

**June 2021 Baby Bar
Question 2 – Torts**

In the absence of any evidence of negligence, are there any other theories that might support a claim by Neighbor against Fireworks Shack? Discuss.

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.

Fireworks Shack is a store that stocks a large volume and wide variety of fireworks. Fireworks Shack is under a duty to properly stock and sell fireworks and to do so safely so as not to expose others to an unreasonable risk of harm. Since fireworks are highly explosive, it is impossible to eliminate the risk of causing harm to others, and it is an abnormally dangerous activity.

The owner of Fireworks Shack takes extensive safety measures to prevent fires on the premises, including the posting of warning signs to customers not to smoke in the store, installation of a sophisticated sprinkler system, and frequent inspections throughout the store by employees specially trained in fire prevention. Thus, the storing and selling of fireworks did not involve a high risk of harm to persons or property. However, despite these measures, a fire broke out in the store and caused an explosion that severely injured Neighbor.

The stocking and selling of fireworks is foreseeable as a potential danger to the possessors of land nearby where the store is located. Fireworks Shack owed a duty to Neighbor not to create a high risk of harm.

The Fireworks Shack takes extensive safety measures to prevent fires on the premises, however, despite these measures, a fire broke out in the store and caused an explosion that severely injured Neighbor.

Therefore, Fireworks Shack should be held strictly liable for its conduct.

Actual Cause

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

But for a fire breaking out in the store and causing an explosion, Neighbor would not have been severely injured.

Therefore, Fireworks Shack is the actual cause of Neighbor’s injuries.

Proximate Cause

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

It is foreseeable that having a store full of fireworks start a fire and cause an explosion that severely injured Neighbor, who was in the backyard of his home, which is adjacent to Fireworks Shack.

Thus, to the extent that Neighbor came into contact with the explosion from the fireworks catching fire, injury to him and damage to property is foreseeable.

Therefore, any such Neighbor's injury would be proximately caused by the firework explosion.

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 a fire broke out in the store and caused an explosion that severely injured Neighbor, who was in the backyard of his home, which is adjacent to the Fireworks Shack, he suffered damages to his person as a result.

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 most likely incurred medical and hospital expenses, and possibly loss of income as a result of the incident. Since these damages are unique to Neighbor, they must be specifically pleaded and proven for Neighbor to recover them. It is reasonable and foreseeable that when a consumer is injured, that he will incur medical and hospital expenses, and possibly lose income because of his injuries.

Therefore, Neighbor may recover special damages.

Private Nuisance

A private nuisance is an intentional or negligent non-trespassory interference with the plaintiff's interest in the use and enjoyment of her property.

Fireworks Shack is a store the size of a large supermarket that stocks a large volume and wide variety of fireworks. Fireworks Shack is located in an otherwise entirely residential neighborhood in the city of Hometown. A fire broke out in the store and caused an explosion that severely injured Neighbor, who was in the backyard of his home, which is adjacent to Fireworks Shack. A person has a right to safety in his own backyard and should expect to not be injured by explosions by neighboring property. A large supermarket full of fireworks should not be allowed to be in a residential neighborhood. A thorough investigation by the local fire marshal has failed to identify the source of the fire or any evidence that Fireworks Shack was in any way negligent or that it could have taken additional precautions to prevent the fire. Thus, the explosion resulting in injuring Neighbor was a negligent interference with his property.

The facts that Neighbor was severely injured by the explosion while he was in his backyard shows an interference with the plaintiff's interest. Further, Neighbor is a home owner. Like most home owners, he likes to come home and relax after and be affected by surrounding neighbors with the use of their property. The explosion causing injury to Neighbor is an interference with the plaintiff's interest in the use and enjoyment of his property.

Therefore, Firework Shack's activities are a private nuisance.

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.

Fireworks Shack is a store that stocks a large volume and wide variety of fireworks. Fireworks Shack is located in an otherwise entirely residential neighborhood in the city of Hometown.

As the retailer of the product, Fireworks Shack is liable to Neighbor's for damages caused by the product if it is proven to be defective in design, manufacturing and/or warning.

Therefore, Firework's Shack may be liable for Neighbors' damages.

Strict Liability in Tort

Strict liability is where an unreasonably dangerous product is placed in the stream of commerce, the manufacturer, distributor or retailer will be held strictly liable in tort to all foreseeable users for their injuries.

Firework Shack sold fireworks, and as a retailer will be liable for any defect in design and warnings regarding its use of fireworks. Fireworks Shack stocks a large volume and wide variety of fireworks. A fire broke out in the store and caused an explosion that severely injured Neighbor, who was in the backyard of his home, which is adjacent to Fireworks Shack. This dangerous condition would not be expected by an ordinary consumer in normal use of a fireworks. Thus, the fireworks were unreasonably dangerous.

Firework's Shack will rebut that it did have an adequate warning since it had extensive safety measures to prevent fires on the premises, including the posting of warning signs to customers not to smoke in the store, installation of a sophisticated sprinkler system, and frequent inspections throughout the store by employees specially trained in fire prevention.

However, despite the warnings a fire broke out and caused an explosion. Since it is normal for fireworks to explode when brought into contact with fire there is not defect in existence at the time of the explosion. Fireworks Shack did place in the stream of commerce, but it will not be strictly liable for Neighbor's injuries.

Therefore, Fireworks Shack will not be held liable under a strict liability in tort theory.

Breach

To prove the product is defective, plaintiff must establish the product failed to meet the ordinary commercial expectations of the average reasonable consumer.

Design Defect

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

Despite these measures, a fire broke out in the store and caused an explosion that severely injured Neighbor, thus, the fireworks were inherently dangerous in its design since they caught fire and exploded causing injury to Neighbor. However, Fireworks Shack will argue that the fireworks are to ignite and will explode when they come in to contact with fire.

Therefore, there is no design defects of the firework. Thus, Fireworks Shack did not breach its duty of due care owed to Neighbor.

Res Ipsa Loquitur

Res ipsa loquitur is established when you show that an accident does not normally occur in the absence of negligence, the instrumentality is in the exclusive control of the defendant, and the plaintiff did not contribute to her own injury.

The owner of Fireworks Shack takes extensive safety measures to prevent fires on the premises, including the posting of warning signs to customers not to smoke in the store, installation of a sophisticated sprinkler system, and frequent inspections throughout the store by employees specially trained in fire prevention. Despite these measures, a fire broke out in the store and caused an explosion that severely injured Neighbor. A fire breaking out does not occur absence negligence.

Despite these measures, a fire broke out in the store and caused an explosion, the Fireworks Shack and the fireworks were in the exclusive control of Fireworks Shack and thus was in Fireworks Shack's exclusive control.

Because a fire broke out in the store and caused an explosion that severely injured Neighbor, he did not contribute to his own injury. Thus, *res ipsa loquitur* will establish a breach.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Implied Warranty of Merchantability

The implied warranty of merchantability exists when a manufacturer, distributor or retailer places a product in the stream of commerce such that he warrants the product is of fair and average quality.

Fireworks Shack is in the business of selling fireworks. Thus, it is a product retailer. Despite these measures, a fire broke out in the store and caused an explosion that severely injured Neighbor, who was in the backyard of his home, which is adjacent to Fireworks Shack. Neighbor will argue because of its inadequate design of being dangerous, he became injured. Thus, the was not of fair and average quality.

Unfortunately, there is no indication that any of the fireworks were defectively designed. Fireworks Shack will argue that this kind of event happens with fireworks when the it comes into contact with fire.

Therefore, Fireworks Shack will not 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.