

Tort Model Answer #3

Abe v. Gary

Assault

Where there is an intentional placing of another in reasonable apprehension of an imminent harmful or offensive touching.

The facts indicate Abe ran through the flower beds bordering the playground. Gary a groundskeeper yelled at Abe "Hey, get out of the flower beds!" and threw a rock at Abe. Since Gary, the groundskeeper acted with a substantial certainty to scare Abe in order to get him out of the flower bed his conduct of throwing the rock directly at Abe was intentional.

By Gary, the groundskeeper throwing the rock directly at Abe put Abe in reasonable apprehension of an imminent harmful touching given the fact that he ducked and the rock missed him.

Therefore, Gary will be liable to Abe for assault.

Punitive Damages

Punitive damages may be awarded where there was intent to injure or harm plaintiff.

Since Gary committed an assault against Abe, he acted with the intent to cause injury to Abe.

Therefore, Abe will be entitled to punitive damages from Gary.

Battery

Battery is the intentional, harmful or offensive touching of another.

Gary's conduct of throwing the rock directly at Abe shows he was substantially certain to cause Abe to react and get him out of the flower beds. Thus, Gary's actions were intentional. Abe saw the rock coming toward him evident by the fact that he ducked to avoid being hit. Gary will argue since the rock did not hit Abe there was no harmful or offensive touching.

It appears Abe does not have a claim for battery.

Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress is the intentional outrageous conduct by the defendant which is calculated to cause and which does cause severe emotional distress.

Abe will assert by Gary yelling at him to get out of the flower beds and his actions of throwing a rock at him, exceeded the bounds of decent behavior and was intentional, outrageous conduct.

Further, Gary's act of throwing a rock at Abe before he had a chance to get out of the flower bed is calculated to cause distress. The outrageous nature of throwing a rock at him without justification would be the calculated to cause and would cause Abe to experience emotional distress.

Assuming that Abe did suffer emotional distress from the incident, given that the facts are silent on this element, Gary will be liable to Abe for intentional infliction of emotional distress.

General Damages

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation pain and suffering.

Abe should recover for any damages which reasonable and naturally flow from Gary's tortious conduct, which would include the emotional distress damages he sustained.

Therefore, Abe will be entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and they must be specifically pleaded and proved. Further, special damages must be foreseeable, reasonable in amount and not too remote.

Abe should receive damages for any medical expenses resulting from Gary's act.

Therefore, Abe is entitled to special damages.

Punitive Damages

Defined and discussed supra.

Betty v. Slideco

Products Liability

When a product is defective and causes injury, the manufacturer, distributor or retailer may be liable under one or more theories of recovery governed by products liability. In a products liability lawsuit, the product can be defective in design, manufacture and/or warning.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached and that the breach was the actual and proximate cause of damages.

Duty

A manufacture of a product owes a duty of due care to inspect, discover, and to correct or warn of any defect. The duty is owed to all foreseeable persons who may be a user of their product.

Slideco is the manufacture and the distributor of a metal slide that was in the park where Betty played. Slideco owes a duty of due care to warn or correct known defects associated with the slide and/or to eliminate the harm that can be caused from the use of such product. Since the slide is located in the playground where Betty was playing, she is a foreseeable user.

Therefore, Slideco did owe a duty to Betty.

Breach

Where the product is defective in manufacturing, design or there is a lack of warning, a Plaintiff may establish a breach if the product does not meet the ordinary consumer expectations of the average reasonable consumer.

Warning Defect

A warning defect exists when the manufacturer fails to warn of any potential harm that may result from the use of its product.

The slide in the park manufactured by Slideco was metal. It became very hot and the surface of the slide reached a temperature of 140 degrees. As a result when Betty went down the slide she sustained burns on her legs. Slideco failed to warn Betty that the slide could become hot and cause burns on a hot day. Thus, there was a warning defect.

Design Defect

A design defect is found when a product is inherently dangerous in its design.

The playground slide was made of metal. Slideco should be aware that play ground slides are generally outside for children to play on. When the temperature of the slide reached 140 degrees it became very hot. Betty, a six year old girl climbed the ladder on a hot day and went down the slide. She sustained burns on her legs. Thus, the metal slide became very hot on a hot day. The fact that the slide was made of metal that could become hot versus another material shows the slide was inherently dangerous in its design.

Therefore, due to the design defect of the metal slide, Slideco breached its duty of due care owed to Betty.

Actual Cause

But for Slideco's failure to adequately warn or design the slide to not get hot on hot days, Betty would not have been burned when she used the slide.

Therefore, Slideco is the actual cause of Betty's burns.

Proximate Cause

It is foreseeable when Slideco, a manufacture of the metal slide, failed to adequately warn that the slide can become hot and burn a child who is using the slide, Betty would not have gone down the slide and sustain burns on her legs.

Therefore, Slideco is the proximate cause of Betty's burns.

General damages

General damages allow recovery for personal injury and property damages.

Since Betty suffered burns on her legs because of the hot slide, she received damages which flow naturally from Slideco's lack of warning, such as her pain and suffering.

Therefore, Betty is entitled to general damages.

Special Damages

Special damages allow recovery for those damages which are plead and proven.

Betty will be able to recover for any medical expenses or lost income that is plead and proven.

Therefore Betty is entitled to special damages.

Implied Warranty of Merchantability

There exists an implied assurance from a manufacturer, distributor or retailer that warrants the product is of fair and average quality when the product is put into the stream of commerce.

Slideco manufactured and sold the metal slide to the playground where Betty played. Slideco, as a manufacturer, warrants that the product is of fair and average quality. Because of the design defect of the metal slide becoming too hot to slide down and the lack of warning that the metal slide could reach a temperature of 140 degrees, Betty would not have slid down on the slide and sustain burns on her legs. Thus, the metal slide was not of fair and average quality.

Therefore, Slideco will be held liable for breach of implied warranty of merchantability.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Strict Liability in Tort

If a defective product is placed in the stream of commerce, the manufacturer, distributor, or retailer will be held strictly liable in tort to all consumer-users for their injuries. For a product to be defective it must be sold by a commercial seller and be unreasonably dangerous in its normal intended use. Some jurisdictions require the defective product causes harm in its normal use.

Slideco sold the slide that was placed at the playground where Betty was playing. Slideco manufactured and sold the slide. Thus, Slideco placed the metal slide in the stream of commerce.

Further, the slide had reached a temperature of 140 degrees which caused burns on Betty's legs when she slid down the slide. Thus, the slide was unreasonably dangerous in its normal use.

Therefore, Slideco will be held liable for strict liability in tort.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Carl v. Jane

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the breach was the actual and proximate cause of damages.

Duty

Defendant has a duty to act as a reasonable prudent person under the same or similar circumstances.

Carl will argue Jane, as the babysitter, owed a duty to watch him while he played in the park. A reasonable prudent person would take those steps reasonably necessary to assure the child's safety and to watch the child who was playing soccer in the park.

Therefore, Jane owed Carl a duty of due care.

Breach

A breach is a failure to act as a reasonable prudent person under the same or similar circumstances.

Carl was playing with a soccer ball in the park. He kicked the ball into the street and was running to retrieve it. Jane, the babysitter, was occupied texting on her cell phone to notice that Carl had kicked the ball into the street. Carl ran after the ball and was struck by a motorist. Thus, Jane's conduct of not watching Carl shows she fell below the reasonable person standard of care.

Therefore, Jane breached her duty owed to Carl.

Actual Causation – Successive Tortfeasor

“But for” the successive negligent act of motorist hitting Carl and but for Jane's act of not properly watching Carl, Carl would not have been hit by a car and become injured.

Thus, Jane and the motorist are the actual cause of Carl's injuries

Proximate Cause

Jane will argue Carl was injured when he ran into the street and was hit by a motorist who was driving 40 miles per hour despite the 25 miles per hour posted speed limit. Based on motorist exceeding the speed limit he would not have been there at the exact time to hit Carl when he entered the street to retrieve the soccer ball. Therefore the motorist is an intervening act.

However, it is foreseeable when you take a child, that you are to be watching to the park, and allow him to play ball, that if the ball is kicked into the street the child would try to retrieve the ball. Carl kicked the ball into the street.

As a six-year-old boy he would not be looking for cars before entering the street to get his ball. Carl was struck by motorist. Motorist's conduct was not intentional, but negligent. The negligence of a third party is always foreseeable.

Therefore, since Jane was not properly watching Carl she is the proximate cause of Carl's damages.

Damages

Defined supra.