

MONTEREY COLLEGE OF LAW

TORTS

FINAL EXAMINATION

SPRING 2018

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Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question 1

Chandler is a 22 year old college student, just entering his last term of undergraduate studies at U.C. Santa Cruz. A mathematical and computer genius, he is being recruited by many of the best technology companies in Silicon Valley. Although he is quite good with numbers and computer code, he is not so good with social interaction or girls. In truth, he is a classic computer geek.

Chandler purchased a state-of-the-art drone, manufactured by AirVisual. This drone is known for its high definition photography and video capabilities. According to the user manual, users are warned not to fly the drone for longer than 15 minutes at a time due to loss of power potential, and not to fly the drone near power or electrical wires. No other warnings were provided.

Chandler desperately wants a girlfriend, and has a particular crush on a pretty blonde across the street named Lisa. Although he has tried multiple times to talk to Lisa, she will have nothing to do with him. In fact, Lisa is so fed up with Chandler's awkward advances, she has told her friends she will do anything to embarrass or humiliate him.

One sunny afternoon, Chandler launches the AirVisual drone, and flies it at 150 feet over Lisa's backyard, where he obtains high resolution video and still images of Lisa sunbathing naked. Lisa's backyard is bordered by a three foot high fence, which while not visible to houses across the street, is open and visible to the houses on either side of it. The occupant of one of those houses, while not seeing Lisa naked in the backyard, does see the drone hovering above her yard, and calls Lisa on her cell phone. Lisa, looking up, sees the drone above her, and runs horrified into her house. In a hurry to get inside, she forgets she closed her sliding glass door, and smashes through it, sustaining significant cuts and lacerations. The glass door through which Lisa crashed did not contain tempered glass and was installed 20 years earlier by the predecessor of Lisa's current landlord. The Uniform Building Code at the time the landlord purchased the dwelling required that sliding glass doors contained tempered glass. Despite having knowledge of this code requirement, the landlord did nothing to change out the glass, which would have cost approximately \$500.00.

Question 1 continued...

Chandler, disappointed that the backyard show is over, tries to catch the drone as it descends. Unknown to him, however, the motor housing has become superheated due to the extended flying time, and causes second and third degree burns to his hands. Residual scarring from these burns render Chandler's hands almost useless, and greatly impede his ability to use a keyboard.

Lisa, upon her release from the hospital, immediately posts on Facebook that she caught her "creepy" neighbor secretly videotaping her with a drone, and says in the post that thinks he is a pervert. While she doesn't mention Chandler by name, Chandler lives in one of only 4 houses surrounding Laura. Laura's post is "liked" 95 times within the first two hours of posting.

Henry is the hiring director for Galaxy, Inc., one of the top software companies in Silicon Valley. While Henry doesn't know Lisa, he is a mutual friend with someone who does, and sees her post. Putting two and two together, Henry realizes Laura is referring to Chandler, and withdraws a previous job offer offer to Chandler for what would have been a high paying entry position.

In resulting litigation, Lisa sues Chandler and her landlord, and Chandler sues Lisa and AirVisual. Discuss appropriate causes or action, the respective merits thereof, recoverable damages, and potential defenses.

Question 2

Jimmy Hawthorne is schizophrenic. When he fails to take his medication, he becomes severely paranoid and violent. He is also grossly overweight and suffers from hypertension and a bad heart valve.

Over the last few weeks, Jimmy has sporadically taken his medication. On Friday night he went to a local bar called Flaming Moe's. He drank so much he became intoxicated and started to yell at people in the bar. City Police were called to the disturbance he was creating.

Upon arrival, Officer Paul recognized the signs of intoxication, but was unaware of Jimmy's mental health or physical health issues. Officer Paul ordered Jimmy to take a prone position on the floor inside the bar. Jimmy refused. He called Officer Paul a "loser" and swung violently toward the officer. The officer deftly avoided the punch, grabbed Jimmy's right arm, and took Jimmy to the ground. Jimmy suffered a cut and bruise to his face. Officer Paul handcuffed Jimmy and removed him from the bar.

A bar customer, Charlie, was taking video of the incident on his cell phone. Later that night, he posted the video with the comment "more police brutality in the Happiest City in America!" In the video, you can clearly see the face and name tag of Officer Paul.

Jimmy was taken to the County jail. He began to show signs of paranoid schizophrenia. He was unmanageable. The jailers called Sheriff Parker at home to seek guidance. The Sheriff told them to monitor Jimmy in a padded cell. He further stated "if Jimmy's behavior did not improve, to call the jail's psychologist for help.

Instead, two Sheriff Correctional Officers, Eric and Tana, decided to utilize the jail's new restraint chair. Every deputy was required to be trained regarding the restraint chair. During the training, every deputy is required to sign that he or she understands the importance of following all of the manufacturer guidelines for use. The manufacturer's guidelines indicate that no one should be placed into the restraint chair without first receiving a medical clearance. The manufacturer also warned that thrombosis — a clotting of the blood in a part of the circulatory system — could occur if the patient/inmate was left in the restraint chair over 10 hours. The jail policy requires that the patient/inmate be removed from the restraint chair every two hours for exercise, food/water, and a latrine break.

Question 2 continued...

Close to midnight, Friday night, Eric and Tana placed Jimmy into the chair, tightened the straps around his arms, chest and legs. Then they walked out. They did not tell anyone that they had placed Jimmy in the restraint chair. An hour later, forgetting about Jimmy, Sheriff Correctional Officers Eric and Tana, signed off their shifts.

Two days later, when they returned to work from their days off, CO Eric and CO Tana, passed the cell where they had placed Jimmy in the restraint chair. They were surprised to learn that Jimmy was still in the restraint chair. As they passed by, they waved to Jimmy. Jimmy died soon thereafter. The Coroner opined that Jimmy died from dehydration, coronary heart failure, and renal failure.

Video of Jimmy in the chair was soon released by the media. It showed Jimmy wildly writhing back and forth in his chair for 48 hours. Upon viewing the video, Jimmy's parents became physically ill. Jimmy's Mother lost consciousness from the shock. Neither parent has been able to resume normal lives, including work.

Under what theories, if any, may Jimmy's parents sue the County, Sheriff Parker, and the Sheriff Correctional officers, Eric and Tana? What damages, if any, are recoverable for Jimmy's parents? What defenses, privileges or immunities, if any, are available to the County, the Sheriff, and the Correctional Officers?

Under what tort theories, if any, may Officer Paul sue Charlie. What defenses would Charlie have available?

Question 3

Paul needs to repair his fence and locates Dave on Craig's List under the heading of handyman. Paul contacts Dave who tells him that he's an experienced handyman, has his own tools and equipment, all of which are in excellent condition, and has liability insurance. Paul likes Dave's attitude and the fact that he has his own equipment and insurance and hires him at \$20 an hour to help Paul repair his backyard fence.

Dave arrives at Paul's house with all his carpentry tools, an electric saw which appears to have a frayed cord, and an old wooden ladder with all its rungs replaced with wooden dowels. Paul comments to Dave that his equipment looks rather old and beat up. Dave responds that he's been using the equipment for years, it is very reliable, and is in excellent shape. Dave remarks that you "cannot tell a book by its cover."

Paul and Dave commence work on the fence, which is 12 feet high. Paul needs to install some latticework on the top of the fence and needs Dave's ladder to do so. As Paul is moving the ladder into position it seems somewhat unstable and he again asks Dave if the ladder is safe. Dave assures him it is in good condition and that just last week he had climbed up and down the ladder fifty times without any problem. Paul climbs up the ladder and when he puts his foot on the top rung it snaps and Paul falls to the ground and breaks his leg.

It is subsequently discovered that Dave had not previously used the ladder and in fact had found it lying in an alley on his way to Paul's house. It is also discovered that shortly before Paul had contacted him, Dave had received a letter from his insurance company cancelling his liability insurance for nonpayment.

Paul received medical treatment for his broken leg and he remained in a cast for two months. Paul's doctor estimated that there was a 25% chance that Paul would need a second surgery on his broken leg in five years to remove the pins the surgeon had installed.

One reason Paul wanted to fix the fence was that he was thinking about opening a daycare center in his house and wanted an enclosed backyard. Because of his broken leg Paul has given up that idea.

Please discuss Paul's tort claims and remedies and any tort defenses to them.

Torts 2018 – Final Answer Template

Lisa's suit against Chandler:

1. Invasion of privacy
 - a. Is there a reasonable expectation of privacy
 - b. Backyard fence height and visibility to some but not all
 - c. Potential damages resulting from invasion
 - d. Recovery of personal injury damages for privacy tort
2. Intentional infliction of emotional distress
 - a. Extreme and outrageous conduct
 - b. Was there intent or reckless disregard
 - c. Was the emotional distress severe
 - d. Recovery of personal injury damages for intentional tort
3. Bonus: Trespass and/nuisance
 - a. Can Lisa establish these torts based on facts

Lisa's suit against landlord:

1. Negligence per se
 - a. What harm is code intended to prevent
 - b. Balance of burden of replacing glass vs. prevention of harm

Chandler's suit against Lisa:

1. Defamation
 - a. Per se or per quod
 - b. Truth as to statement he videotaped
 - c. Opinion as to statement he is a pervert
 - d. Existence of privilege
 - e. Existence of malice
2. Damages
 - a. Presumed damages
 - b. Reasonably foreseeable damages for loss of earnings
 - c. Intervening cause as affecting damages

Chandler's suit against AirVisual:

1. Products liability
 - a. Manufacturing or design defect, failure to warn, or all
 - b. Intended purpose and consumer expectation analysis
 - c. Available damages
2. Damages
 - a. Personal injuries – reasonably foreseeable
 - b. Loss of earnings

GRADING MATRIX – QUESTION 2

Paul v. Charlie

1. Defamation: (5 points)
 - a. False Statement or Opinion
 - b. Regarding Plaintiff?
 - c. Damage to Reputation?
2. False Light (5 points)
 - a. Disseminated to substantial number of people?
 - b. Highly offensive?
3. Appropriation of Likeness or Image (5 points)
 - a. For commercial advantage?
4. Defenses (10 points)
 - a. Truth? Video is what it is.
 - b. First Amendment: Freedom of Speech
 - c. NY Times v. Sullivan/Goetz:
 - 1) Public Figure/Official?
 - 2) Public Concern?

Parents

1. Parents bringing a claim for loss of child (5 points)
 - A, Wrongful Death: survivor v. estate
 - b. Loss of Consortium for loss of child?
2. Parents bring their own claim for IIED: extreme and outrageous conduct that caused severe emotional distress (5 points)

Parents v. CO Eric and CO Tana

1. Negligence: duty, standard of care, breach, causation, damage (20 points)
 - a. Standard of care determined by:

- 1) RPP
- 2) orders of Sheriff Parker?
- 3) guidelines of manufacturer for use of chair
- 4) jail policy re use of the chair

b. Breach?

- 1) failed to get medical clearance
- 2) failed to follow orders of Sheriff Parker
- 3) left before restraint limits occurred
- 4) fail to tell anyone

c. Cause Death of Jimmy?

- 1) But For?
Jimmy's medical conditions
- 2) Proximate Cause:
Intervening acts/omissions of other correctional officers over two days

d. Damage: Jimmy's Death

- 1) Compensatory/Punitive Damages

2. Defenses: (15 points)

- a. Comp Neg/CN/AOR for not taking medications and drinking alcohol
- b. Privilege: authority of law enforcement to arrest and maintain control of prisoner
- c. Immunity:
 - 1) official governmental activity
 - 2) immune unless willful and wanton
 - 3) majority: punitive damage unavailable against government

Parents v. Sheriff Parker/County (30 points)

1. Parker and County vicarious liable for Negligence of Eric and Tana?
2. Sheriff Parker's own negligence: duty, standard of care, breach, causation, damages
 - a. Standard of Care: RPP of sheriff
 - b. Causation: intervening acts of Eric and Tana and numerous others – gross negligence
3. Parents individual IIED/NIED claims due to release of the video of Jimmy's death.
4. Damages: compensatory/punitive damages
5. Defenses:
 - a. Immunity
 - 1) official governmental activity
 - 2) immune unless willful and wanton
 - 3) majority: punitive damage unavailable against government

GRADING MATRIX TORTS FINAL QUESTION 3

Paul v. Dave

1. Intentional misrepresentation.
 - (a) Elements
 - (1) Dave made false statement of material fact – the ladder is reliable and in excellent shape, Dave had climbed the ladder 50 times, Dave had insurance.
 - (2) Knowledge that statements are false or made with reckless disregard of their truth or falsity.
 - (3) Dave intended Paul to rely on the statements.
 - (4) Paul justifiably relied on the statements.
 - (5) Damages to Paul.
 - (b) Defenses – Because this is an intentional tort, comparative fault is not a defense.
 - (c) Paul's Remedy
 - (1) Compensatory damages – Can Paul prove there is a reasonable medical certainty for his second surgery?
 - (2) Damages for loss of day care center too speculative?
 - (3) Punitive damages due to intentional tort.
2. Negligent misrepresentation.
 - (a) Elements
 - (1) Dave represented to Paul a fact that was not true.
 - (2) Dave had no reasonable grounds for believing the representations were true when he made them.
 - (3) Dave intended Paul rely on these representations.
 - (4) Paul reasonably relied on the representations.
 - (5) Paul's reliance on the representations was a substantial factor in causing Paul harm.
 - (b) Defenses – Comparative fault.
 - (c) Remedies. Same as with intentional misrepresentation minus punitive damages.
3. Negligence
 - (a) Elements
 - (1) Duty
 - (2) Breach
 - (3) Causation
 - (4) Damages
4. Intentional/negligent interference with prospective economic advantage/opportunity

Paul unlikely to prevail because no evidence Dave knew Paul wanted to open a day care center and Paul doing so was so speculative that Dave's conduct was not a substantial factor in causing Paul not to open the day care center.

Paul v. Ladder Manufacturer

1. Products liability – manufacturing/design defect or failure to warn. Paul unlikely to prevail on products liability claim because the ladder was significantly modified and changed after manufacture and sale.

1)

Lisa's Causes of Action Against Chandler

1. private nuisance

This is the unreasonable interference with the use or enjoyment of personal property. Plaintiff must have a possessory interest in the land infringed upon. This must actually interfere with plaintiff's use or enjoyment of his/her own property. Here, Chandler, a neighbor to Lisa, flew his drone over her backyard and, upon seeing her sunbathing naked, hovered in order to take high resolution photos. This act interferes with Lisa's enjoyment of her backyard. Lisa may now feel in the future that she cannot sunbathe outside without the possibility of Chandler flying his drone. This infringes upon her use and enjoyment of the possessory interest of her land as it is her dwelling.

2. intrusion into seclusion

This is the intentional intrusion into someone's private space that results in the release of facts considered embarrassing or private to the reasonably prudent person. Here, Chandler flew his drone over Lisa's backyard and took high resolution photos of her sunbathing naked. While in the privacy on personal property, aerial surveillance by a neighbor to obtain intimate photos not intended to be seen by the public is an intrusion into seclusion. Chandler may argue that Lisa's backyard was not private as there was only a three foot fence, and the area could be viewed from the neighbors on either side of her, weakening Lisa's assertion of invasion into a private space. That being said, Lisa was in her own backyard and Chandler, from his own house, was not able to see into her backyard. He had to intrude, using his drone, to be able to see her.

3. *Intentional Infliction of Emotional Distress*

This is the intentional act by the defendant of extreme or outrageous behavior intended to cause extreme distress, causing extreme distress in the plaintiff. Upon notification of the drone flying above her, Lisa fled from the scene, horrified and in such a hurry that she did not open the glass window. Lisa could argue, not only, that it was an extreme and outrageous act by Chandler to fly a drone, equipped with a high resolution camera, over her backyard, at vantage point that Lisa would never expect anyone to be able to access, but it caused her to feel extremely violated. Lisa could further argue that this feeling of violation turned into an overall emotional distress. Chandler intended to fly the drone over her backyard and hovered his drone to be able to take photos of her naked.

4. Negligent Infliction of Emotional Distress

This results from the breach of a duty owed to the plaintiff who finds themselves within the zone of danger and may or may not result in an injury to plaintiff or may simply result in the emotional distress. However, emotional distress is an element required for this cause of action. Lisa fled from the scene only to smash through her sliding door from the panic of trying to get away from the drone. Lisa could argue that, as a neighbor, Chandler owed a duty to his fellow neighbors not to fly a drone over their homes, especially hovering over young women's backyards. Lisa was a foreseeable plaintiff that would suffer distress over such an act/omission of the expected standard of reasonable care. Furthermore, her distress caused her shock and physical injuries that directly resulted from fleeing from Chandler's drone. Chandler was the proximate cause of such shock as he hovered over a naked women with a device that, more often than not, contains a camera.

Lisa's Suit Against Her Landlord

1. premises liability

As the landlord to the premises, the landlord has the duty to ensure that the building is up to code. The landlord bought the house when the code to have tempered glass was in place. As such, he had ample time to examine his purchase and evaluate any updates or improvements he would need to conduct in order to rent it out. The standard of care that he owes to a tenant does not require him to diligently inspect the premises. However, he is liable for the building as much as he is aware. Here, the landlord knew about the code and did nothing to update the glass. His failure to install the correct glass was the cause of Lisa's injuries as, but for, this untempered glass, the glass would not have shattered in such a way to cause her significant cuts and lacerations. He is also proximately liable under the uniform building code as it was his duty, per regulations, to install the proper glass. He breached this duty, causing Lisa damages. Though his negligence was not sufficient for malice, his knowledge of the code and failure to act suffices.

Chandler's Suit Against Lisa

defamation: libel

This is the written publication to a third party of a false defamatory message. The third party must know that said message was about plaintiff. Furthermore, plaintiff's reputation must be damaged as a result, meaning that the message must be received by the third party and taken to be true. Due to the written nature of its publication, libel has more significant damages beyond slander as the message is considered to be more permanent. The more people a defamatory message reaches, the higher the damages could be. If Plaintiff's reputation is at a high level, any damage is considered to have a more serious effect, resulting in more damage. Ultimately the damages (as most torts) are up to the jury to decide. Here, Lisa essentially wrote "creepy neighbor" and "he is a pervert". While the first statement could be appear to be an opinion, thus neither true nor false, the second message is an affirmative defamatory statement that can be proven true or false. The nature of calling someone a pervert could also be construed as libel per se as it is attaching

an accusation of criminal or "disgusting" behavior. If so, damages are presumed for Chandler.

Lisa's defense here would be that the statement was true. She has a witness that saw the drone above her house and she could possibly show that there was evidence of photos being taken. Lisa could further argue that she did not make any mention of Chandler's name, thus it was a statement about "john doe," thus causing no one to see Chandler in such a way. Chandler would counter this by saying that she has told people that she wanted to find a way to embarrass or humiliate him, and publishing the message was exactly this. This would merit punitive damages as it was done with malice if Chandler won on this argument.

false light (there was malice)

interference with economic advantage

Here the plaintiff must have a protected, but not sealed, economic advantage such as the possibility of entering into a contract. Defendant must have intended to interfere with this advantage, interfered with the advantage and actual interference with must have resulted causing damages. Due to Lisa defamatory message, whether true or not, she caused a lot of people to believe Chandler to be a pervert. As Chandler might be able to prove that most people knew she was talking about Chandler and Lisa knew he was trying to get a job with people like Henry. Lisa could argue that she had a privilege of disclosing such facts as she felt violated by his actions and believed it was in the public interest to know about the "creepy" pass time activities of Chandler.

negligent interference with a contract

Chandler's Suit Against AirVisual

products liability: warning defect

This is a strict liability that attaches to defects in products that cause injury. Under a warning defect, it means that the manufacturer did not supply sufficient warning for the type of product or its risks or knew about potential risks and did not do anything. The plaintiff must show that he/she would not have been injured had it not been for the lack of warnings.

products liability: design defect

This is a strict liability where the defect of a product does not stem from the manufacturing but a flaw in the design. It is assessed via three different tests: customer expectation test, danger-utility test, and hindsight negligence test.

END OF EXAM

2)

P v. County, Et. Al

Negligence

Wrongful Death

In order to bring a negligence case about for wrongful death there must be a finding that D owed P's decedent a duty of care, that D negligently breached that duty, that the breach by D was the cause of some harm to P and their decedent and that damages flowed from the harmful breach. Here it is likely that first the parents will attempt to establish a negligence case against the county as the employer of all the sheriff's in the sheriff's department for the death of their son J. J was an obese schizophrenic with bad blood pressure and a bad heart valve who died of a heart attack. Plaintiff must be foreseeable under the of *Cardozo* zone of danger rule.

Respondent Superior

If it is found that the sheriff's were acting within the course and scope of their employ with the county then the county would be respondent superior and therefore liable for the negligent torts of their employees. Any cause of action J's parents may bring on any individual employee, they may bring against the county.

Duty

As a government body what level of duty of care was owed to the prisoner J, I believe this would be professional standard. They owed a professional standard of care to all inmates that they would take all precautions to warn them of potential dangers, to train their employees to avoid potential dangers in the work place and to remove all potential risks

and dangers from environments under their control. Here there was a duty to train all the employees and continue to check the quality of that training in regards to the safety and health practices of inmates that are "unmanageable" if the policy was to place them in a restraining chair that had dangerous conditions attached to it.

Breach

A breach of the above duty is likely to have occurred when D failed to exercise care in training and observing the training of all employees under their control. The breach occurred as above when they failed to ensure that all the sheriff's knew the dangers of the restraining chair and followed proper procedure with regard to the total care of prisoners under their control.

Causation

Causation must be shown, that is that at a minimum, the negligent breach of the duty owed was the proximate cause of the harm. Here, D will argue that they are an employee with a large force and that they do their best to maintain standards, but sometimes employees fail to follow them. They will shift the liability to others such as their employees (government agencies I believe can't do this) or they will shift the causal chain attempting to break it by asserting a countersuit against the Chair company for SPL. However, the underlying cause of death was a heart attack, it was likely that J could have died of this at any moment from his abusive alcoholic tendencies and hard life. At a minimum contributory negligence should be applied here. The county cannot possibly be the cause in fact of this tort, but they are the proximate cause, this has a supervening event that is unforeseeable by a county encountering a drunk, obese man with a heart condition. D will argue, no level of care could have stopped this man from having a heart attack. P will say that this is not the case, that depriving their son of water and exercise for 48 hours is the proximate

cause of his heart failure. The courts will likely decide that the county was negligent when it breached its professional standard of care to P's son.

Sheriff's Eric and Tanya

These sheriff's may have been the proximate negligent actors in this case for which a claim may be rightfully asserted by the parents because they left the decedent in the chair for 48 hours and failed to tell anyone that he was there. He wasn't given food or water, and died of dehydration related heart failure (most likely) which was not found to be caused by a blood clot (which is the inherent danger of the products misuse). Furthermore if the county asserts a claim against the chair manufacturer for SPL (see below), the manufacturer will have the defense of misuse of the product in that these sheriff's knew of the inherent danger of sitting in the chair for extended periods of time, but assumed that risk anyway when they left J in the chair). They will attempt to assert the defense of immunity or privilege to act in this way as sheriff's, however they will fail because they exceeded the scope of their duties.

Chair Company

Strict Products Liability

Manufacturer's of products owe consumers a duty to not manufacture or design defective products before they flow into the stream of commerce. In order to prove that there is a prima facia case for SPL you must prove that there was a defect, that it entered the stream of commerce, that it was used by a foreseeable user/P, that harm was caused and damages resulted.

Manufacturing

A manufacturing defect occurs in the production or manufacturing environment and is the fault of an error there within. This would be something like a cracked soda bottle leaving the warehouse and injuring a consumer later. Typically, the manufacturer is presumed to be liable for this kind of defect so long as ordinary distribution chains are utilized. Here, the defect will not extend to all products by design, but to those resulting in faulty manufacturing defects.

The facts do not lend themselves to this type of PL.

Design

A design defect is where the product itself by design is defective. Here there are three tests in determining if there was a design defect: the expectancy test-where the reasonable user doesn't expect to encounter the danger in the product; utility-fitness test-where the benefit outweighs the potential harm to users; and the reasonable alternative test where there existed a reasonable design alternative that would not be significantly more costly, but it was not chosen. P will attempt to argue this was the case as all of the designed drones will overheat if used for more than fifteen minutes at a stretch, that a reasonable alternative must have existed. The county will assert that there was a design defect that caused blood clots. This will not be the case. Sitting in chairs too long causes blood clots.

Failure to Warn

Here, if there is a defect known to the designer, but it is not warned, the manufacturer is at fault. Here, the manufacturer warns of the potential risk known to the product and the county knows of the risk but the deputies engage in a willful deviation from the intended use of the product which is a misuse defense that the manufacturer will assert. Finally, the manufacturer can also say, wait a minute, our

product and all sitting activities for ten hours or more may cause blood clots, your plaintiff died of a heart attack not caused by a clot, but by the negligent neglect of your sheriff's.

Sheriff Parker

Battery is the intentional act of D that causes a harmful or offensive contact of the person of another. Here, Parker grabbed J's right arm and took him to the ground. This was a battery, for which P may sue if they believe it was causal to the death of their son and part of the same series of negligent acts. However, it is an affirmative defense of immunity and privilege of officers acting within the reasonable scope of their duties to assault and batter and imprison combative suspects. As long as there is not egregious misconduct, the privilege stands.

Damages

In the likely event that the sheriff's (I lumped tanya and eric as well as eric in with the county here for time) or sheriff's department is found to be the proximate cause of the harm to P's decedent and the wrongful death suit is won on a negligence claim, then they can recover special and general damages (funeral costs)(emotional distress, etc). That is they can recover specials for their inability to work. They may also be able to collect for emotional distress if they sue for NIIED for the sheriff's department releasing the video and they prove that that outrageous intentional act was to a reasonably prudent person likely to cause emotional harm, and did cause the harm. I am unsure, but I'm curious to know whether in respondent superior if the plaintiff is able to hold all defendants joint and severable so they can recover from all and not merely one on each claim.

Sheriff Parker v. Charlie

Defamation

In order to prove the tort of defamation, it must be shown that there were defamatory statements by Lisa (now D), that the statements were of and concerning Chandler (now P), a publication of those statements, and that actual harm resulted for which damages (even nominal) may be awarded. Defamation cases are categorized as either libel (a writing or broadcast), slander (speech) or slander per se (speech re P being unchaste, having a criminal charge, or a loathesome disease). Here the facts indicate libel and slander

Defamatory statements are those made that are offensive to a reasonable person, and damaging to the reputation of the plaintiff. Here the statements are most likely offensive, but on a national standard police brutality is something that is a public concern and is in the public eye. Police have been seen brutalizing individuals for a long time and nationally they have a pretty low reputation at this point.

The statements must be reasonably understood to be of or concerning P. Here P is a public police officer acting in his official capacity as a police officer which is a public matter. In order to prove a prima facie case of defamation, libel here there needs to be a showing of falsity that is malicious or negligent by a reckless disregard for the truth on the part of D. You can clearly see P's uniform nametag and a reasonable person would likely understand P to be himself if they saw it. The statement is of and concerning P. However, he wasn't named by name and the phrase "more brutality" seems to be an opinion on the state of police in general either nationally or locally, it is unknown. So groups of people here apply, all of whom are public.

A publication for libel means that it is seen by at least one other person besides P, even if done so negligently. The publication of the video doesn't appear to have views by the fact pattern, and so it is unknown if anyone has seen it. Here libel cannot be proven, a publication requires an audience or at least someone to understand it. Here we are concerned now with the publication of the slandorous speech in the bar. Others did here it within the bar so long as there was one other person, J could have heard it.

Defenses

Defenses to defamation include privilege, consent and truth. D will assert that he truthfully stated his opinion that there was police brutality. If facts tend to show that he was truthful and that no falsity exists with concern to this public matter and public figure and no actual malice or negligent reckless disregard for the truth exists, then he will have a defense of truth. Here it is unclear whether he will get a truth defense because brutality is a subjective event.

Damages

Damages are presumptive with actual malice, which does not appear to be present. So here, P will have to prove his actual damages if any, but will be unable to recover as he is a public figure and the public matter requires additional elements to be met to recover.

END OF EXAM

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Question 3

Outline

- **Product liability**
- **Strict product liability?**
- **Negligence**
- **Breach of Warranty**
- **Intentional tort**
- **Misrepresentation**
- **Negligence (duty breach causation damages)**
- **Damages**
- **Defense (comparative/contributory/assumption of risk)**
- **Damages (general special)**

Product Liability

Product liability is a liability for all designers, manufacturers, distributors or sellers of harm producing products. There are five types of product liability: strict product liability, negligence, breach of warranty, intentional tort (usually battery) and misrepresentation. Here, There are three areas in which to determine if there is strict product liability: design, manufacture and failure to warn. Here, Paul will assert that Dave misrepresented the product. Misrepresentation occurs when a party either intentionally or negligently states a material fact that is false. Intention occurs when the party makes the statement with the

intent that the party will be induced to rely on it, the party does rely and harm is the result and damages will be awarded. Negligent misrepresentation occurs when a party does not with due diligence determine if the material fact is false or not.

Here Dave presented himself to Paul as a handyman with his own equipment in excellent condition. The equipment was in shoddy condition and when Paul queries Dave about it, Dave states that he has climbed the ladder 50 times and it's not a problem. This is a false statement of a material fact that the induced Paul to use the ladder and thus injuring himself. The ladder was actually found in an alleyway and was not Dave's ladder and he did not use it prior to arriving at Paul's house. The ladder rungs were makeshift steps comprised of dowels.

Product liability is assigned to designer, the manufacturers, distributors and sellers of harm producing products if they are in the business of selling that reach the user/consumer not substantially changed. Any entity that places a product into the stream of commerce. Here Dave is a handyman and does not fit into the category of a liability based on product liability. And the injury was not directly caused by the design or manufacture of the ladder itself because it was significantly altered before it reached the foreseeable user. Therefore there are no liability claims that Paul can bring against the manufacturer, designer, distributor or seller of the ladder.

Breach of warranty is also applicable to an individual in the stream of commerce. Dave is not in the business of providing products, he is providing services, therefore the ladder manufacturer did not breach their warranty, express or implied. Nor did they behave negligently, commit an intentional tort or misrepresent the ladder. Misrepresentation would be committed by the seller of a product that induced a buyer to rely on their skills, knowledge and judgment, but again, Dave is not a seller of the ladder and this is not applicable, nor the any seller misrepresent the ladder to Paul.

Battery

Battery: Is an intentional tort whereby physical or offensive conduct with intent to cause to another person is committed without consent or privilege.

Here, Dave assured Paul that the ladder is likened to not judging a book by its cover. Paul then used the ladder fell and broke his leg. Dave may not have known that the ladder would break therefore he may not have had intention to cause physical harm to Paul.

The court will conclude the Dave did not commit battery against Paul.

Negligence

Outline

- **Duty**
- **Breach**
- **Causation (actual and proximate)**
- **Damages**
- **(general - pain and suffering), special medical bills and loss of income)**

Negligence is when there is a duty, a breach of that duty, causation (actual and proximate) and damages. The duty of care in this case is a reasonably prudent person. Here, the Dave failed in his standard duty of care by failing to test finding the ladder, not testing the ladder and stating that that he has used the ladder 50 times and it could not be judged by how it looked. The breach occurred when he failed in his duty to a foreseeable plaintiff in the zone of danger (Cordova). As a customer of his services, Paul was a foreseeable plaintiff. Stating that the ladder was effectively safe and it broke was the actual (but for

not providing the ladder and attesting to his quality) Paul would not have been injured) and proximate cause (the breaking of the ladder rung) resulting in damages.

Paul will assert that Dave committed negligence by breaching his standard duty of care and that he suffered harm (damages).

Dave will assert four defenses:

Contributory, comparative, and assumption of risk and consent.

Contributory is not used in many states as a form for damages (if the plaintiff contributed in any way to their own harm, they will not recover). It is primarily comparative fault now and that if Paul contributed to her own injuries, by a certain percentage then he will only recover the amount of money minus the percentage that he contributed to the injury.

Here, Paul observed the ladder and stated that it looked rather old and beat up, and on a second occasion asked if the ladder was safe. This implies that Paul thinks the ladder may not be safe and uses it anyway. He is comparatively responsible for his injuries and may not recover completely 100% of the damages he may be owed.

Assumption of risk is another defense and if the activity was possibly reckless or dangerous and the plaintiff was aware of that and still proceeded to act, then they may not fully recover if at all in damages. Here, Paul has observed that the ladder is old and unstable and still climbs to the top of the ladder to build a 12 foot fence. He may assumed risk as he was likely aware of that the ladder was unsafe.

The court is likely to rule that Paul contributed to his injuries and assumed risk when he climbed 12 feet up on a ladder he observed to be unstable and "old and beaten up."

Damages:

Paul can collect general and special damages: general are for pain and suffering and special are foreseeable such as medical bills, loss of income, etc. He is likely to recover for both pain and suffering for being for the broken leg and medical bills from the physical injuries he sustained. He may be able to claim damages for foreseeable medical bills based on the doctor's estimate that he would need a second surgery at some point in the future.

Punitive damages: Paul may be able to collect punitive damages as Dave's conduct was malicious and reckless resulting in harm caused to Paul.

Paul is likely to assert that he also needs to collect damages for losses of future income. This is speculative income and is it is not foreseeable that the daycare would have opened or been successful.

Conclusion:

Paul will prevail on his claim of negligence and he will collect general damages for pain and suffering, special damages of medical bills and possibly punitive damages as Dave's actions were malicious and reckless. He is not likely to collect speculative damages as they are not foreseeable. His damages will be offset by his contribution (comparative) to his own injuries and by his assumption of risk, reducing his award by whatever percent the court determines Paul's actions may have contributed to his injuries.

END OF EXAM