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articulate & well-reasoned; great job. Paul 37/42

AI v RaTech(tech)

Product Liability-a commercial manufacturer is strictly liable for harm to all foreseeable consumers when a product is let into the stream of commerce with manufacturing defects, design defects, inadequate warnings and breach of expressed warranties if actual harm is caused.

New summary (H)

Here the facts imply that the product packaging was opened after it left the hands of the manufacturer and that there were no manufacturing, design or warning defects. But, the fact that Paul was fired for "committing similar acts" that threatened consumers Tech may be found negligent for rehiring Paul, see below.

AI v Paul & Vicariously (Tech)

A master (employer) is liable for all torts of its servant (employee) that were done within the course and scope of employment.

7

Here, although the act of Paul (changing instructions from the Model 5 to the Model 4) may arguably-if it was a first time event-have been seen as a superceding intervening act, because they rehired him, Tech will be found negligent for rehiring him after they were on notice of his proclivities. Tech will argue that Paul did this "in a fit of drunken vengance" and that this was not under the course and scope of employment and was in fact an intervening event which broke the causal chain. It appears that Paul and possibly Tech are substantial factors in the ultimate demise of AI. It was foreseeable that rehiring an employee who sabotaged instructions would result in the same sabotage again and it was foreseeable that if the two Model's instructions were switched that injurious harm would result, therefore Paul and possible Tech were the actual and proximate cause of AI's harm

the worst kind -

No later, intervening causes

and are successive tortfeasors with Nora and others.

AI v. All Sport

used to harm relevant here?

All Sport had a duty to consumers to inspect a product that they sell if there is an indication of possible defects or missing warnings. It appears from the facts that a model 5 was in the box and although there were no instructions, including the proper warnings, it appears that All Sport met its duty when the Saleswoman told AI where to find the instructions on the internet and that All Sport will have no liability under product liability.

AI v Nora & Vicariously (Fit Now)

3

See Vicarious Liability Supra. Nora, as an employee of Fit Now will bring Fit Now into liability for her acts done under the course and scope of her employment. Nora owed a special duty of care under the national standard of professional "top personal trainers" since she undertook his care for rehabilitation of his heart problems. When she did not identify AI's "panting rapidly within minutes" as a sign of possible trouble and shouted "faster, faster, or you're going to die" she breached her duty of care to AI. Nora is a substantial factor in the eventual death of AI along with Paul and possible Tech. This was foreseeable that if she allowed a heart patient to reach such a heart rate evidenced by the rapid panting that harm would result. Therefore, Nora meets the actual and proximate cause test. Nora is a successive, *joint?* tortfeasor along with the others mentioned Supra.

isn't panting a part of most beneficial cardio exercise?

relevant

Nora added to the problems when she took the cell phone away from a bystander preventing a 911 call. AI and Tech will argue that this was a superceding intervening event that broke the causal chain, but the facts do not show how bad AI's condition was at the time and if 911 would have helped. It appears that this is an indivisible injury and that all are in it jointly.

Al v. Nurse Jim

I say to Jim never attempted ~~to~~ ~~do~~ ~~it~~ so to duty.

Nurse Jim had apparently started to offer care to Al and when Don stepped in and demonstrated his "ineffective mimicry" Don was under a special duty, under "omission to act", to continue his rescue efforts. If he took it upon himself to render aid and then walked away leaving Al to an obvious incompetent Jim breached his duty by failing to act. Further, Nurse Jim must be judged by the national standard of professional nurses and his failure to act breached the national standard and probably the code of conduct of his profession (which is not neg per se). Nurse Jim is a substantial factor in the eventual demise of Al. It was foreseeable that if a qualified Nurse left the scene of a suffering heart rehabilitation patient and allowed an incompetent to act that the outcome would be bad and it was. Therefore Nurse Jim is also a successive tortfeasor in this indivisible injury to Al and will be found jointly and severably liable for the death of Al.

Al v. Don

The ultimate injury.

When Don took it upon himself as an incompetent rescuer, with the motivation of "impressing Nora" he breached a duty of care to hit harm Al. Don was a substantial factor in creating the harm. It was foreseeable that attempting a rescue incompetently will result in the resultant harm. It appears that Don is actually and proximately the cause along with the other successive tortfeasors Supra. Don will argue that when Nurse Jim did not notice that he was incompetent and walked away that that was a superceding intervening event that broke the causal chain and therefore his liability but it does not appear to be the case here. Don may be jointly and severably liable with the rest.

but you do act with all the skill he possessed!

Wrongful Death

Under Wrongful Death, the income and other losses incurred/benefits (including consortium, etc.) that Al would have

provided for his family, less living expenses will be awarded to his estate.

Survival Statute

The estate will also be awarded the pain and suffering and other losses suffered by Al up to the time of his death.

Dr. Smith v. Nora-Defamation vs. False Light

False Light-False light in the public eye is the publishing of misleading information that is intended to portray the plaintiff in a false light in the public eye. It is compared to defamation where false light is misleading, defamation is false. Defamation is a knowing false statement, intentionally published to a third party or negligently published, that was taken as defamatory and that caused damages.

Here when Nora stated that Dr. Smith "is not competent because he doesn't keep up with current cardio research" she published a knowingly (scienter) false statement. It must be argued whether Dr. Smith is a public figure or a private figure and if the information is of private interest or public. A medical doctor's competency is arguably of public concern and published by a non-media defendant. The standard here is there must be actual damages. Here the facts do not state that there was actual damages so no defamation.

Standard per se require 0 damages to (incompetent professional) proved.

False light in the public eye is the tort here. The misleading information was intended to cause harm to Dr. Smith. Although he was disciplined by the board it was for a name change problem (administrative) not a medical practice fault.

Dr. Smith v. Kim the reporter

See Defamation Supra. Here if Dr. Smith was a public figure Kim

is a media defendant the standard is actual malice (knowingly false or reckless disregard for the truth or falsity). Kim should have verified the information before publishing and so this is reckless at least and possibly knowingly. It meets the New York Times Standard.

If Dr. Smith is a private plaintiff the subject matter is still of public concern and so the standard is negligence with actual damages necessary. Publishing this in the paper would meet the standards as people who read this in the paper would tend to not want to see Dr. Smith.

Dr. Smith v. Newspaper

The newspaper is a publisher and thus will be liable as well though not under Vicarious Liability (respondeat superior) but because it published the defamation. This is not false light (misleading) but defamation (false) as the Doctors' error had nothing to do with the fatality.

Bystander v. Nora Battery

Intentional harmful or offensive touching of another without consent or privilege.

Grabbed cellphone, personal instrumentality, meets the elements for battery

Nurse Jim v. Don

See Battery Supra. Don had no privilege to push Jim. Meets the elements of battery.

Al v. Kim Conversion vs. Trespass to Chattel

Conversion- the intentional exercise of dominion and control of

the chattel of another without consent or privilege.

When Kim took the heart monitor she did exercise control and dominion of the chattel of Al. Meets the elements.

Q of time - yours, & respect.

38/42 Excellent
analysis
presentation
Done

Conversion is the exercise of dominion/control over chattel in the possession of another to the extent that damages for full value would be appropriate. Conversion can be by various means, including prevention of use by the rightful owner for an extended period of time.

Trespass to chattel is the interference with the chattel in the possession of another such that it causes a diminution in value of the chattel, impairs the use of it by the possessor, causes personal injury to the owner or to persons or things in which the owner has a legal interest.

When Joe took the knives, depending on Liz's need for them and the time he kept them, he would be liable for either conversion or trespass to chattel. While returning them may mitigate damages, it will not absolve him of all liability.

5 Joe may argue that he was owed the money by Liz but the facts indicate that he knew the knives belonged to Liz.

Customers v Liz

Negligence is the breach of a duty that is the actual and proximate cause of damage. The duty is to act as a reasonable, prudent person would in like circumstances. Actual cause is the sine qua non-but for the act (or inaction) of the defendant, the harm would not have occurred. The proximate cause is the legal cause-absent a subsequent supervening act, the act of the defendant will be the proximate cause.

5 When Liz did not properly supervise Luke, who is a junior high student and was clearly untrained, she was acting negligently because she had a duty of care to her customers, assumed due to her position as deli operator. When the customers began to choke and cry out, her breach of duty to adequately supervise her employees was the actual and proximate cause of the harm to the customers; hence she will be liable for negligence. See below for damages.

1 Alternatively, the customers may claim product defect liability, which arises when a party puts a product into the stream of commerce in a defective condition and it harms a foreseeable end user due to a manufacturing defect, design defect or failure to warn/inadequate warning. However, food products are generally not subject to product liability claims, and this will probably not be successful.

Respondeat superior is a vicarious liability theory under which the employer will be responsible for the acts of their employee when acting within the scope of their employment.

3 While it is not clear if Liz actually hired Luke for the day, it is clear that he took on the role of employee at her direction and it would appear to the reasonable person that he was her employee. When the customers were made sick by the potato salad made incorrectly by Luke, they will have a claim against Liz for the actions of Luke. Additionally, her failure to adequately train or supervise will strengthen the customers' claim.

Negligence per se is the theory of liability under which the violation of a statute is the breach of a duty absent a defense. The statute establishes the duty and the violation is a presumed breach. If the breach of the duty causes the type of harm meant to be prevented and harms one who is in the class of persons meant to be protected by the statute, there will be negligence.

5 When Liz violated Public Law 18 in using child labor (assumed because Luke is still in junior high school), she was causing the type of harm included in the 'ensure

responsible and competent employees' component of the statute. It may also be argued that the events of the day would cause an impairment of Luke's normal childhood! Luke was in the class of persons meant to be protected from impairment of a normal childhood and the customers were in the class of persons meant to be protected with competent employees; therefore Liz will be found negligent under the theory of negligence per se.

only relevant if Luke is some LIZ

Luke v Liz

Negligence per se supra

See discussion above regarding damage to Luke.

? ? has lost childhood?

Liz may raise the defense of consent, because Luke's parent consented to his working at the deli. However, consent to an illegal act will be found to be invalid consent. Liz will be liable for negligence to Luke.

Luke v Tom

Assault is the intentional placing of another in reasonable apprehension of imminent harm with apparent present ability to harm.

When Tom rushed at Luke and Luke ran from his aggressive behavior, he was clearly in apprehension of imminent harm and Tom will be liable for assault absent defense or privilege.

Tom will argue a defense of detention for investigation (shopkeeper privilege) which allows for a reasonable subjective belief that a customer is committing a crime such as stealing for a reasonable time to investigate the matter. As Liz's employee, he may be successful in this defense.

Tom may also argue defense of property; however this defense is weaker as the property is not his.

it was

Joe/Tom v Nan

Assault supra

When Nan raised her gun at Joe and Tom, and then when she fired it at Tom, at least Tom will be able to show that he was in reasonable apprehension of imminent harm.

Nan would have the defense of legal authority; however without identifying herself as a police officer, she may not be successful (she probably no longer cares).

Nan v Joe

yes

Battery is the harmful or offensive touching of another without consent or privilege.

When Joe threw a knife at Nan, he was using an instrumentality to cause the harmful touching and he will be liable for battery absent defense.

9 Joe will raise self defense and possible defense of others. Because Nan did not identify herself as an officer of the law and Joe thought she was in league with the crazy kid-Luke, his defense of self may lie.

Supervening causes

The actions by Tom and then Nan, while subsequent to Liz's negligence, will not cut off her liability to Luke as the chain of causation is not sufficiently severed.

joint tortfeasors

When more than one party acts to cause a harm, under comparative negligence theory, each will be assessed their portion of the harm. If the harm is indivisible, they will be held jointly and severally liable. Each may seek contribution from the others if appropriate. *and how...?*

2 Survivor statutes allow for the survival of a decedent's cause of action beyond their death, subject to any defenses that the defendants may have had against the decedent, such as comparative negligence. If Al should have been more careful in checking the instructions, the defendants' damages *low* may be reduced.

Nan's survivors v Joe (and possibly Liz?)

2 Wrongful death statutes allow for the recovery by sufficiently closely related plaintiffs against the tortfeasors for the damage caused to the plaintiffs by the wrongful death.

Damages may be nominal, compensatory or punitive. Generally punitive damages will only lie when there is intentional tortious behavior. Nominal damages may be used to vindicate the plaintiff's rights and prevent the defendant from acquiring prescriptive rights. Compensatory damages may be general: non pecuniary, more difficult to measure; or special: pecuniary or more readily measured by monetary means, such as medical costs, lost wages, loss of consortium.

2 The customers are likely to get all medical costs, any lost wages due to being too sick to work and may also get pain and suffering. Nan's survivors may be successful in getting compensatory damages for the pain and suffering of Nan, if she was conscious for any period of time after the knife wound. *& their damages vs*

END OF EXAM