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**What are Pete's (P) causes of action against Dude's Gym(D)**

**Is D liable to P in Product Liability**

Products liability covers any commercial manufacturer, seller, or other party who puts a products into the stream of commerce. Liability can arise in products liability in many different ways.

**Liability under the theory of Intent**

There is nothing in the fact pattern that show any intentional tort such as battery. No liability.

**Liability under a Negligence Theory**

Negligence in tort liability arises when any seller of a product negligently puts an unreasonably dangerous product into the stream of commerce. As a seller or supplier, there is a **duty** to the users of the product not to injure them or place then in unreasonable danger of being harmed. As D is the one putting the gym equipment into the market, if they were negligent in any way in doing this there could arise liability. The negligence may occur in many different ways, a failure to warn, improper safety precautions, improper supervision, or improper assembly. Here, it seems that the bench press may have created a false sense of security for users, and the gym should have foreseen this. Further, there employees should be aware of the potential for risk and guard against it. Either of these areas would lead to the **breach of their duty** to not supply an unreasonably dangerous product to their customers. The breach of the duty must cause, both actually and proximately, the damages. If it was too dangerous and they did not guard against it properly, then their negligence would be the actual cause. Proximate cause is the legally recognized cause sufficient to creat liability. Proximate cause, which looks to limit the scope of liability for a defendants actions, can be broken in a number of ways; too remote, unforeseeable type of harm, public policy, or a superceding intervening cause. In this situation, the intervening actions of Don may be superceding. However, as an employee, they are responsible for his actions while he is on the job (respondeat Superior). Further, it is not unforeseeable to have distracted employees, therefore, the harm flowed naturally from the negligence. Damages occurred. It is likely that D is liable under a neg theory of Prod Liability.

**Liability under a Warranty Theory**

**Is d liable for in prod liab for a breach of an Express Warranty\***

There is no mention in the facts of any express warranties being made regarding the product. Neither the product nor the gym said anything about it. Therefore there is no breach of an express warranty.

**Is D liable for a breach of an implied warranty of merchantability\***

Products that are sold by merchants come with a warranty that they are fit for the ordinary purpose that they were intended for. Here, a bench press is made to help you work out - and is not meant to injure you. However, the product did work as intended. It was P's failure to be able to raise the bar that caused his injury, not a malfunction with the product. Therefore, it is unlikely that there is liability for a breach of an implied warranty of merchantability.

**Is D liable for a breach of an implied warranty of fitness for a particular purpose\***

this warranty covers situations were the product is not going to be used in its ordinary fashion, but instead in a particular way. If the seller knows of this purpose, or has reason to, and the

buyer is relying on the seller's skill or judgement, and then the product fails in some way there is liability. Here, P is using it in its intended fashion. There was no specific purpose that was indicated or that the seller knew about, therefore there will be no liability here.

**Is D liable under the theory of strict liability - either through a Manufacturing defect or a design defect?**

**Manufacturing defect:**

**Restatement 402A** states that any seller or onn who puts an unreasonably dangerous product into the stream of commerce is liable for any injuries that result from it use by any users or cunsumers if:

- a) the seller is in the business of selling the product; and
- b) the product is intended to and does reach the user without substantial alteration.

The above hold true even though the seller used all possible due care and their was no privity of contract between the user and the manufacturer / seller.

A manufacturing defect arises when the product emerges from teh manufacturing process different from the other products on the line and more dangerous. The difference is a deviation from the intended manufacturing specifications and makes the product unreasonably dangerous, beyiong the expectations of the ordinary consumer. This consumer expectation test is used to determine the product is defective and thus resulting in strict laibility.

Here, there is not mention of any manufacturing deviation or issue. It is unlikely that there is any laibility.

**Design Defect**

A design defect arises when all of the products are identicle after the manufacturing process, but are unreasopnable dangerous due to an inherent dangerous desin, either in their mechanical features or packaging. In this case, the risk / utility test is used. Does the risk and magnitude of the possible harm outweigh the utility of the product? If yes, then there will be laibility.

In this case, the rolling bar machanism could potential be a design defect. It could be shown that this mechanism creates a false sense of security ~~causing a user to overload~~ the bar. By putting the hook at the top, where they are least likely to be able to raise the bar too when tired, it could create an inherent risk which outweighs the risk. Especially since if there is harm it is likely to be pretty severe (very heavy metal bar crashing onto your chest) and given that there are many alternative designs for benchpresses and gym equipment focusing on the same exercise. Also, if it would not impair the utility of afordability of the product and there was a modification that could be made - possibly a second hook at the bottom of the bar as a safety precautin - this too would tend to show that the product was defective in design. It is likely that they would be liable for strict liability for a defective design.

**Is D laible for a failure to warn?**

If a seller or distributor of the products fails to warn against a foreseeable risk, they may be liable. Here, neither the machine not the gym warned users anywhere about the use of the product. There may have been instructions that canme with the equip, however there was none where Don could see. It seems likely that for the use of equipment such as this, there should be warnings on the equipment as well as in the area where the equipment may be used. It is likely that they are laible for a failure to warn.

### **Is D liable for Negligence for the actions of its employee?**

Under **Respondeat superior**, an employer is liable for the tortious actions of its employees while in the scope of their employment. As Don was on the job, he was within his scope of employment and the Gym is liable if he was negligent.

### **Was Don Negligent?**

Negligence is an act that creates an unreasonable risk of harm to a foreseeable plaintiff. It is comprised of 4 parts; Duty, breach, causation and damages. Here, as an employee working in the gym, Don has a duty to the customers. This is created by his position. Further, he voluntarily undertakes a duty to help P, by spotting for him. Clearly he breached the duty by walking away when even though he saw that P was getting tired. It was the actual cause of the harm. Proximate cause (above) can also be shown as there were no events that break the causal chain. There were damages. D was negligent, therefore D is also liable.

D will claim that P waived his right to any claim of negligence. However, the courts do not allow one to waive the right to bring a claim against another for negligent action in contracts like this. This defense would not stand. They would also claim that P assumed the risk, and that he was either contributorily negligent (a total bar in the jx's that use it) or that there was some comparative fault on his part. It is unlikely that this is true.

### **What are P's causes of action against IbeX (I)?**

#### **Is I liable to P in Product Liability**

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If the injury is

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Paul v. Dottie

Strict Liability

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One who keeps wild animals will be strictly liable for any damage that results from the animal.

Has Harlan been domesticated to the degree that he would not be considered a dangerous wild animal? No. Despite D having tamed Harlan and treating him as her own pet, he was still a wild animal. The fact that she enticed him, and the other bears' presence, resulted in their being wild animals on her property. That she treated one as a pet gives rise to her taking control of their being there and thus she will be strictly liable for all the damage that resulted from them being there. Specifically, her feeding Harlan salmon created a foreseeable risk that Harlan would continue to search for salmon in her absence foreseeable posing a harm to P. Thus, D will be liable for strict liability for the property damage to P's home and for the emotional distress he suffered.

There are no defenses available to D.

Negligence

All persons engaged in an activity owe a duty of due care to foreseeable plaintiffs in the performance of their actions, the breach of which, if actually and proximately cause damages to another, will be liable for negligence. The four elements to prove are 1) Duty, 2) Breach, 3) Actual and Proximate Causation and 4) Damages.

### Duty

A duty of due care toward all foreseeable plaintiffs to act as a reasonable person would in the same or similar circumstances. The standard of care depends upon the circumstances. Here, P is D's neighbor and it is foreseeable that the bear she continues to feed could create an unreasonable risk of harm to P. Therefore she owes him a duty of due care in how she interacts with the bears.

### Breach

A duty is breached when the standard owed is not met.

When D treated Harlan as her own pet, she breached a duty owed to P by not maintaining a safe environment in which to live near.

### Causation

Actual Cause--but for D feeding Harlan and making him her pet, and but for her leaving on vacation having created a perilous position whereby Harlan would come looking for food, P would not have been harmed.

Proximate Cause--Harlan seeking food nearby was a foreseeable consequence of D feeding him regularly and then leaving for the weekend. That he might cause harm to another's person or property is also foreseeable and thus her breach proximately caused P's harm

### Damages

P had both property damage and emotional damages as a result of the breach and thus D will be liable for negligence.

### Defamation

Common Law Defamation is a false and defamatory statement of or concerning another published to a third person that results in reputational harm. It can be libel--in written form--or slander--spoken.

Libel is written defamation and damages are presumed (reputational harm does not need to be proved). However, P's proving that his sales went down prove damages and he will be able to recover for actual and presumed damages.

Here, when D sent her own letter to the editor falsely claiming that P mixed domesticated cat meat into the hamburger he sold, she made a false statement and published it to the newspaper. The fact that Paul sold meat to the general public resulted in this being a matter of public concern.

Constitutional Defamation is defamation that involves a public concern and requires the plaintiff to prove two additional elements: falsity and fault. The degree of fault required to prove depends upon the status of the plaintiff. According to *New York Times v. Sullivan*, constitutional malice must be proved to establish fault if the plaintiff is a public official or public figure. Constitutional malice is knowing the statement is false or having a reckless disregard for its truthfulness. With a private person involved in a public concern, the court in *Gertz* established that the level of fault required to prove was negligence--a carelessness regarding the truthfulness of the statement.

In this case, P is a private person and thus he only needs to demonstrate that D acted with negligence when she published the falsity about him. However, her knowing the falsity of her statement actually establishes malice and therefore, P may also be able to recover punitive damages from D.

The falsity of the statement is a given in the facts presented.

Thus D will be liable for constitutional defamation.

D has no privileges for having made her defamatory statements. She may claim freedom of speech under the First Amendment, but it is not protected in defamatory statements of this kind.

### False Light

Under the privacy tort False Light, the D public information about P to place P in a False Light in the eyes of others and it must be offensive to a reasonable person. Here, when D published the information regarding P's use of cat, she placed him in a false light in view of others in community. Her statement would have been offensive to any reasonable person in the community and thus, D will be liable for False Light.

D has no defenses for False Light.

### Injurious Falsehood (Trade Libel)

Injurious falsehood is intentionally making disparaging remarks regarding someone's business, product or property with the intent to cause them harm.

Here, D intentionally disparaged P's products when she said that he mixed cat meat in with his hamburger and as a result he lost sales. Thus, D will be liable for injurious falsehood.

D has no defenses here.

### Interference with Prospective Advantage

When the D knows of a prospective business expectancy and intentionally interferes with that expectancy by inducing others to avoid doing business with P, and P suffers

harm as a result, D will be liable for interference with prospective advantage.

When D published the information about P regarding his business, she knew it would reach prospective customers and her comments would induce them to stop shopping with him. In fact her motive for publishing the information was to do just that in order to get even with him. P was able to demonstrate that his sales declined after the statement was published and thus D will be liable for interference with prospective advantage.

D has no defenses for this action.

### Dottie v. Paul

#### Intrusion

The privacy tort of intrusion occurs when one has intruded into the solitude and seclusion of another, and the intrusion would be offensive to a reasonable person. Here, when P would sit on his back porch and listen to what was happening on Dottie's yard, he could be liable for intruding into her solitude and seclusion. However, this intrusion would not be offensive to a reasonable person and this P will not be liable for intrusion.

#### Defamation--Libel

##### Defined supra

Paul will be liable for common law defamation--libel as he published false and defamatory statements about D when he wrote the letter to the GAzette claiming that D had watched over the hedge laughing when the bear was breaking into P's home. Common law defamation presumes damages and therefore P would need to prove that what he published was in fact true. However, it was not and therefore, he will be liable for common law defamation.

P has no defenses to Defamation.

#### False Light

##### Defined supra

When Paul published the information about D, stating that she was laughing and encouraging Harlan to "get some" he did so with the intention of placing P in a false light in the eyes of the public. Therefore, P will be liable for False Light.

P has no defenses to False Light.

**END OF EXAM**

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