

October 2018 Baby Bar
Question 3 Torts
Model Answer

What claims and defenses, if any, do Neighbor, BlastCo and Pet Farm have against each other, and what damages can be recovered? Discuss.

Neighbor v. BlastCo

Strict Liability

One who engages in an abnormally dangerous activity will be strictly liable for damages resulting from such activity. A balancing test that weighs the utility of the activity against the risk of harm can be used to evaluate whether Defendant will be held liable for its actions.

BlastCo is a blasting company and has been in operation since 1970. BlastCo must blast in a safe manner so as not to expose others to an unreasonable risk of harm. Since blasting is highly dangerous it is impossible to eliminate the risk of blasting which can cause harm to adjoining land. It is an abnormally dangerous activity.

However, BlastCo will argue that there is a need for blasting in order to make tunnels for train transportation and this is a common method used in order to create tunnels. Since the risk of damages is low due to the fact that the blasting is occurring 3 miles away from Neighbor, and other property owners, the utility of risk of harm is far outweighed by the risk of harm to others.

Further, blasting is necessary in order to make tunnels through mountains and rock to allow train transportation for the community. Train transportation is appropriate in the area and was necessary to help the community. Additionally, BlastCo will assert that the blasting did not involve a high risk of harm to Neighbor since he was 3 miles away.

However, since a reasonable blaster would have foreseen a potential danger to the possessors of land nearby when blasting, BlastCo owed a duty to Neighbor not to create a high risk of harm to him or his property.

Therefore, BlastCo should be held strictly liable for its conduct.

Actual Cause

If Plaintiff would not have been injured “but for” Defendant’s tortious act, Defendant’s conduct is the actual cause of Plaintiff’s injuries and damages.

But for the blasting that created an unusual jolt, the jeep would have not been shaken off its blocks causing it to roll down a steep driveway and careen into a wood fence causing damage to the jeep beyond repair.

Therefore, BlastCo is the actual cause of Neighbor’s damage to his jeep.

Proximate Cause

A Defendant’s tortious act is the proximate cause of Plaintiffs’ injuries and damages if the manner and result of Defendant’s acts are foreseeable.

BlastCo will argue the blasting that caused the jolt resulted in the jeep to jump off its blocks because Neighbor did not have the jeep properly secured, thus Neighbor's act was an intervening unforeseeable act and breaks the causal chain.

However, it is foreseeable that when you blast that the blasting could cause a jolt or vibrations that could cause damage to property that was not properly secured in the nearby area. Thus, to the extent that property was damaged by the jolt, the negligence of Neighbor is foreseeable.

Therefore, the damage to the jeep would be proximately caused by the blasting.

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 for injuries that include past, present and future pain and suffering. General damages could also include damage to or destruction of personal property.

Since the blasting caused the jeep to be shaken off its blocks which resulted in the jeep careening across the street and bursting into a neighbors wooden fence causing damage beyond repair, Neighbor did suffer damages to his property as a result of the blasting.

Therefore, there were general damages sustained by Neighbor.

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. Special damages may include economic losses and lost business profit resulting from the injury.

Neighbor will argue that the damages he sustained rendering his jeep beyond repair is unique to him and, thus, might be recoverable as special damages.

If Neighbor can show that the damages were foreseeable and he would have received more money for the jeep since when repaired it would have been worth \$50,000, special damages will be awarded.

Therefore, Neighbor should be able to recover any special damages from BlastCo's conduct.

Comparative Negligence

The doctrine of comparative negligence apportions the relative negligence or fault, i.e., blameworthiness, of the Plaintiff and Defendant, and reduces Plaintiff's recovery of damages accordingly.

Neighbor had his jeep perched at the top of his steep driveway with the front wheels improperly secured by blocks. When the blasting caused an unusual jolt the jeep jumped off its blocks and rolled down the driveway. Neighbor's act of not having the jeep properly secured establishes he acted unreasonably. However, Neighbor will argue that the jeep jumped based on the unusual blast that caused the jeep to get knocked off the blocks. Even if properly secured on the blocks, the blasting caused a jolt that resulted in the jeep jumping. In light of the facts, Neighbor is not solely to blame for the damage to the jeep. As such, the court will apportion damages accordingly.

Therefore, comparative negligence will likely not be a complete defense.

Assumption of the Risk

A person who expressly or impliedly agrees to confront the risk posed by Defendant's act and knowingly assumes the risk of his conduct is barred from recovery. Defendant must show that Plaintiff recognized and understood the particular risk, and voluntarily elected to encounter it.

Since Neighbor improperly secured his jeep on the blocks while restoring his car and leaving it on his steep driveway, he did so with full knowledge that the jeep could roll down his driveway and become damaged. Thus, he impliedly appreciated the danger, in part because he knew harm could occur due to parking on a steep driveway and not securing the jeep properly.

However, Neighbor was not aware that BlastCo would be blasting and an unusual jolt would cause the jeep to jump off the blocks. Hence, he did not know of and appreciate the potential danger showed by his actions and he did not voluntarily choose to encounter the risk of damage to his jeep.

Therefore, assumption of the risk is not a valid defense.

Negligence

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

Duty

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

BlastCo owes a duty to blast in a safe manner and not subject others to harm. A reasonable prudent person would take those steps reasonably necessary to assure that no one would be injured when blasting occurred. The facts state that BlastCo was blasting and an unusual jolt occurred which caused Neighbors jeep to jump off its blocks. However, Neighbors jeep was three miles away from where the blast was taking place. Thus, BlastCo owes no duty of care to Neighbor.

Duty – Cardozo and Andrew Views

Neighbor will argue that under the Cardozo view, Blastco owes a duty of care to foreseeable plaintiffs in the zone of danger.

Since Neighbors property is only 3 miles away, his property is within the foreseeable zone of danger of BlastCo's conduct.

BlastCo will counter that Neighbor is located 3 miles from the blasting site and is not within the foreseeable zone of danger.

Neighbor will argue that Andrews' view of duty applies. Under the Andrew's view, BlastCo's conduct would create a foreseeable risk of harm to Neighbor based on the blasting causing a jolt.

Thus, BlastCo's conduct of blasting that resulted in a jolt created a reasonably foreseeable risk of harm to others.

However, the only foreseeable harm was to those persons who suffered injury or damage to their property. As such the jolt caused the jeep to jump off the blocks which caused the harm since it was not properly secured. The blasting did cause the jolt which resulted in the jumping off its blocks and becoming damaged.

Therefore, the court will find BlastCo owed a duty of due care to Neighbor.

Breach

A breach is a failure to act as a reasonable, prudent person under the same or similar circumstances. A Defendant breaches a duty through an act or omission that exposes others to an unreasonable risk of harm.

BlastCo's conduct of blasting caused a jolt which resulted in the jeep jumping off its blocks and becoming damaged. Hence, the foreseeability of a risk of blasting would outweigh the preventable risk of danger to property owners like Neighbor. BlastCo's blasting did cause damage to Neighbor's jeep. Thus, its conduct fell below the reasonable prudent person's standard of care.

Therefore, BlastCo breached its' duty of due care to Neighbor.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Contributory Negligence

At common law, the Plaintiff's contributory negligence, however slight, was a complete bar to his recovery against a negligent defendant. If a Plaintiff's conduct falls below the reasonable person's standard of care and contributes to his own injury or damages, he is barred from recovering against Defendant.

BlastCo will contend that Neighbor fell below the standard of care due to the facts he parked his jeep on a steep driveway and did not properly secure the jeep on its blocks. His actions were unreasonable. Hence, Neighbor contributed to his own injury.

Therefore, contributory negligence is a valid defense.

Comparative Negligence

Defined and discussed supra.

Assumption of the Risk

Defined and discussed supra.

Pet Farm v. BlastCo

Strict Liability

Defined and discussed supra.

Actual Cause - Successive Tortfeasors

“But for” BlastCo’s causing a jolt while blasting and Neighbor’s act of not properly securing his jeep on its blocks, the jeep would not have jumped of its blocks, roll down the driveway, and bust into Pet Farm’s property killing 22 Holland Lop rabbits.

Therefore, the successive negligent acts of BlastCo and Neighbor resulted in Pet Farms loss of rabbits.

Thus, BlastCo is the actual cause of the Pet Farm damages.

Proximate Cause

Defined and discussed supra.

General Damages

Defined supra.

Since the blasting caused the jeep to be shaken off its blocks which resulted in the jeep careening across the street and bursting into Pet Farms wooden fence damaging his fence and killing 22 rabbits, Pet Farm did suffer damages. The worth of each rabbit is of \$100. Hence, Pet Farm should be able to recover \$2,200 in damages.

Therefore, general damages are recoverable by Pet Farm.

Special Damages

Defined supra.

Pet Farm will argue that 22 of his Holland Lop rabbits were killed. Hence, Pet Farm should receive any lost profit from the loss of the rabbits.

Therefore, Pet Farm should be able to recover any special damages from BlastCo's conduct.

Pet Farm v. Neighbor

Negligence

Defined supra.

Duty

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

Neighbor owes a duty to take steps to avoid his jeep from coming off its blocks and causing damages to neighboring property. A reasonable prudent person would take steps reasonably necessary to assure that the jeep was secure on the blocks, especially since the jeep was parked on a steep driveway.

Therefore, Neighbor has a duty of care to Pet Farm.

Breach

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

Since Neighbor failed to properly place his jeep on blocks, and upon the blasting a jolt caused the jeep to jump off the blocks and careen into Pat Farm's fence killing 22 rabbits, shows he did not act as a reasonable prudent person. Neighbor will contend that Pet Farm's damage was the result of the blasting by BlastCo and he did not breach his duty.

Although BlastCo did cause a jolt by blasting for a tunnel which show a breach of its duty of due care, Neighbor is the one that failed to secure his jeep that caused the damage to Pet Farm. Neighbor breached his duty of due care owed to Pet Farm.

Therefore, Neighbor breached his duty of due care.

Actual Causation – Successive Tortfeasor

Defined and discussed supra.

Proximate Causation

Neighbor will argue that BlastCo caused the jolt that allowed his jeep to jump off the blocks and careen into Pet Farm's property. Hence, BlastCo's conduct is a supervening intervening act.

However, BlastCo's act is an indirect, independent successive negligent act of Neighbor's negligence and it is foreseeable that a blast could cause a jolt. Thus, BlastCo's conduct will not sever causation in order to relieve Neighbor of liability of his negligence.

Pet Farm's damages were sustained because of Neighbors failure to properly secure his jeep on the blocks. Hence, his negligence based on his failure is a foreseeable result.

Because Neighbor is liable for subsequent negligent acts arising from his own negligence, BlastCo's negligence is not a superseding cause.

Therefore, Neighbor was the proximate cause of Pet Farm's damages.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.