

**June 2020 Baby Bar
Question 1 – Torts**

1. **What claim or claims can Penny reasonably raise against Mel; what arguments can Mel reasonably make; and what is the likely outcome? Discuss.**

Penny v Mel

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 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.

Mel was driving 35 miles per hour, which was 5 miles over the posted speed limit. The purpose of the statute is to protect motorist and pedestrians who are using the residential road from being injured by a car who is speeding and either loses control or hits a pedestrian. Mel was driving when he braked and turned into the center of the street in order to prevent hitting another car. When he did this, Otto, the other car driver, did not see him and both cars collided and plowed into Penny who was walking on the sidewalk. The speed limit is established to prevent accidents. Thus, the intent of the legislature in creating the statute is to protect motorist and pedestrians from injury from an accident. As such, Penny is a member of the class that the statute was designed to protect.

By driving over the speed limit Mel did violate the statute. However, the intent of the legislature is to protect a motorist and pedestrians from injury by creating a safe speed for the road being used. The statute was not intended to prevent an accident when a motorist crossed a no passing yellow line in order to prevent hitting another vehicle. Thus, the injury to Penny is not the type the legislature is trying to prevent.

Therefore, Mel's violation of the statutory speed limit requirement is not negligence per se.

Duty

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

Mel owes Penny a duty to drive his car in a safe manner and adhere to the rules of the road. Mel must drive his car in a reasonable manner and not subject other motorist or pedestrians to an unreasonable risk of harm. A reasonable prudent person would take steps reasonably necessary to assure that, while driving a car, other motorists and pedestrians were not subjected to harm.

Therefore, Mel owes a duty of care to Penny.

Breach

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

While Mel was driving his car on a residential road rounding a curve he saw Nigel suddenly back out of his driveway in front of him. To avoid hitting Nigel's car, Mel braked and turned into the center of the street, crossing a yellow no passing line and partially entering the lane of oncoming traffic. Otto, who was driving towards Mel, did not see him and the two cars collided, plowing into Penny.

Mel will argue had Otto been paying attention and been attentive to his driving he could have avoided the accident. Instead, he caused the two cars to collide and plow into Penny.

However, Mel was driving on the wrong side of the road that resulted in the car accident.

Therefore, Mel's conduct that resulted into plowing into Penny causing her injury shows he fell below the reasonable person standard of care.

Therefore, Mel breached his duty owed to Penny.

Actual Cause - Successive

"But for" Mel crossing a yellow line and entering into oncoming traffic, he would not have hit Otto's car which result in both cars plowing into Penny. Further, Otto's act of not adjusting his car radio and not being attentive to his driving, he would have seen Mel coming at him, and not hit his car. Thus, but for Mel crossing the lane into oncoming traffic and Otto not paying attention while driving, Penny would not have been injured.

"But for" the successive negligent act of Mel colliding with Otto's car and Otto not paying attention to his driving, Penny would not have sustained serious injuries.

Thus, Mel and Otto are the actual cause of Penny's injuries.

Therefore, Mel was the actual cause of Penny's injuries.

Proximate Cause

Mel will argue Otto was adjusting his radio in his car and did not see Mel in order to prevent the accident. Thus, Otto was an intervening act.

However, it is foreseeable that while driving on the wrong side of the road into oncoming traffic, Mel could hit another car, causing an accident and resulting into plowing into Penny causing her to suffer damages.

Therefore, Mel was the proximate cause of Penny's damages.

General Damages

Plaintiff must have sustained actual damages to person or property to recover for negligence.

Mel ran into Otto's car and plowed into Penny, causing her to suffer injuries. Therefore, Penny may recover for her personal injury.

Special Damages

Plaintiff may recover for any medical damages or lost of income if specifically plead.

Penny will be able to recover of any medical expenses incurred and any lost wages.

Therefore, Penny may recover special damages.

2. What claim or claims can Penny reasonably raise against Otto; what arguments can Otto reasonably make; and what is the likely outcome? Discuss.

Penny v Otto

Negligence

Defined supra.

Duty

Defined supra.

Otto owes Penny a duty to drive his car in a safe manner. A reasonable prudent person would take steps reasonably necessary to assure that while driving others were not subjected to harm.

Therefore, the court will find that Otto did owe a duty of due care to Penny.

Breach

Defined supra.

Otto was distracted driving his car by adjusting his car radio when he collided into Mel that resulted in both cars plowing into Penny. Thus, Otto's conduct fell below the reasonable person standard of care.

Otto will counter that Mel is the one that crossed the double yellow line and collide with Otto's car. The fact that Mel was negligent in crossing into oncoming traffic did not cause Otto to plow into Penny. Otto was not paying attention to his driving that resulted in the collision.

Therefore, Otto did breach his duty owed to Penny.

Actual Cause

Defined and discussed supra.

Proximate Cause

It is foreseeable that while driving a car adjusting the car radio resulted in one taking their eyes off the road, you could collide with another vehicle and serious injuries would result.

Otto will argue it was not foreseeable that Mel would be driving on the wrong side of the road and into oncoming traffic. However, had Otto been paying attention to his driving he likely could have prevented the accident.

Therefore, Otto was the proximate cause of Penny's injuries.

Damages

Defined and discussed supra.

3. What claim or claims can Penny reasonably raise against Nigel; what arguments can Nigel reasonably make; and what is the likely outcome? Discuss.

Penny v Nigel

Negligence

Defined and discussed supra.

Duty

Nigel, as a driver on the road, has a duty to act as a reasonable prudent person under the same or similar circumstances.

Nigel, owes a duty to drive his car in a safe manner and not create an unreasonable risk of harm. As such, Nigel must drive his car in the same manner as a reasonably prudent person and not subject others to an unreasonable risk of harm.

Nigel will argue he was backing out of his driveway when Mel saw him and diverted hitting his car. Thus, he owed a duty to those persons on the road and not Penny who was on the sidewalk.

Hence, Nigel would not owe a duty to Penny.

Duty – Cardozo/Andrew View

No duty of care is owed to anyone who unexpectedly is hurt by the Defendant's actions if a reasonable person would not have foreseen injury to anyone from the conduct.

Nigel owes a duty to those persons using the residential street. Since Nigel back out of his driveway almost hitting Mel and Mel, in order to prevent the crash, entered into the center of the street and ending up running into Otto, that resulted in both cars plowing into Penny, who was walking on the sidewalk, he does not owe a duty of due care to Penny.

However, there is a split of authority. Under the Cardozo view, the duty of due care is owed only to those in the foreseeable zone of danger.

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

Since Penny was in the residential neighborhood and walking on the sidewalk and was then plowed into by Mel and Otto's car because Mel was trying to prevent crashing into Nigel, it is foreseeable that Penny who was walking in the neighborhood could be hit by a car who was preventing an accident. Thus, Penny will argue that she is within the foreseeable zone of danger of Nigel's conduct.

Nigel will counter that although he did suddenly back out of his driveway, the accident, which resulted in hitting Penny occurred because Mel failed to act as a reasonable driver. As such, Penny is not within the foreseeable zone of danger.

Since Nigel did not hit Mel's car, and Mel in order to avoid an accident turned into the center lane into oncoming traffic that resulted in Penny being injured, it is not foreseeable that Nigel's conduct would cause an accident. Thus, Penny is not within the foreseeable zone of danger.

However, if the court does not find Penny within the foreseeable zone of danger, she will argue that the Andrew's view of duty applies. Under Andrew's view, Nigel's conduct created a foreseeable risk of harm to Penny when he suddenly backed out of his driveway in front of Mel that caused Mel to turn into oncoming traffic, hitting Otto's car and causing Penny to be injured.

Thus, Nigel's conduct resulted in Mel turning into oncoming traffic that resulted in Penny's injuries that created a reasonably foreseeable risk of harm to others, including Penny.

Therefore, the court will find that Nigel did owe a duty of due care to Penny.

Breach

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

While Nigel was backing out of his driveway in front of Mel, his act of not paying attention resulted in Mel crossing a yellow line into oncoming traffic in order to prevent hitting Nigel. Nigel's conduct fell below the reasonable person standard of care.

Therefore, Nigel breached his duty owed to Penny.

Actual Cause - Successive Tortfeasors

"But for" Nigel's failure to adequately drive his car while backing out to the driveway in front of Mel, Mel would not have crossed into oncoming traffic resulting in hitting Otto, that resulted in plowing into Penny.

Therefore, the successive negligent acts of Nigel, Mel, and Otto resulted in Penny suffering injury.

Therefore, Nigel is the actual cause of the Penny's injuries

Proximate Cause

It is foreseeable that while operating car and backing out of a driveway in front of another car that someone may be injured.

However, Nigel will argue it is not foreseeable that backing out of a driveway in front of another car that the other driver would cross into oncoming traffic in order to prevent hitting a car. As a result of Mel crossing into oncoming traffic, Penny was injured.

Intervening, Superseding Cause

An intervening cause is one that occurs after the negligent conduct of defendant but before the harm. An independent, intervening act is an abnormal response to stimulus created by defendant's negligence. The fact that the intervening force was not reasonably foreseeable does not excuse defendant from liability as long as result was foreseeable.

Nigel will argue that his actions were indirect and independent of Mel's and Otto's act of failing to drive properly, which caused both Mel and Otto to plow into Penny. Thus, Mel's and Otto's act were an intervening act.

However, the negligence of a third party is always foreseeable and will not cut off Nigel's liability.

Under Andrews view in order to find proximate cause you need to look to the foreseeability of the harm, directness of the connection between the Defendant's act and the Plaintiff's harm, whether there is a natural and continuous sequence between the two, was the act a substantial factor, and was the harm too remote.

It is foreseeable that if you back out of your driveway cutting off another car that an injury would result. It is also foreseeable that another party could be negligent.

However, is it foreseeable that if you back out of your driveway cutting off another car, that the other driver would try to prevent a collision and go into oncoming traffic which resulted in Penny being injured since Mel and Otto both plowed into her.

Further, there is no direct connection between Nigel's negligent act and Mel's and Otto, with Penny being hit by their cars. The act of Nigel backing into traffic in front of Mel, was not a substantial factor that resulted in Penny's injuries. In addition, the harm to Penny is too remote to the conduct of Nigel backing out in front of Mel.

Therefore, Nigel's conduct was not the proximate cause of Penny's injuries.

Assuming the court does find Nigel the proximate cause damages must be proven

General Damages

Defines and discussed supra.

Special Damages

Defines and discussed supra.