

October 2022 Baby Bar
Question 1 Torts
Model Answer

1. What tort claims can Storeowner reasonably bring against Albert; what defenses can Albert reasonably assert; and what is the likely outcome? Discuss.

Storeowner v Albert

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 a majority of 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.

The state had a firearm ordinance that makes it a crime to leave an unattended firearm in a motor vehicle, unless it is kept in a locked trunk or kept in a locked container out of plain view inside of the vehicle. One day Bob, owner of Bob's automobile dealership, Albert's employer sent Albert to a local restaurant to purchase take-out food for the dealership's employees. Instead of going directly to the restaurant, Albert drove to a pharmacy to pick up some medication that was being held for him. Because he was in a hurry, Albert left his gun on the car seat under a towel instead of locking it in the trunk as he normally did, thus, he has violated the firearm ordinance.

Albert will argue the intent behind the statute is to protect the public from other people being able to gain access to a firearm and causing injury to others. At the time Carl broke into his car and took the gun that caused the injury to Storeowner and not Albert. However, Albert's failure to lock the gun in the trunk allowed another to obtain the firearm that resulted in Storeowner being harmed. Albert did not follow the statutory standards for safety, thereby violating the statute.

In addition, the statute was intended to protect the public against harm caused by a firearm. Albert's act of leaving the firearm without locking it up in the trunk or locking it in a container caused Storeowner's injury. The intent of the legislature in creating the statute was to protect the public from gunshot injuries. Hence, the statute was intended to protect and prevent gun injuries. The legislature had the intent to prevent injuries from others wrongfully obtaining a firearm. Thus, the intent of the legislature is preventing firearm injuries caused by those not trained in handling a firearm, or from those who obtain a firearm illegally.

Albert left his gun on the car seat under a towel instead of locking it in the trunk as he normally did. Carl, who was standing nearby, broke into the car and took the gun while Albert was inside the pharmacy. Several months later, Carl's roommate Drew, without Carl's knowledge, used Albert's gun in an armed robbery during which Drew shot and wounded Storeowner. Hence, Storeowner is a member of the class the statute is designed to protect.

Storeowner was a member of the class the statute was designed to protect. Storeowner did suffer wounds from the gunshot. The injury he sustained is the type the legislature was trying to prevent, i.e., being harmed by a firearm obtained wrongfully from another. Thus, the injury was the type the legislature was trying to prevent, i.e., being shot and injured by a firearm.

Therefore, the cause of action for negligence per se for violation of statute established Albert owed a duty and breached that duty.

If the court does not find Negligence per se, a duty needs to be established.

Duty

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

Albert owes others a duty to properly abide by the law and not leave an unattended firearm in a motor vehicle unless it is kept in a locked trunk or kept in a locked container out of plain view inside of the vehicle. As such, Albert must not leave an unattended firearm in a motor vehicle, unless it is locked in a trunk or locked container out of plain view inside as a reasonably prudent person would do under the same or similar circumstances and not subject others to an unreasonable risk of harm.

Therefore, a duty is owed to those persons who were injured by the firearm the firearm. Under the facts Carl obtained the firearm and Drew, his roommate took it several months later and robbed the store injuring Storeowner. There is no relationship between Albert and Store owner.

Hence, Albert would not owe a duty to Storeowner.

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.

Albert owes a duty to those persons that could be harmed by those who improperly obtained his firearm based on his action of violating the ordinance. Under the Cardozo view, the duty of due care is owed only to those in the foreseeable zone of danger.

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

Since Albert did not abide by the ordinance and lock his firearm and another person was able to obtain the unsecured firearm and use it in a robbery, it is foreseeable that Drew using the firearm in a robbery would injure another, i.e., Storeowner. Thus, Storeowner will argue that he is within the foreseeable zone of danger of Albert's conduct.

Albert will counter that although he did accidentally violate the ordinance, which resulted in the firearm being stolen and used in a robbery, that the act occurred several months after the taking of the firearm and thus, Storeowner is not within the foreseeable zone of danger.

Since Albert's firearm was obtained based on his act of violating the ordinance and resulted in Drew obtaining the firearm and using it in an armed robbery, during which Drew shot and wounded Storeowner and this occurring several months later after the taking of the firearm, it is not foreseeable that Albert's act of leaving a firearm unattended and hidden in the car would

cause another to use the gun in a robbery and wounding Storeowner. Thus, Storeowner is not within the foreseeable zone of danger.

However, although a criminal act is not foreseeable, the act of another obtaining a firearm because it is not locked up is foreseeable and the court should find that Storeowner is within the foreseeable zone of danger.

In addition, under the Andrew's view, Albert's conduct created a foreseeable risk of harm to Storeowner when the firearm was stolen and used in a robbery.

Thus, Albert's conduct of not abiding by the ordinance and locking his firearm that resulted in another person to obtain the unsecured firearm and use it in a robbery created a reasonably foreseeable risk of harm to others, including Storeowner.

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

Breach

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

Albert drove to a pharmacy to pick up some medication. Because he was in a hurry, he left his firearm on the car seat under a towel instead of locking it in the trunk or a locked container. Albert's conduct fell below the reasonable prudent person standard of care.

Therefore, Albert breached his duty owed to Storeowner.

Actual Cause - Successive Tortfeasors

"But for" Albert's failure to lock the firearm in the trunk or container Drew would not have been able to obtain the firearm and use it in a robbery resulting in wounds to Storeowner. Further, Carl's act of failing to place the firearm in a locked container or preventing his roommate, Drew from obtaining the firearm, the firearm would not have been used in a robbery of Storeowner. Therefore, the successive negligent acts of Albert and Carl resulted in Storeowner's wounds.

Therefore, Albert is the actual cause of the Storeowner's injuries.

Proximate Cause

It is foreseeable that while using a gun in an armed robbery that a shot could wound another, i.e., Storeowner.

However, Albert will argue it is not foreseeable that another would steal the firearm out of his car and use it in an unlawful act.

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 if the result was foreseeable.

Albert will argue that his actions were indirect and independent of Drew's act of robbery and his act of causing Storeowner's wounds. Thus, Drew's act was an intervening act.

However, Albert's negligent act of failing to place the gun in the truck or a locked container, it is foreseeable that another would obtain the firearm and cause injury and thus, will not cut off Albert's liability.

Under Andrews view 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 allow another to obtain your firearm that a gun injury would result. It is also foreseeable that another party could be negligent or act intentionally with the firearm that results in harm.

Therefore, Albert's conduct was the proximate cause of Storeowner's injuries.

General Damages

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

Due to Albert's act of leaving his firearm unattended and not locked resulted in Storeowner being injured by the firearm.

Therefore, Storeowner may recover for his personal injuries.

Special Damages

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

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

Therefore, Storeowner may recover special damages.

Negligent Infliction of Emotional Distress

A party owes a duty to others not to subject them to a foreseeable risk of physical injury (impact/threat) that might foreseeably result in emotional distress.

Albert's act of driving to a pharmacy to pick up some medication and being in a hurry, left his gun on the car seat under a towel instead of locking it in the trunk as he normally did. This allowed Carl, who was standing nearby to break into the car and take the gun that resulted in Storeowner's suffering from gunshot wounds. Albert owed a duty not to subject others to harm. However, because he left his firearm unattended and unlocked his actions resulted in a foreseeable physical injury to Storeowner. Albert's act of leaving the firearm unattended and unlocked resulted in Storeowner's wounds resulting in emotional distress.

Therefore, there was negligent infliction of emotional distress.

1. What tort claims can Storeowner reasonably bring against Bob; what defenses can Bob reasonably assert; and what is the likely outcome? Discuss

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 plaintiff's damages.

Duty

Defined supra.

Bob, who owns Bob's automobile dealership owes a duty to act as a reasonable prudent person under the same or similar circumstances. Hence, Bob must take reasonable steps to check the background, qualifications, skills, and physical condition of an employee, i.e. Albert, whose job duties included carrying a firearm.

Breach

Defined supra.

Bob will argue that he took all reasonable steps in hiring Albert. For two years Albert has worked full-time for Bob's automobile dealership, which sells high-value classic cars. Bob provided Albert with a uniform, a car, and a handgun registered to the dealership that Albert carries on the job. Albert has been a model employee during his time at Bob's automobile dealership.

As such, Bob was not negligent in the hiring of Albert under the given circumstances.

Vicarious Liability

However, an employer is liable for the negligent acts of its employees while in the course and scope of employment.

The facts indicate that Bob hired Albert and provided him with a handgun registered to the dealership. Thus, evidence of an employer-employee relationship exists. Further, Albert's act of leaving the firearm unattended and not locked occurred while he was making a pickup to for the dealership employees at local restaurant. Hence, Albert was acting in the course and scope of his employment with Bob.

However, Albert's act was not within the course and scope of his employment. Bob sent Albert to a local restaurant to purchase take-out food for the dealership's employees. Instead of going directly to the restaurant, Albert drove five miles in the opposite direction to a pharmacy to pick up some medication. Thus, a frolic and detour.

However, the law has been modified so that vicarious liability will be imposed under certain

circumstances. Bob did hire Albert and sent Albert to a local restaurant to purchase take-out food for the dealership's employees. The mere facts Albert ran an errand to pick in his medication would not be outside the scope of his duties.

Therefore, since Albert's failure to lock up his firearm that resulted in Storeowners injury, Bob is vicariously liable for Albert's actions (i.e. Negligently leaving the firearm unattended and not properly stored in the car).

Hence, Albert was acting in the course and scope of his employment with Bob and Bob will be vicariously liable.

To make Bob vicariously liable the underlying tort, i.e., Negligence of the employee, Albert must be proven

Negligence of Albert

Defined and discussed supra.