

90

2)

## Question 2

Joan v. Arnold

Issue: Negligence

Rule: To establish a prima facie case for negligence there must be a duty owed, a breach of that duty, an actual and proximate causation and damages.

Duty: Arnold owed Joan a special duty because she was a passenger in his car. His duty was to act beyond that of a reasonable person in the same situation.

Breach: When he fell asleep, he breached his duty to Joan.

Actual Cause: Actual cause is the direct cause of the injuries, either decided by the "but for" test or when the "but for" test doesn't work, you go to the substantial factor test. In instant case, the "but for" test works. But for Arnold falling asleep, the car wouldn't have gone off the road and Joan wouldn't have been injured. As for the permanent nerve damage suffered when the Doctor negligently reset Joan's shoulder, "but for" Arnold's negligence, her shoulder would not have been dislocated and needed to be reset.

Proximate Cause: The proximate cause is the legal cause and it is determined through foreseeability and intervening acts. Because driving a car off the road is a foreseeable result of falling asleep at the wheel and there were not any intervening forces in Joan's injuries for the dislocated shoulder and the whiplash, Arnold's negligence is the proximate cause for her injuries. As for the permanent nerve damage suffered because of the dislocated shoulder, medical malpractice is always foreseeable! Even though the Doctor's negligence is an independent intervening act, it is foreseeable and Arnold will be held jointly and severally liable for Joan's permanent nerve damage.

Damages: Arnold will be liable for compensatory damages for the medical bills, lost wages and pain and suffering. His percentage will be determined in accordance with indemnity.

Joan v. Dr. Hampton

Issue: Negligence

Rule: Supra

Duty: Dr. Hampton is held to a higher standard of care because he is a professional. Depending on the area, he will be held to the national standard for doctors.

Breach: He breached his duty by causing permanent nerve damage.

Actual Cause: "But for" the doctor's negligence Joan would not be suffering from permanent nerve damage. The doctor will argue that but for Arnold's negligence, Joan wouldn't be injured in the first place. That doesn't work for the permanent damage to her shoulder because the doctor's negligence is the substantial factor in the permanent damage.

Proximate Cause: This is where it gets tricky. The Doctor will argue that he is not the proximate cause of her injuries because Arnold is a superceding intervening act. However, the doctor is the proximate cause of her nerve damage only because he his the indirect cause without an intervening act, whereby medical malpractice is always foreseeable, thereby holding him liable.

Damages: The doctor will be liable for for pain and suffering and any future lost wages due to Joan's permanent nerve damage.

Joan v. Eric

Issue: Negligence

Rule: Supra

---

Duty: The reasonable person standard of having to act as a reasonable person would in the same situation or under the same circumstances driving a car and not causing any accidents or injuries.

Breach: Eric obviously breached his duty when he rear-ended Joan.

Actual Cause: But for Eric's negligence, he wouldn't have rear-ended Joan exacerbating her neck injuries from the prior week.

Proximate Cause: Here Eric will argue that he is not the proximate cause of Joan's injuries that there was a superceding injury. However, the eggshell doctrine, or thin-skulled doctrine, whichever you prefer applies. It means that you take the plaintiff as you find them. In instant case, Eric is the proximate cause of Joan's injuries because there was no intervening acts and it is foreseeable that if you rear-end someone, you will cause injuries.

Damages: Eric will be liable to Joan for her medical expenses and lost wages along with pain and suffering.

The fact pattern states that Joan's medical expenses totalled \$3,000.00 and her lost wages totalled \$1,000.00. Each person will be jointly and severally liable for their share of the expenses because they were independent of each other. She can not claim \$4,000.00 from each. If Eric contributes \$2,000.00 then the others will not be held liable for it.

Sue v. Arnold

Issue: Negligent Infliction of Emotional Distress

Rule: Negligent Infliction of Emotional Distress is extreme emotional distress caused by the negligence of another.

Analysis: Because Sue is a 3rd party, she would have had to have a close personal relationship

---

with the victim or be a family member, which she was, she was the sister. She would've had to actually been at the scene of the accident and would've had to actually witness the accident.

Seeing the mangled car does not constitute being at the scene and witnessing it.

Conclusion: Arnold is not liable to Sue for Negligent infliction of emotional distress.