a cause of action for false light.

Strict Liability

Animals under strict liability will make the defendant liable where the defendant has an animal with a known dangerous propensity.

Penny will assert that because Dave's ferret slipped its leash and bit her that it is dangerous. And because Dave exposed her to that danger, he is strictly liable for the resulting personal injury.

However, Dave's ferret had never been aggressive before, so he will counter that he did not know of any dangerous propensity, so he is not strictly liable for the ferret bite.

Dave will not be liable.

What about wild animal strict liability?

Assault

Assault is an apprehension of an imminent harmful or offensive touching where the defendant has the present and apparent ability to commit the touching.

As Dave rushed in to grab the ferret away from Penny, she was afraid that he was attacking her as well. Thus, she was in apprehension of an imminent harmful or

offensive touching. However, because Dave was grabbing the ferret and not about to attack Penny, there was no present apparent ability for Dave to commit a harmful or offensive touching. Therefore, there is no assault.

Intrusion

Intrusion is the interference into the affairs of another, which is objectively harmful or offensive.

Dave climbed a tree near Penny's house and was taking photos of her in her backyard with a telephoto lens camera. Because people expect reasonable privacy while on their own property and to only have photos taken of them with consent, Dave's act is objectively offensive. Therefore, he has committed intrusion.

Dave v Penny

Interference with contract

Occurs where one knows of a plaintiff's contract, intentionally interferes with the contract, to the plaintiff's detriment.

Willie worked for Dave at the grocery store, so he was engaged in an employment contract with Dave. Penny knew this when she propositioned Willie to leave Dave's grocery store and work for her own. Willie accepted and immediately left Dave's employment. Because Willie was Dave's night manager, a position of leadership and responsibility that requires proper training, Willie immediately leaving Dave to work for Penny places Dave in the detrimental position of having to find, hire, and train a new night manager. Thus, he has a cause of action for interference with a contract.

Battery

intentional harmful or offensive touching of another without consent.

Penny punched Dave in the eye thinking that he was about to attack her. The punch was harmful. And because one cannot generally consent to personal harm, there was no consent. She committed a battery.

Self-defense: Penny will assert that she acted with the reasonable belief that she was facing imminent harm, which required the use of force. She was mistaken in her use of force and he was had the ferret in hand, so her use of force was unreasonable for he circumstances.

Conversion

Intentional very substantial or complete dispossession of the property of another.

Dave's ferret is his property, so when Penny killed the animal she permanently dispossess Dave of his pet. She has committed conversion.

chattel + trespass
Negligence -vicarious liability

Negligence, defined supra (Question 1)

Under the theory of vicarious liability Penny is liable for the harm caused by Willie while he is within the course and scope of his employment.

Because he was driving distracted, Willie was carelessly driving when he hit Dave. This carelessness establishes a breach in his duty to safely operate a vehicle. The vehicle hit Dave, so it is the actual cause of any injuries suffered by Dave. Because there is such a close relationship between the distracted driving and striking Dave with the car, there is proximate cause. No harm is stated, but it is reasonably inferred. Because Willie was returning to Penny's store after purchasing cleaning supplies for use at the store, he was within the course and scope of his employment at the time he struck Dave. Thus, Penny is vicariously liable for Willie's carelessness resulting in the probable harm occurring to Dave from being struck by a car.

END OF EXAM
