

**June 2006 Baby Bar
Question 1 – Torts**

On what theory or theories might damages be recovered, and what defenses might reasonably be raised in actions by:

1. Barb v Adam

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.

Adam was riding his motorcycle without wearing a safety helmet as required by statute. The purpose of the statute is to protect motorcyclists who are riding a motorcycle and are involved in an accident. If a motorist riding a motorcycle is involved in an accident their head would be protected from head injury with use of a helmet. Thus, the intent of the legislature in creating the statute is to protect a motorcyclist from head injury from an accident. As such, Adam is a member of the class that the statute was designed to protect.

By driving his motorcycle without his helmet Adam violated the statute. However the intent of the legislature was to protect a motorcyclist from head injury when involved in an accident. The statute was not intended to prevent an accident when a bee lands on a motorcyclists head. Thus, the injury to Barb is not the type the legislature is trying to prevent.

Therefore, Adam's violation of the statutory helmet requirement is not negligence per se.

Duty

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

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

Therefore, Adam owes a duty of care to Barb.

Breach

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

While Adam was driving his motorcycle a bee landed on his head. In attempting to brush the bee away, Adam lost control of his motorcycle and fell, sliding over the double line into Barb's lane. Thus, Adam's conduct of losing control and going into Barb's lane shows he fell below the reasonable person standard of care.

Therefore, Adam breached his duty owed to Barb.

Actual Cause

"But for" Adam losing control of his motorcycle, and sliding over the double line into Barb's lane, she would have not been injured.

Thus, Adam was the actual cause of Barb's damages.

Proximate Cause

Adam will argue that a bee landed on his head and caused him to lose control. Thus, the bee was an intervening act.

However, it is foreseeable that while Adam was attempting to brush the bee away, Adam would lose control of his motorcycle causing him to fall, and slide over the double line into Barb's lane causing her to lose control and suffer damages.

Therefore, Adam was the proximate cause of Barb's damages.

General Damages

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

Due to Adam's losing control of his motorcycle which caused him to fall, and slide over the double line into Barb's lane, Barb suffered injuries. Therefore, Barb may recover for the property damage to her car and her personal injury.

Special Damages

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

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

Therefore, Barb may recover special damages.

Defense - Contributory Negligence

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

Adam will argue if Barb would have been watching where she was driving, rather than looking down to get her dropped sunglasses, she would have seen Adam lose control of his motorcycle and had time to react to the situation, rather than looking up and seeing the motorcycle sliding toward her, and not having time to react. If she was paying attention she would not have abruptly turned her steering wheel of her car to avoid hitting Adam and collided head on with Dave's truck. The

act of not looking where you are driving is conduct falling below the standard of care to which Barb 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 a 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 Adam could have avoided the accident if he would have worn his helmet. Then the bee would not have bothered him when it landed on his head.

Thus, Adam 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 including the amount of plaintiff's negligence, is apportioned according to fault.

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

Therefore, comparative negligence is a valid defense.

Assumption of Risk

One who assumes the risk when she has knowledge, comprehension and an appreciation of the danger and voluntarily elects to encounter it, cannot recover for Defendant's negligence.

Adam will argue since Barb looked down to retrieve her dropped sunglasses while driving she had knowledge that she could lose control or not see the activity on the road, which caused her injury. By driving without paying attention to the roadway Barb had comprehension and an appreciation of the danger and voluntarily elected to encounter that danger. However, Barb was not aware that Adam would slide into her lane causing her to react by driving over the double line and colliding with a truck. Hence, she was not aware of the risk and did not encounter the risk.

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

Barb v Dave

Negligence

Defined supra.

Negligence Per Se – Violation of Statute

Dave was driving his truck over the posted speed limit in violation of statute. The purpose of the statute is to protect motorists on the roadway from motorist driving too fast for the road conditions causing accidents. Motorist are involved in accidents because other motorist drive too fast for the

road conditions, Thus, the intent of the legislature in creating the statute is to protect a motorist from injuries caused by accidents due to the high rate of speed.

Further, the legislature intended to protect a motorist from injury if involved in an accident. As such, Barb is a motorist and is a member of the class that the statute was designed to protect.

By driving over the posted speed limit, Dave violated the statutory requirement. The intent of the legislature was to protect motorist from accidents caused by high speeds, and not from causing a collision by another motorist crossing over into there lane of traffic. Thus, the injury is not the type the legislature is trying to prevent.

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

Duty

Defined supra.

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

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

Breach

Defined supra.

Dave was driving his truck twice the posted speed limit, when he collided into Barb. Thus, David's conduct fell below the reasonable person standard of care.

Dave will counter that Barb is the one that crossed the double line and collide with Dave's truck. The fact that Dave was going twice the posted speed limit did not cause Bard to collide into his truck.

Therefore, David did not breach his duty owed to Barb.

Actual Cause

"But for" Dave driving twice the speed limit Barb would not have been injured. However, Barb is the one who was trying to pick up her sunglasses and did not see Adam come into her lane in time to react to the situation.

Thus, Dave was not the actual cause of Barb's injuries.

Proximate Cause

It is foreseeable that driving twice the speed limit you could collide with another vehicle and serious injuries would result.

Dave will argue that it was not foreseeable that Barb's car would cross the double line and collide with his truck and thus, driving over the speed limit did not cause the accident and Barb's injuries. However, had Dave been driving his vehicle at or below the posted speed limit it is much more likely that he could have stopped and avoided the accident.

Therefore, Dave was not the proximate cause of Barb's injuries.

Damages

Defined and discussed supra.

Defense - Contributory Negligence

Defined and discussed supra.

Last Clear Chance

Defined and discussed supra.

Defense - Comparative Negligence

Defined and discussed supra.

Assumption of Risk

Defined and discussed supra.