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Ian/Motorists v. Trucking Company

35/38

Negligence: when one owes a duty of due care to another and breaches that duty causing, acutally and proximately, damage. Negligence per se: when one violates a statute intended to protect a class of persons from a type of injury that results to a person of that class, there is a rebuttable presumption of duty and breach of that duty.

2

When Beth and Paul chose to operate their trucking company using a driver (Paul) without the class A driver's license required by Transportation Law 16B, they breached the duty they owed to motorists and the general public as per the clear legislative intent/public policy outlined in the statute. The type of incident they were involved in, an injury accident with hazardous materials causing death and injury, was the type of injury the statute was designed to prevent and the class of persons to be protected, motorists and the general public, were in fact injured. Their act of operating a truck with hazardous materials without a class "A" license breached their duty owed.

The breach of that duty was an actual and the proximate cause of all resulting injuries and damage. Additional evidence of their negligence is found in that they poorly timed the transport of a substance that would explode if transported during the day, they took an route that had steep curves and was probably unsuitable for their dangerous load, and they were in a hurry. Even if the statute permitted the supervision of a driver without a class "A" license by one with that license, Beth was sleeping at the time and therefore, negligently supervising Paul. Also, under the doctrine of respondeat superior, she and the corporation will be held liable for the acts of their employee/partner. Respondeat superior provides that employers will be responsible for the acts of their employees committed in the furtherance of their work.

really? with my own mind helpfully
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Also, because the transportation of hazardous, explosive materials is an inherently dangerous activity (like the use of dynamite) they are held to be strictly liable. Strict liability means that injuries resulting from their activities are presumed to be their responsibility. Because their mishandling of the volatile chemicals caused an explosion which was an actual, factual cause of injury of dozens of motorists, and their acts will be found to be the proximate cause of those

True, but not the proximate cause
rmi

injuries, they will be held liable for the resulting injuries and damage; but for their acts, these injuries and Ian's death would not have occurred. They could argue that Ian's negligent driving and speeding were a supervening cause that broke the chain of causation relieving them of liability. In that speeding and negligent drivers are foreseeable, this defense would fail.

4

The trucking company will argue in Ian's case contributory negligence in that he was speeding and negligently using his cell phone/shaving/blackberry causing him to be driving without due care. He also was in violation of statute ^{Speeding?} (see negligence per se supra) He also appeared to not be wearing a seat belt, another statutory violation. In addition, Ian owed a general duty of care to other motorists on the road and the evidence is that he breached that duty. In a comparative negligence jurisdiction like CA, damages would be apportioned between parties found liable. Had he lived, he would have been found to carry some liability. His estate could be found liable for damages. It would be possible that any award to his estate could be reduced to that degree.

don't assume
my failure to
wear seat belt
is by neg

When Paul and Beth jumped from their vehicles to come to Paul's aid, they became rescuers. As such, they aren't held to the same standard of care as, say, EMTs. So if moving Ian caused additional injury, if their acts were reasonable, they wouldn't be liable for those damages. Normally a duty of rescue isn't owed, but here they arguably created the peril, by their negligence per se, that caused Ian's ultimate death and therefore did owe Ian a duty of aid.

~~What effect that P pushed B away? abandonment?~~

Ian's Estate/Motorists v. Truck Driver

Negligence (see def supra). It could be argued that the truck driver who ran over Ian's body was negligent in that he ought to have been driving in such a way as to be reasonably in control of his vehicle. Ian's estate and other motorists could argue contributory negligence. However, his duty owed is that of a reasonably prudent truck driver. The facts show that the road had tight curves. His negligence would hinge on the trial court's determination as to whether his operation of the vehicle was in keeping with the due care expected by the standards of his profession. He will argue that the truck in the road was unforeseeable. The plaintiffs will argue that he was not driving with due care given the conditions.

5

Beth v. Paul

Battery: the intentional unpermitted harmful or offensive touching of another. When Paul pushed Beth away as she was attempting to move Ian's body from the road, she could argue that he committed a battery. He touched her without her permission and his act, it could be argued, contributed to or caused Ian's death. Paul's motives for moving Beth, however, noble aren't at issue, though they might influence the jury.

*a real stretch
but crimes &
well argued*

yes, if "emergency"

(x2)

*Comprehensive, very articulate,
well-organized -*

a first rate analysis;

Congratulations