MONTEREY COLLEGE OF LAW
HYBRID
TORTS
FINAL EXAMINATION
SPRING 2025
PROF. L. HOLDER

General Instructions:
Answer Three (3) Essay Questions
Total Time Allotted: Three (3) Hours

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QUESTION 1

Forest Hills Stadium (Stadium) is a historic outdoor music venue that has welcomed fans to the picturesque New York City neighborhood of Forest Hills, Queens for over 100 years. Designed to optimize acoustics and with no obstructed views, the 13,000-capacity stadium is the only outdoor venue of its kind and size in the city.

Originally designed in the 1920's as the home of the U.S. Open tennis tournament, Stadium began booking concerts in the 1960's and went on to host some of the most culturally significant performances of the time – Frank Sinatra, Barbra Streisand, The Rolling Stones, and Bob Dylan.

Stadium was updated in 2018 with $4 million in state-of-the-art upgrades and has since welcomed a new age of diverse superstars - sell-out performances by Drake, Dolly Parton, Mumford and Sons, The Alabama Shakes, Ed Sheeran, and many more.

Forest Hills Gardens Corporation (Gardens), founded in 1909, is the first planned garden community in the United States. Gardens is an oasis in the very heart of Queens. Gardens is a membership organization dedicated to preserving the quality of life and the architectural character of the community. Membership is limited to property owners within Forest Hills Gardens. Gardens is responsible for maintaining the Gardens community, including its streets and sidewalks, numerous parks, and green spaces. Gardens owns some of the land and the private streets that surround Stadium.

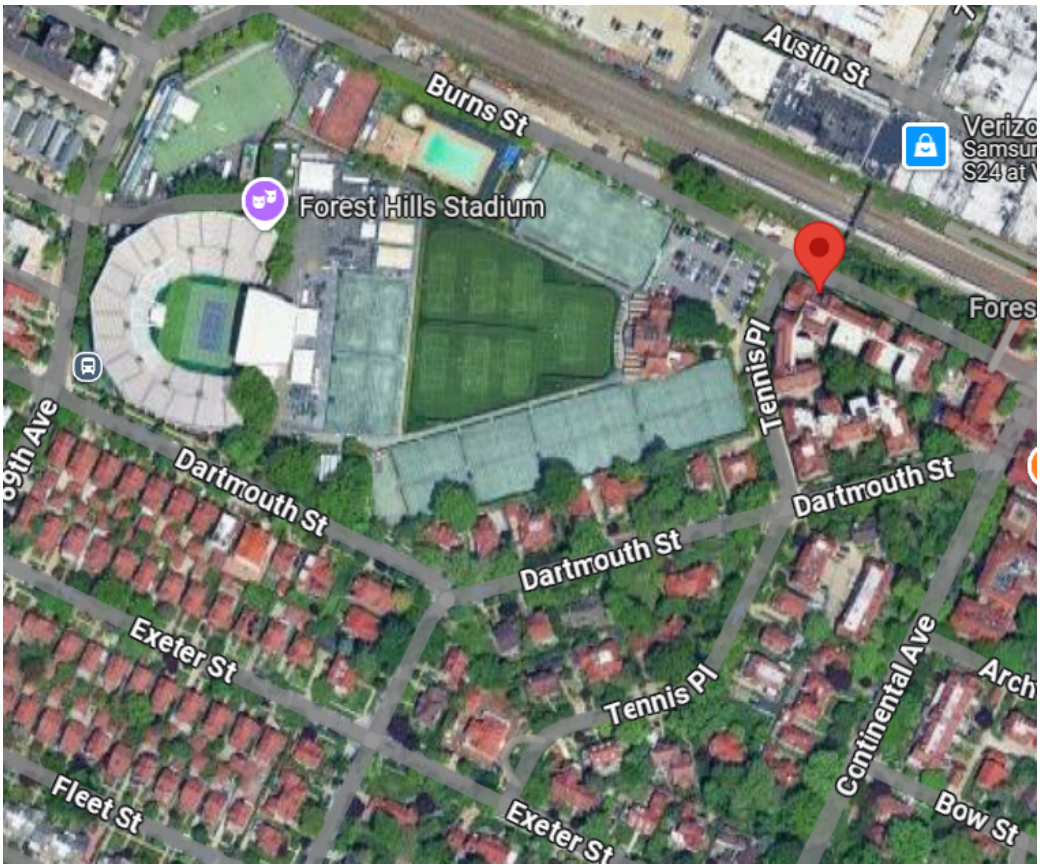
Since the 2018 Stadium upgrades, about 40% of the 1,214 Gardens members have complained that every summer large concert crowds invade their sidewalks, streets, and lawns, and that Stadium's growing number of yearly concerts are too loud, too hectic, and infringe on the quiet lifestyle many of the residents moved to Forest Hills for.

Anthony Oprisiu, president of the Gardens Board of Directors, noted that a "record-breaking 37 events took place at the stadium during the 2024 season." Oprisiu said that "The noise from the concerts sends vibrations through residents' houses for hours at a time, and the crowds make it impossible for residents to enjoy their homes and neighborhood." Oprisiu outlined a litany of complaints, stating that concertgoers frequently trespass and urinate on private property, and leave trash on the streets or in private yards, and that private security guards block access to private streets during events at the Stadium, impairing residents' access to their homes.

Stadium's attorney, Akiva Shapiro, responded to the criticism:

> Shutting down the Stadium would be catastrophic for the Forest Hills economy, destroy local businesses, deprive Gardens itself of its largest source of revenue, and put community members out of their jobs. Beyond its cultural impact, the annual concert series adds over 200 seasonal jobs at Stadium, and uplifts Forest Hills' small businesses including restaurants and bodegas. Stadium garnered more than 25,000 signatures of support for the Stadium on a recent petition. Under no circumstance should an individual or small group have veto power over the socioeconomic vitality of an entire community or the cultural influence of an entire borough. Nobody should listen to this small group of individuals who are indifferent to Stadium's history and value to the community. See you at Stadium this summer. (Shapiro, Letter to *Queens Eagle* Newspaper)

Gardens filed a private nuisance lawsuit against Stadium. What is the likely outcome? Discuss.



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QUESTION 2

N.J. cop files defamation suit against mayor amid overtime abuse accusations

April 2, 2025

HACKENSACK — Mayor John Labrosse is being sued for defamation by a city police lieutenant. Labrosse, who has been mayor since 2013, is running for reelection in May.

Lt. Anthony DiPersia's suit states that Labrosse disseminated false statements in a March 8 campaign letter published as a paid advertisement in the local newspaper (Letter).

Letter was published soon after Hackensack's Policemen's Union endorsed Jason Hanson, the rival candidate running in the May 13 City Council election, according to the suit. DiPersia, the union president, signed the endorsement letter, which urged voters to choose Hanson as a "fresh start for our city and police department" (Endorsement).

Labrosse responded by writing in his Letter that the "letter from a Hackensack Policemen's Union official" criticized the current administration's efforts to address a "culture of corruption" within the police department. The Letter went on to state that "a few rogue superior officers manipulated the system to enrich themselves by earning hundreds of thousands of dollars through 'extra duty' jobs while they should have been performing their actual roles." The Letter said "union officials" are some of the "worst offenders" of these abuses and some earned more than $225,000 in 2024.

"It is important for taxpayers to recognize the Labrosse administration's role in ending police corruption," the Letter read. The reforms "effectively halted a certain union official's profitable activity," which manipulated the system to "fleece Hackensack and its residents." However, he's seeking revenge by "involving the police union in city politics," it said.

DiPersia's suit notes that officers who work extra duty details are not compensated through taxpayer dollars but are instead paid directly by outside private contractors. All investigations into "extra duty" officer work revealed no impropriety.

Is DiPersia likely to prevail in his defamation case against Labrosse? Discuss.

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QUESTION 3

The National Highway Traffic Safety Administration determined that 14% of vehicle accidents are due to poor visibility around the vehicle, aka "blind spots." The NTSB states that 40% of any given vehicle is made up of blind spots. The Chevy Camaro has the worst visibility of all cars in its class. The Camaro is a svelte coupe with a wide, low stance and raked windshield, and significant blind spots. Further, the deep, body-hugging seats make it more difficult than average for the driver to look over their shoulder when changing lanes or backing out of a parking space. This decreased visibility means drivers have a harder time seeing not only other cars but also pedestrians.

Blind spot warning systems, backup cameras, and blind spot intervention systems that apply the brakes when an object is detected in a blind spot first hit the market in 2003. The Insurance Institute for Highway Safety examined the effectiveness of anti-blind spot technology in preventing collisions and found it reduces collisions by 23%. No law requires vehicle manufacturers to include anti-blind spot technology as standard equipment.

Since 2012, Chevy has offered its blind spot monitoring system, "Blind Zone Alert," as an available option, adding from $495 to $1,760 to the price of a Chevy vehicle. Since 2016, if Chevy had included Blind Zone Alert as standard in all of its offerings, it would have cost about $130 per vehicle. Chevy chose to keep Blind Zone Alert as an option.

Arnie drives a 2019 Camaro that he purchased new from Chevy Dealer. Arnie did not purchase Blind Zone Alert. Arnie and Joshie have a 4-year-old daughter, Dani. Joshie usually drops Dani at day care. Joshie drives a Subaru Forester, a vehicle with exceptional driver visibility due to its large windows and blind-spot monitoring system that comes standard on all Subarus.

On this day, Arnie dropped Dani at day care. Arnie signed Dani in, and Dani ran into the chain-link fenced yard to waive goodbye. Blowing kisses, Arnie hurried back to the Camaro, put the car in reverse, and began backing out of his parking space.

Dani needed one more hug from Arnie, saw that the gate was open, and dashed into the parking lot behind the Camaro. Arnie could not see Dani in his mirrors or over his shoulder and he backed into Dani with the Camaro. Dani suffered a severe traumatic brain injury affecting her thinking, feeling, and mobility.

As Dani's legal representative, Joshie sued day care and Arnie for negligence, and Chevy for products liability under strict liability. Day care and Arnie settled for insurance policy limits.

Will Dani prevail in the case against GM? Discuss.

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ANSWER OUTLINES

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Question 1 – Private Nuisance (Forest Hills Stadium)

Call of the question: **Gardens filed a private nuisance lawsuit against Stadium. What is the likely outcome? Discuss.**

A private nuisance is a substantial, unreasonable interference with another person's use or enjoyment of her property. A defendant is only liable under a private nuisance theory if, among other things, his use of his own property significantly encroaches upon another's interest in the private use and enjoyment of her land. See Restatement (Second) of Torts § 822.1

Interference must be either: (1) Intentional and unreasonable, or (2) Unintentional, but negligent, reckless, or such as would give rise to strict liability in tort. See Restatement (Second) of Torts § 822.

Substantial: "a harm of importance, involving more than slight inconvenience or petty annoyance. The law does not concern itself with trifles, and therefore there must be a real and appreciable invasion of the plaintiff's interests" or "a real and appreciable interference with the plaintiff's use or enjoyment of his land before" he may prevail in a nuisance action. Id. at § 822, comment c.

Unreasonable: For a nuisance based on intent or negligence, the interference with plaintiff's use of his land must be unreasonable. To be characterized as unreasonable, the severity of the inflicted injury must outweigh the utility of defendant's conduct. In balancing these respective interests, courts take into account that every person is entitled to use his own land in a reasonable way, considering the neighborhood, land values, and existence of any alternative courses of conduct open to defendant.

1. The extent and character of the harm.
2. The social value the law places upon both the purpose of defendant's conduct and the particular interest of the plaintiff that has been invaded.
3. The extent to which the defendant's conduct, and the plaintiff's invaded interest, are well-suited to the particular locality.
4. The burden or expense that either party must incur in order to avoid the harm.
5. The impracticability of preventing the harm.
   See Restatement (Second) of Torts §§ 826-829, 831.

Remedies: Damages / Permanent damages / Injunction

Defenses: zoning ordinance or other legislative license permits is relevant but not conclusive evidence that the use is not a nuisance / "Coming to the Nuisance"

Conclusion

Question 2 – Defamation (Policeman v. Mayor)

Call of the question: **Is DiPersia likely to prevail in his defamation case against Labrosse? Discuss.**
Common law defamation: (1) The defendant published (2) defamatory material (3) of and concerning the plaintiff, (4) which caused damages. (Modern rule - must also prove falsity and fault as part of prima facie case.)

Prima facie element at issue: "Of or Concerning" the Plaintiff

The plaintiff must establish that a ***reasonable*** reader, listener, or viewer would understand that the defamatory statement referred to the plaintiff.

Colloquium

A statement may be actionable even though no clear reference to the plaintiff is contained on the face of the statement. In such a case, however, the plaintiff is required to introduce additional extrinsic facts that would lead a reasonable reader, listener, or viewer to perceive the defamatory statement as referring to the plaintiff. Pleading and proving such extrinsic facts to show that the plaintiff was, in fact, intended is called "colloquium."

Here, **DiPersia is not named directly in the Letter**.

> "DiPersia, the union president, signed the endorsement letter,"
> "letter from a Hackensack Policemen's Union official"
> "a few rogue superior officers . . ."
> "union officials" are some of the "worst offenders"

Public figure actual malice (NYT): a public figure is either (1) a public official or (2) a private citizen who has attained a sufficient degree of notoriety, whether generally or in relation to a specific matter. There are two types of public figures of notoriety: general public figures (well-known celebrities or famous athletes.) and limited-purpose public figures (someone who voluntarily and substantially participates in a public controversy, usually to influence public opinion or to affect the outcome of the controversy. More rarely, this category can include someone drawn into a controversy involuntarily).

Matter of public concern (Dun & Bradstreet, Inc. v. Greenmoss Builders): A matter of public concern is a matter of legitimate news interest, not limited private interest. Matters of public concern include those implicating political and social concern, as well as those involving the public health, safety, morals, welfare, and policy.

Damages: libel/slander; general/presumed; special

Defenses: Qualified privilege: interest of the publisher, interest of the recipient - lost if exceeded.

Conclusion

Question 3 – Product liability, Strict liability (Camaro)

Products liability – Strict liability

Products liability deals with the liability of a person who sells a product to another who is injured by the product.

Privity. No requirement of contractual privity between plaintiff and defendant: privity is generally irrelevant under current law except for some of the warranty theories of liability.

Strict products liability is imposed if (1) the actor was a commercial supplier of the defective product, (2) the product was defective when it left the actor's control, (3) there was no significant change in the product's condition between the time it left the actor's control and the time it caused the injury, and (4) the defect actually and proximately caused the injury.

Commercial supplier: A person who is in the business of selling or distributing products can be liable for a defective product's harm to others or others' property. A commercial supplier of the product includes a manufacturer, wholesaler, retailer, or anyone else who sells the product on a more-than-casual basis in the regular course of business, if that supplier is in the chain of distribution from the initial manufacturer to the plaintiff.

Existence of a defect. There are three basic kinds of defects: (1) manufacturing defects, (2) design defects, and (3) informational defects, or unreasonable failure to give adequate instruction or warning.

Design defect if (1) the product as designed is unreasonably dangerous (2) if used or misused in a reasonably foreseeable manner. Courts generally use one or both of two tests to identify a design defect: (1) the consumer-expectation test and (2) the risk-utility test, also called the reasonable-alternative-design test.

Informational defect if (1) it fails to include reasonable warnings or instructions about reasonably foreseeable risks, and (2) the omission makes the product unreasonably dangerous. [Restatement (Third) of Torts: Products Liability § 2.]

Adequate Warnings or Instructions: To be reasonable, a warning or instruction must be legally adequate in both its content and its presentation. [Restatement (Third) of Torts: Products Liability § 2, with comments

Causation: actual and proximate

Damages: general damages for pain and suffering / special damages for medical bills and continuing care, education, etc. Punitive damages may be available in extreme cases where the defendant's conduct was particularly evil, indifferent, or outrageous.

Defenses: contributory negligence / assumption of the risk / regulatory compliance.

Conclusion

1)

NUISANCE

PUBLIC NUISANCE

A public nuisance is an unreasonable interference with the safety, health, and property rights of the community.

In this situation the suit is a private nuisance lawsuit.

Therefore public nuisance does not apply in this situation.

PRIVATE NUISANCE

A private nuisance is a substantial and unreasonable interference with the use and enjoyment of property the plaintiff actually owns or has immediate property rights. The interference can be: (1) intended and unreasonable; (2) reckless and negligent; (3) give rise to a strict liability tort.

Substantial

A private nuisance must be substantial in order to be actionable. Meaning, it must be offensive, annoying, or inconvenient to an average person of the community. A private nuisance will not be characterized as a nuisance if it offend the hypersensitivity of a member of the community or if infringes on a plaintiff's specialized use of their property.

In this situation, it is not one member of the community that finds the stadium and stadium a nuisance. It is about 40% of the 1,241 Garden Members of the community have established the behavior from part of the guest as annoying, offensive, or inconvenient. It is not one member of the community that is reacting in a hypersensitive manner to the concertgoers but rather a substantial amount of the community. The consensus by members of the community can give grounds to establish that the nuisance is subsntantial. [You neglected to address the main 'substantial' prong – applying the rule for "offensive, annoying" etc.]

Therefore the private nuisance filed by the Gardens community is substantial.

Unreasonable

A private nuisance based on intent of negligence must be unreasonable. A private nuisance is

unreasonable when the the severity the injury inflicted outweighs the utility of the defendant's conduct. A court will balance the conflicting interest by taking into consideration that property owners are allowed to use their property in reasonable ways. A court considers custom, the neighborhood, land value, and if there are alternative coursed of action available to the defendant.

In this situation, the balancing of the conflicting interest can result quite problematic. Because in one hand you have a traditional stadium that has harbored 'A-list' artist for more than a century. The stadium promotes the local economy, in a wide array of ways including providing jobs to 200 seasonal workers. On the other hand, the community the Garden community finds it the noise inconvenient, the concertgoers indulge in criminal acts near the homes such as trespassing, disposing garbage in public, and urinating. These are legitimate concerns. However, when you balance the concerns of a couple hundred people with the millions of dollars in revenue that the stadium produces, there are grounds to establish that the injury inflicted does not outweigh the utility that the stadium presents. The community only needs to put up with the concert goers 37 times per year, and that was a record. That argument along with the jobs and millions in revenue that the stadium produces are significant indicators that the quaint lifestyle of the Garden community is not interrupted that often and due to the benefit of the stadium they must put up with the concertgoers 37 or less times out of 365 days of the year.

Therefore the private nuisance is not unreasonable. [Good job on this issue overall, but it would be good to discuss the 2018 upgrade that has created the problems.]

Ownership

In order to bring forward a suit for private nuisance, plaintiff must be the owner of the land/property or have immediate rights of possession of the land.

In this situation we know that the plaintiff's are owners of the property because the plaintiffs are the Garden members. To be a garden member you must own property there.

Therefore the element of ownership is satisfied.

Conclusion

To the heightened number of people annoyed with the nuisance, it can be considered substantial, however, the gardens have a heavier burden to prove that the nuisance is unreasonable due to the number of concerts vs. the benefit of the stadium.

DEFENSES

Legislative Authority

If there a zoning laws that allow the behavior by defendant or city permits, these are defenses. But they are not full assertions that are nuisance is not occurring, meaning a nuisance can still occur with legislative authority.

In this situation, the stadium has permits and is allowed by government. It can be implied by the fact pattern that everything is in regulation.

Therefore, legislative authority allows the stadium to function.

Coming to the Nuisance

Is a person buy property in good faith, without the intent to harass lawsuit, It is not a defense when a defendant has been living in an area or has seniority in that area.

In this situation, it will not be a defense that the stadium had been there for centuries, The Gardens community has the right to live without a nuisance, even if the stadium has been there for longer [and the 2018 upgrade happened after people lived at Gardens].

Therefore coming to the nuisance defense does not apply.

Contributory & Comparative Negligence

When the nuisance is based on negligence this defense is applicable. A plaintiff can not excise his behavior and accuse the defendant of nuisance.

In this situation, there defense is not applicable.

Therefore the element is irrelevant.

Conduct of Others

REMEDIES

Damages

Permanent Damages

Permanent damages can be awarded when the damage is lasting and irreparable. A good valuation is desired to remedy the situation, because no more suits will be able to be brought forward.

In this situation the fact pattern does not indicate any permanent damage.

Therefore the remedy is inapplicable. [Decreased property values?]

Temporary Damages

Temporary damages are damages that can be mitigated or repaired over time. A good valuation is also desired sot hat no more suits are brought in the future for the same nuisance.

in this situation the fact pattern does provide temporary damages that can be assigned, such as pick up of trash or fixing the pee smell by the urinators.

Therefore temporary damages can be assigned, but not much remedy will come out just damages for trash and pee smell.

Injunction

If damages is not approbate then there can be an injunction or partial injunction to remedy the private nuisance. The court considers the harm that could be brought by an injuction to either party.

In this situation perhaps, there can be a partial injunction so that security stops blocking the public streets.

Therefore other than this, there is not much an injunction can do, due to the utility of the stadium. [Decrease concert volume and crowd size?]

Purchased injunction

A less talked about form or nuisance remedy is purchased injunction. A plaintiff can enjoin the behavior of the defendant but only if they are ready to compensate the defendant.

In this situation, this will be really difficult because the defendant makes millions of dollars.

Therefore this solution probably will not work.

CONCLUSION

The utility of the stadium outweighs the annoyance. There is very few concerts out of the 365 days of the week. The nuisance is substantial but not unreaonsable. Perhaps the defendant can have other courses of action such as helping prosecuting more heavily people that commit crimes and cleaning the streets, and not blocking the roads. Other than that the private nuisance suit does not prevail on its face.

2)

Defamation

The tort of defamation compensates a victim for harmful falsehoods communicated about the victim to third parties. Written defamation is called libel and spoken defamation is called slander.

Prima Facie Case

To establish a prima facie case for defamation you must prove:

1. defamatory communication by the defendant
2. of or concerning the plaintiff
3. publication of the defamatory language by the defendant to a third person
4. damage to the reputation of the plaintiff

Additionally, where the matter is of public concern or involves public figures or public officials, the "constitutionalization" of defamation law has added two elements to the prima facie case for defamation: falsity of the defamatory statement and fault on the part of the defendant (i.e. the actual malice standard) by acting with knowledge of falsity or with reckless disregard as to the truth or falsity of the statement.

Element 1: Defamatory communication by the defendant

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. A communication to be defamatory need not tend to prejudice him in the eyes of everyone in the community. It is enough that the communication would tend to prejudice him in the eyes of a substantial and respectable minority of them. Mere jokes, insults or pure opinion is not actionable.

In this case, the mayor specifically said that superior officers manipulated the system to get rich. This is a defamatory communication as it would harm the reputation of the superior officers if false. Element 1 is met.

Element 2: Of or concerning the plaintiff

The statement must be about the plaintiff. A statement is made of and concerning the plaintiff if the recipient of the statement correctly or incorrectly but reasonably understands it to refer to the plaintiff. That is, it identifies the plaintiff to a reasonable reader, listener or viewer. A defamation action will lie where the recipients of the communication reasonably believe that the character is really the plaintiff. However, in this case, the mayor didn't refer to the LT by name, so there is an argument to be made that even though he is a LT, perhaps this would not identify him to the reasonable reader? What now?

Colloquium! A statement may be actionable even though there is no clear reference to the plaintiff is contained on the face of the statement. But the plaintiff is required to introduce additional extrinsic facts that would lead a reasonable reader to perceive the defamatory statement as referring to the plaintiff. Pleading and proving such extrinsic facts to show that the plaintiff was in fact intended is called colloquium. In this case, the court may require the LT to plead and prove colloquium. The LT may show this by introducing extrinsic evidence such as testimony from his colleagues that read the article that they would interpret this to refer to him as a superior officer. [Don't rely on presumed testimony. Use the facts you are given. This was a major issue and you were given several relevant facts to support your conclusion.] If he can do this, which he likely can, element 2 is met.

Element 3: Publication of the defamatory language by the defendant to a third person who understood it.

Publication of defamatory matter is its communication intentionally or by a negligent act to one other than the person defamed. Alternatively, one who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication (cover the graffiti :))

In this case, the statement about the superior officers was made in a campaign letter which was published in the local newspaper. The letter reached third parties and amounts to publication. Element 3 is met.

Element 4: Damages (for the sake of this analysis we will explore this last to award the proper damages)

Element 5: Falsity of the Defamatory Language

At common law, a defamatory statement was presumed to be false. The USSC has rejected this presumption when the plaintiff is constitutionally required to prove some type of fault. In these cases, the plaintiff must prove as a prima facie element that the statement was false.

In this case, the LT clarified that those officers who work extra duty are not compensated through taxpayer dollars. All investigations revealed no impropriety which shows that this statement by the mayor is false. Element 5 is met.

Element 6: Fault on the Defendant's part

Following Sullivan, the courts now impose a fault requirement in cases involving public figures/public officials or matters of public concern. In this case, the defamatory statement refers to the LT. The LT is a private figure. [Conclusory – needs support with argument. Many concluded just the opposite.] Nonetheless, the statement is of public concern. Where the defamatory statement relates to a nonpublic person, there is less concern for freedom of speech and press. In addition, private individuals are more vulnerable to injury from defamation because they usually do not have the same opportunities for rebuttal as do public persons. A defamation action brought by private individuals are subject to constitutional limitations only where the defamatory statement involves a matter of public concern.

Public concern: A matter of public concern is a matter of legitimate news interest, not limited private interest. Matters of public concern include those implicating political and social concern as well as those involving public health, safety, morals, welfare and policy.

In this case, the statement regarding superior officers is a matter of public concern as it pertains to policy changes the major wishes to make. Additionally, the LT notes that the extra duty compensation does not come from taxpayers money. Taxpayer money is a public concern and will be held as such especially when published in the local newspaper.

Private Person & Public Concern? At Least Negligence required (level of fault)

When the matter is of public concern and the individual is a private figure, you must prove at least negligence in order to recover in a defamation action.

Where the defamatory statement involves a matter of public concern, Gertz imposes two restrictions on private plaintiffs:

- It prohibits liability without fault and

Where the statement is published is such that its defamatory potential was apparent to a reasonably prudent person, the plaintiff must show that the defendant permitted the false statement to appear, if not through actual malice, through a lower fault which presumably means negligence to its truth or falsity.

In this case, the campaign letter was actually a paid advertisement which was published after the LT actually signed an endorsement letter for the mayors opponent. The introduction of this fact will likely show not only was it published negligently (should have due care in publishing advertisements) but also that there was likely actual malice in the mayors actions.

- it restricts recovery of presumed or punitive damages

Damages in these instances are limited to actual injury. Actual injury is not limited to out of pocket loss and may include damage to reputation, standing in the community and personal humiliation. However, presumed or punitive damages are allowable where actual malice is found. In this case, it may be more difficult for the LT to prove actual injury. However, there is a strong case for actual malice. Note, there are no constitutional protections for publications made with actual malice so the plaintiff would be permitted to whatever recovery the state law allows. (Note: for lack of time this means mayor would lose any qualified privileges for actual malice.)

Damages (revisited from earlier)

In order to determine the damages for the defamatory language, you must classify the language as either libel or slander.

Libel is a false unprivileged publication by writing printing picture or effigy or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided.

The defamatory communication in this case is libel considering it was by writing and published in a newspaper.

Damage rules for Libel: in most jurisdictions, general damages are presumed by law for all libels; that is, special damages need not be established.

General damage - are presumed by law in libel and need not be proved by plaintiff. they are intended to compensate for the general injury to her reputation caused by the defamation. the compensation received is for past and future harm sustained to reputation in the community as well as mental and emotional anguish and personal humiliation. Court awards $50k in general damages.

Special damages: if P shows pecuniary loss, then they can also receive special damages. $10k awarded to potential loss of promotion (not noted but I'm adding)

Punitive damages: additional sums meant to punish. Mayor acted with actual malice bc he supported the other candidate - awarding $100 million in punitive

Defenses:

Qualified Priv - Public Interest : Statement made in public interest are qualifiedly privileged. However, a defendant can lose the qualified priv through abuse or actual malice. Actual malice was established above as the mayor acted with reckless disregard as to the statements truth or falsity. Privilege is lost. Lt will still recover.

3)

Dani v. GM

(Acknowledgement that Joshie is bring the action but noted as Dani below since she suffered the injury)

Products Liability

A product's supplier may be liable to one injured by the product. There are 5 theories under products liability with one of them being strict products liability.

Contractual Privity

Parties are in privity when there is a contractual relationship that exists between them, such as a direct sale by the defendant retailer to the plaintiff buyer. To bring a strict liability action in products liability, a plaintiff is not required to be in privity with the defendant. Anyone foreseeably injured by a defective product or whose property is harmed by the product may bring a strict liability action. The plaintiffs in these actions include not only the purchasers of the the products but even bystanders who suffer personal injury or property damage.

In this case, the injured party was Dani. Dani did not purchase the vehicle herself (i.e. they are not in privity to each other), but Chevy may still be liable under strict liability for products liability because even bystanders who suffer personal injury may bring an action if the case meets all of the prima facie elements.

Liability Based on Strict Products - Prima Facie Case

To establish a prima facie case in products liability on strict liability you must prove:

1. The defendant was a commercial supplier
2. The defendant produced or sold a product that was defective when it left the defendant's control
3. The defective product was the actual and proximate cause of the plaintiff's injury; and
4. The plaintiff suffered damages to person or property

Element 1: The defendant is a commercial supplier

Liability of a commercial supplier: One engages in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect.

Under this theory, the plaintiff must show that the defendant is a commercial supplier of the product in question (that is, not a casual seller). Thus, strict liability applies when the defendant is a manufacturer, retailer, assembler or wholesaler. Notably, the sellers of defective products is generally still strictly liable even if the seller was not responsible for the defect in any way and even when the product is not purchased directly from the seller.

In this instance, GM is undeniably a commercial supplier as they manufacture and have sold the Chevy Camaro for many years. Element 1 is met.

Element 2: The defendant produced or sold a product that was defective when it left the defendant's control

Existence of a defect: the defect must have been in existence when it left the control of the commercial supplier. There are three types of product defects to evaluate when looking at a strict liability case. In addition, there must be no significant change in the product's condition between the time it left the commercial supplier's control and the time it caused the injury (explored infra Element 3).

Manufacturing Defect

When a product emerges from the manufacturing process not only different from other products, but also more dangerous than it would have been if it was made the way it should have been (i.e. according the intended design), the product may be so "unreasonably dangerous" as to be defective because of the manufacturing process. A plaintiff must show that the product was dangerous beyond the expectation of the ordinary consumer because of the departure from its intended design.

In this case, there is no evidence to suggest that this particular Camaro was the product of a manufacturing defect. Rather, the facts indicate the vehicle that struct Dani was designed according to the manufacturer's design, which is poor. This is not a case of a manufacturing defect.

Information Defect

A product must have clear and complete warnings of any dangers that may not be apparent to users. Thus, a product is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings but the seller or other distributor or a predecessor in the commercial chain of distribution and the omission of the instructions or adequate warnings may render the product not reasonably safe.

In this case, there is no indication that there were any warnings that indicate the car has poor blind spots. Perhaps this type of defect would be involved if the car had a bumper sticker that said "warning I can't see my blind spots" similar to the semis that have those yellow stickers than indicate they make wide turns. Nonetheless, there is no warning on the vehicle or described in the facts to support this type of defect.

Design Defect

When all of the products emerge from the manufacturing process identically according to the manufacturers specifications but have dangerous propensities because of their mechanical features or packaging, the entire line may be found to be defective due to poor design. To prove this defect, a plaintiff must show a reasonable alternative design, i.e. a less dangerous modification or alternative that was economically feasible. Factors that may be considered include availability of safer alternatives, the likelihood of serious injury, how obvious a danger was, and the feasibility of eliminating the danger without impairing the product's function or making it unreasonably expensive.

This case has a clear example of a design defect. The facts state that Chevy Camaro has one of the worse visibilities of all of the cars in its class. In fact, it is specifically designed and noted to have a decreased visibility to support its cool look. To prove this defect, Dani (more so Dani's representative) should show the cost to make the Blind Zone Alert is only $130 per vehicle subsequent to 2016 (note Arnie bought the car in 2016). Had this been a case prior to 2016, perhaps Chevy could argue it was best to leave this feature as an option due to the rather big increase in price (up to 2 grand). However, subsequent to 2016, Chevy really had no reason to not include the Blind Zone Alert as a standard feature and add that amount to the sticker price. In this case, the economic cost is significantly smaller compared to the benefit of lives saved and injuries prevented by including this feature. In this case, we are dealing with a clear design defect which is unreasonable, element 2 is met.

Element 3: The product was the actual and proximate cause of the plaintiff's injury

To hold the commercial supplier strictly liable for a product defect, the product must be expected to and must in fact, reach the user or consumer without substantial change to the condition.

Actual Cause: to prove actual cause, the plaintiff must trace the harm suffered to a defect in the product that existed when the product left the defendant's control. If the defect is difficult to trace or the product is destroyed, the plaintiff may rely on a res-ipsa loquitur like inference that this type of product failure ordinarily would not occur if not the result of a product defect. In cases of inadequate warnings, the plaintiff is entitled to a presumption that an adequate warning would have been read and heeded.

In this case since we are working with a design defect, which was the actual cause of harm to Dani. The car backed into her and she suffered a TBI. Actual cause is met. [Conclusory, without any analysis using all the actual factual details.]

Proximate Cause: The plaintiff must have used the product in a reasonably foreseeable manner to satisfy this element.

In this case, the driver was driving and simply backing up a vehicle. The vehicle being put into reverse is an operation that is reasonably foreseeable. This element is met. [Ditto. Dani is the plaintiff and she wasn't "using" the car. Explain fully.]

Element 4: Plaintiff suffered damages to person or property

The types of damages recoverable in strict liability actions for defective products are the same as those recoverable in negligence actions, (i.e. personal injury and property damages). Most states deny recovery under strict liability when the sole claim is economic loss (economic loss rule).

In this case, Dani suffered bodily injury in the form of a TBI. The TBI affected her thinking, feeling, and mobility. Given her damage to person, element 4 is met.

Defenses:

Contributory Negligence States

Ordinary contributory negligence is not a defense in a strict products liability action where the plaintiff merely failed to discover the defect or guard against its existence, or where plaintiff's misuse was reasonably foreseeable. Other types of unreasonable conduct, such as voluntarily and unreasonably encountering a known risk (i.e. assumption of risk) are defenses.

Note: The fact pattern does not indicate whether this is a contributory or comparative fault state, both will be explored. In this case, the Camaro was bring used in a way that was reasonable and foreseeable so there is no issue of misure. In terms of failing to discover the defect, since Dani is a child and could not have failed to discover the defect, this is not a reasonable defense.

Assumption of Risk

Voluntarily and knowing assumption of risk is a complete bar to recovery in contributory negligence jurisdictions and in a small number of comparative fault jurisdictions. This assessment is a subjective standard. The plaintiff must be aware of the danger and knowingly expose himself to it.

Now, had this been an instance of an adult, you could potentially argue that an adult would know not to run behind a car. However, since Dani is 4, she cannot be considered to have assumed the risk by running into the parking lot, she was just a baby.

Comparative Negligence States

Many comparative negligence states apply their comparative negligence rules to strict products liability actions. In a comparative fault jurisdiction, the plaintiff's own negligence reduces his recovery in a strict products liability action in the same manner as it is in a negligence action. For example, in pure comparative fault jurisdictions, the plaintiff's recovery is reduced by the percentage that the plaintiff's fault contributed to causing the injury. In "impure" comparative fault jurisdictions, if the plaintiff is found to be 50% or more at fault, the court may bar recovery completely.

As noted above, Dani is 4. It is unlikely a court would find her at any percentage of fault given her age. Thus, even in a comparative negligence jurisdiction, it is unlikely she will be barred any amount of

recovery.

Disclaimers of Liability

The facts don't indicate a disclaimer of liability. Nonetheless, disclaimers of liability are irrelevant in negligence and strict liability cases if personal injury or property damage has occurred.

Effect of Government Safety Standards

A product is defective in designs or warnings if it fails to comply with applicable government safety standards. However, a product's compliance with government safety standards (while it may be used as evidence) is not conclusive that a product is not defective. A jury may consider this evidence if the defendant chooses to show that a product was compliant with government safety standards as well as the evidence offered by the plaintiff in determining whether the product is defective.

In this case, there is no law that requires vehicle manufactures to include anti-blind spot technology as standard equipment. Thus, Chevy will likely introduce this evidence that they are compliant with the government safety standards. This may be considered by the jury along with the elements mentioned above.

Conclusion: Overall, the prima facie elements are met for a strict product liability case in the form of a design defect. All defenses are weak and it is very likely a jury would award Dani general and special damages. Notably, if I were Dani's representative, I would also push for punitive damages because the risks of harm and benefits derived from the blind spot alert are far greater than the economic cost of $130 which Chevy could have very well passed onto their customer. $100 million awarded in punitive damages to little Dani.

END OF EXAM