

**October 2005 Baby Bar
Question 3 – Torts**

**Abel, Baker, and Carl have all filed a lawsuit against David.
What is David's liability to each of them? Discuss.**

Able v David

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 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 to be protected from the type of injury suffered. 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 establishes 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.

David was driving in a residential neighborhood where there is a posted speed limit of 25 mph. The intent of the legislature is to protect persons and property in the residential neighborhood from being injured or damaged from being struck by a car being operated at an unsafe speed.

Further, the legislature intended to protect Abel's vehicle while it was parked in the neighborhood. As such, Abel is a member of the class that the statute was designed to protect.

By driving at 30 mph, David violated the statutory 25 mph speed limit. Since Abel parked his car in the residential neighborhood, the intent of the legislature was to protect his vehicle from a collision by another vehicle such as the delivery van operated by David.

Therefore, David's violation of the statutory speed limit is negligence per se.

General Duty

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

David owes Abel a duty to drive his car in a safe manner and adhere to the posted speed limit of 25 mph. A reasonable prudent person would take steps reasonably necessary to assure that while driving in a residential neighborhood he would drive the posted speed limit and watch out for pedestrians and parked cars while doing so.

David will argue that the residents customarily drive 30 mph in the residential neighborhood. Although, the general rule is that a custom does not establish a standard of care, if followed throughout the area, a custom can create a standard of care. Since all the residents customarily travel 30 mph, David will argue that driving at 30 mph is conduct of a reasonable prudent person under the same or similar circumstances.

Therefore, David owes a duty of care to Abel.

Breach

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

While driving in the residential neighborhood, David struck and damaged Abel's car. Thus, David's conduct by striking Abel's car fell below the reasonable person standard of care.

However, as argued above, the fact that others act in the same manner as defendant does not mean that defendant has acted reasonably. An additional argument that David may raise is that there is no evidence that the speed he was driving in any way resulted in the accident. While this may be a better argument, the fact is that David somehow lost control of his delivery van and collided with Abel's car.

Therefore, David breached his duty owed to Abel.

Actual Cause

"But for" David striking Abel's car, the car would not have been damaged.

Thus, David was the actual cause of Abel's damages.

Proximate Cause

It is foreseeable that striking a parked car with a delivery van that damages would result.

Therefore, David was the proximate cause of Abel's damages.

Damages

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

Due to David's collision with Abel's car the car was badly damaged. Therefore, Abel may recover for the property damage to his car.

Baker v David

Negligence

Defined supra.

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.

David owes a duty to his employer to properly deliver the packages on his route. Since David properly delivered the package to Baker he does not owe a duty of due care to Baker.

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.

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

Since David left a package he delivered on Baker's front step, Baker will argue that she is within the foreseeable zone of danger of David's conduct.

David will counter that although he left the package on the front step, he acted reasonably under the circumstances in delivering a package. Further, the incident involving Baker occurred because Baker was not watching where she was going when she walked out her front door. As such, Baker is not within the foreseeable zone of danger.

On the other hand, since David left the package on the front step in front of the doorway it is foreseeable when Baker walked out she could not see the package, trip and be injured. Thus, Baker is within the foreseeable zone of danger.

However, if the court does not find Baker within the foreseeable zone of danger, she will argue that the Andrews' view of duty applies. Under the Andrew's view, David's conduct would create a foreseeable risk of harm to Baker that she would be injured upon the tripping over of a package left by David at her front door step in front of the doorway.

Thus, David's conduct of leaving the package in front of the doorway created a reasonably foreseeable risk of harm to others, including Baker.

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

Breach

Defined supra.

David left the package in front of the doorway at Baker's house. Thus, David's conduct fell below the reasonable person standard of care.

Therefore, David breached his duty owed to Baker.

Actual Cause

But for David leaving the package in front of the doorway, Baker would not have tripped over the package.

Thus, David was the actual cause of Baker's injuries.

Proximate Cause

It is foreseeable that leaving a package in front of a doorway that a person like Baker would come out the door and trip over the package causing her to break her hip.

Therefore, David was the proximate cause of Baker's injuries.

Damages

There may be recovery for damages including past, present and future pain and suffering resulting from the injury.

Baker sustained injuries as a result of tripping over the package. Therefore, she would be able to recover for her pain and suffering, as well as her medical bills and any other consequential damages.

Defense - Contributory Negligence

In a contributory negligence jurisdictions, conduct of plaintiff which falls below the reasonable person standard of care is a complete defense to a negligence cause of action.

David will argue if Baker would have been watching where she was stepping she would not have tripped over the package and been injured. The act of walking without determining the condition of the pathway is conduct falling below the standard of care to which Baker should have conformed to protect her own safety. Thus, she contributed to her own injuries.

Therefore, contributory negligence is a valid defense.

Last Clear Chance

To avoid the harsh effect of plaintiff's contributory negligence, some jurisdictions will hold that plaintiff is not barred from recovery where a defendant had the last clear chance to avoid the accident just before it occurred, but failed to do so. It appears from the facts that David could have avoided the accident if he would not have placed the package in front of the doorway, but off to the side of the doorway.

Thus, David had the last clear chance to prevent the injury.

Defense - Comparative Negligence

In other jurisdictions where plaintiff's conduct falls below the standard of reasonable care such that liability, including the amount of plaintiff's negligence, is apportioned according to fault.

David will argue since Baker's conduct fell below the standard of care owed, the court will apportion his own fault against Baker's and render judgment accordingly.

Therefore, comparative negligence is a valid defense.

Carl v David

Negligence

Defined supra.

Duty

Under general negligence principles, a defendant generally has no affirmative duty to act to prevent harm to a Plaintiff unless a special relationship exists between Plaintiff and Defendant or where the Defendant voluntarily undertakes to aid Plaintiff. Where such duty to aid Plaintiff exists, Defendant must act as a reasonable, prudent person to avoid harm to Plaintiff.

Carl will assert that David owed him a duty of care since David saw the car speeding down the street towards Carl.

However, David was only a delivery man and had no relationship with Carl. Thus, no special relationship exists between David and Carl.

Moreover, David did not voluntarily undertake to aid Carl, but in fact did not act at all evidenced by his decision not to go back and warn Carl of the speeding car since he was in a hurry.

Therefore, David owes no duty to Carl.