

**June 2016 Baby Bar
Question 1 - Torts**

1. On what theory or theories might Tenant reasonably sue Landlord? Discuss.

Tenant v. Landlord

Negligence

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

Negligence Per Se – Violation of Statute

Negligence per se by violation of statute is where there is a clear intent to legislate in order to protect a class of persons from the type of injury suffered by plaintiff. To establish negligence per se, you need to look to the intent of the legislature in creating the statute, you must be a member of the class the statute is designed to protect and the injury must be the type the legislature is trying to prevent. Under majority jurisdictions, violation of the statute means the defendant is negligent as a matter of law, thereby establishing both a duty and a breach. Under some minority jurisdictions, violation of the statute creates a rebuttable presumption of negligence, while in other minority jurisdictions it is only evidence of negligence.

Cityville had a fire safety ordinance that states "Any person who permits any article to remain in the stairway or hallway so as to impede entering or leaving the building, or any area within it, shall be punished by a fine of not more than five hundred dollars." Six months ago a fire broke out in the office building that Tenant was renting from Landlord. The fire marshal's report stated the fire started in the basement by faulty wiring and the old newspapers in the basement was the principal source of the fuel for the fire. Since the newspapers located in the basement made some hallways nearly impassable, Landlord has violated the safety ordinance.

Landlord will argue the intent behind the statute is to protect anyone who might have to evacuate the building due to a fire or an emergency. At the time of the fire, it was nighttime and no tenant, including Tenant was affected by the blockage of the basement hallway. Although Landlord did not follow the statutory standards for safety, thereby violating the statute his failure did not prevent Tenant from evacuating the building.

In addition, the facts state the statute was intended to protect against any blockage from an article "so as to impede entering or leaving the building." Moreover, the intent of the legislature in creating the statute was to protect tenants from not being able to properly evacuate in an emergency due to a blockage of the hallways. The blockage was in the basement, and did not hinder Tenant's evacuation of the office building. Hence, the statute was intended to prevent obstacles in the hallways, making it hard or impossible for a tenant to evacuate the building during an emergency. Tenant was overcome by smoke and was unconscious when found by a firefighter. Although he did suffer an injury, the legislature arguably had the intent to prevent blockage in order to allow tenants to the office building to evacuate safely. Thus, the intent of the legislature is to allow clear paths to evacuate the building during an emergency.

Tenant did rent office space from Landlord. While working late one night a fire did break out and Tenant was overcome by smoke in the building. Hence, Tenant is a member of the class the statute is designed to protect, i.e. a tenant.

Tenant was a member of the class the statute was designed to protect. Tenant did suffer from the smoke and while being rescued by a firefighter was dropped and this caused him to suffer a

broken leg. The injury he sustained is not the type the legislature was trying to prevent, i.e. being dropped while being rescued. Thus, the injury was not the type the legislature was trying to prevent, i.e. being unable to evacuate due to hallways being blocked.

Therefore, the cause of action for negligence per se for violation of statute fails to establish Landlord owed a duty and breached that duty.

Duty

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

Landlord owes Tenant a duty to keep the office building in good condition and not cause a dangerous condition. Landlord must take care and maintain the property in a reasonable manner and not subject tenants or others coming into the office building to an unreasonable risk of harm. A reasonable prudent person would take steps reasonably necessary to assure that they abide by the statutory rules for safety and keep the hallways clear from objects, or old newspapers, that would make the hallway impassible.

Therefore, Landlord owes a duty of care to Tenant.

Breach

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

Six months ago, a fire broke out at night in the office building that Tenant rented from Landlord. The fire was caused by faulty wiring. Landlord will argue the cause of the fire was not based on his actions of being negligent. There was no reason he would know of any faulty wiring that resulted in causing the fire. Hence, he did not act unreasonable.

However, the fact he is the landlord, he owed a duty to make sure that the premises were safe. The fire rapidly spread due to old newspapers in the basement, which became the fire's principle source of fuel. Although the newspapers were left by a previous tenant three years ago, Landlord was aware of this, but hadn't gotten around to cleaning them up. Landlord failed to remove the newspapers creating a dangerous condition. In fact some of the basement hallways were impassible. Landlord's failure to remove the dangerous condition shows he fell below the reasonable person standard of care. Further, Landlord had plenty of time over the last three years to remove the newspapers. Thus, Landlord failed to act reasonable in his duties owed to prevent a dangerous condition existing on the property.

Therefore, Landlord breached his duty owed to Tenant.

Actual Causation – Successive Tortfeasor

“But for” the successive negligent act of Landlord not abiding by the statutory laws for fire safety, and allowing old newspapers in the basements, the fire would not have excavated, causing Tenant to become unconscious, which resulted in firefighter caring Tenant out of the burning building, dropping him causing him to break his leg. Thus, Landlord and the firefighter are the actual cause of Tenant's injuries.

Thus, Landlord was the actual cause of Tenant's damages.

Proximate Cause

It is foreseeable when a building catches fire, that the occupants of the building can be injured. However, Landlord will argue that the fire broke out and a firefighter went to get Tenant out of the building and dropped him causing him to break his leg. Thus the firefighter is an unforeseeable, intervening act. Therefore, the firefighter's act cut off the chain of causation.

Although Landlord's acts was an indirect cause of the fire, and independent, it is foreseeable when Tenant was found in the burning building unconscious, that a firefighter would try to rescue him by carry him out of the burning building. While carrying Tenant out the firefighter accidentally dropped him, breaking Tenant leg. Negligent acts by a third party, the firefighter, are always foreseeable.

Therefore, Landlord is the proximate cause of Tenant's damages.

General Damages

Defined and discussed infra.

Special Damages

Defined and discussed infra.

2. What types of damages, if any, might Tenant recover from Landlord? Discuss.

General Damages

Plaintiff must have sustained actual damages to person or property to recover for negligence. General damages are those damages that naturally flow from an act of negligence, such as pain and suffering.

As argued above, Landlord is negligent. Hence, Tenant may recover general damages from Landlord for any property loss and the personal injuries he sustained.

Also he will be able to recover if there is a difference between the rent for the same office space in a new building.

Special Damages

Special damages are those damages that must be specially plead and proved in a lawsuit, such as the amount of his medical bills and loss of income.

Tenant will be able to recover for any medical expenses incurred and a loss of income while he finds a new office.

Therefore, Tenant may recover special damages.