

Question 4 -- Torts

Paula and Art each wish to sue University for personal injury. What theory of liability should they assert, what defenses might University raise against each, and who would be likely to prevail in each suit? Discuss.

Paula v University

Vicarious Liability

An employer is liable for the acts of its employees while in the course and scope of employment.

The facts indicate that University's Director of Student Housing rents out the University's campus housing, thus, establishing an employer/employee relationship.

The University's Director of Student Housing failed to inform Paula of the aerial dispersal of bacteria when he rented her the student resident. Since it is the job of the Director of Student Housing to rent out the housing to students, when he rented the facility to Paula the Director was acting within the course and scope of his employment. Thus, University, as the employer, will be liable for Director of Student Housing's conduct.

Thus, University will be vicariously liable for the Director's actions.

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.

Special Duty - Landowner/Occupier

University owned the campus housing where Paula rented and eventually was injured, thus, qualifying as a landowner/occupier. Further, since Paula was a student of the University and conferred a pecuniary benefit on University, she would be considered an invitee. As an invitee, University owed a special duty to inspect its premises and warn the students of any known dangers, i.e., the bacterial infestation.

Therefore, University owed a special duty to Paula.

Breach

A breach is a failure of the landowner to reasonably inspect, and correct or warn of, any known dangers.

Paula will likely argue that even though the University had knowledge of the bacterial infestation, it failed to properly inspect and correct or warn University student housing residents of the potential bacterial infestation and its danger due to its choosing the cheapest method to treat the infestation. In fact, University's Director of Housing stated that moving in was "safe" when the bacterial infestation was still present. Thus, University did not act as an average reasonable person

under same or similar circumstances.

University will contend that it hired reputable consultants to prescribe a remedy for the bacterial infestation. The consultants advised the University that there were three ways to remedy the situation. One way was to purge the air conditioning system with disinfectants, a more expensive way was to seal off and fumigate the building, and lastly would be to do multiple sealed fumigations. Based on the consultants' advice, University decided to minimize the expense and chose the cheapest method, i.e., purging the air conditioning system. University will further contend although they decided to choose the cheapest method, the remedy chosen was based on an expert consultant's recommendation. Thus, University acted as a reasonable prudent person. Hence they did not breach their duty owed to Paula.

However, the consultants' advice on its face indicated that the "purging" method of treating the infestation could fail since the University was told that the method "usually" worked, but that there were two more effective treatments. Further, University did not test the effectiveness of the chosen treatment method. As such, University failed to act reasonably in that it failed to "inspect and correct" the bacterial infestation. Moreover, its conduct was unreasonable because it failed to warn Paula of the danger.

Therefore, University's failure to make the premises safe and warn of the known danger would be considered a breach of its duty to Paula.

Actual Cause

"But for" University's failure to correct or warn of the danger, Paula would not have fallen ill from the same bacterial infestation that existed in the housing prior to her moving in.

Therefore, University's actions were the actual cause of the Paula's injuries.

Proximate Cause

It is foreseeable that while a bacterial infestation previously existed in the student housing, and although steps were taken to remedy the situation, the bacterial infestation could still exist, or come back and make a student sick. Thus, when Paula became ill from the same bacterial infestation it was foreseeable.

Therefore, University was the proximate cause of Paula's damages.

General Damages

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

Due to the fact University failed to inspect and find that the bacterial infection still existed in the student housing, or to warn Paula of the infestation, Paula suffered injuries. Therefore, Paula may recover for her personal injury.

Special Damages

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

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

Therefore, Paula 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.

University will argue Paula was attracted to the student housing on campus because of the reduced rates. Paula asked if it was safe to move in. Although Paula was told that that it was safe to move in. she was aware of the previous bacterial infestation and decided to move in based on her own knowledge. Since Paula was aware of the bacterial infestation her conduct of moving in falls below the standard of care to which Paula should have conformed to protect her own safety.

However, Paula will contend that she did ask the University's Director of Housing if it was safe to move in and received the Director's assurances her that it was safe. Since Director presumably had personal knowledge of the safety of the student housing, Paula acted reasonably in her reliance on the Director's assurance of safety.

Hence, Paula acted reasonably and was not contributorily negligent.

Last Clear Chance

If the court does find that Paula contributed to her own injuries, she will argue the Last Clear Chance defense. 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.

University failed to check and monitor the student housing for bacteria infestation upon using the cheapest treatment method. University could have avoided Paula's illness if it had monitored the situation to discover the purging method was not effective, and thereafter performed a more effective treatment at the housing.

Thus, University 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, the amount of plaintiff's negligence is apportioned between the responsible parties according to fault.

University will argue since Paula's conduct fell below the standard of care owed, the court will apportion University's proportion of fault against Paula's and render judgment accordingly. However, as discussed above, since Paula's conduct did not fall below the standard of care owed to her, comparative negligence is not 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.

University will argue since Paula was aware of the previous infestation she had knowledge she could become sick for the bacteria. Thus, by moving into the student housing, with knowledge of the prior infestation, Paula had comprehension and an appreciation of the danger, and voluntarily elected to encounter that danger.

However, Paula was not aware the bacterial infestation still existed in the housing. In fact, Paula asked for and received assurances of safety from University's Director of Housing before she decided to move into the housing. Hence, she did not have knowledge, comprehension, and an appreciation of the danger such that she voluntarily elected to encounter it.

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

Art v University

Vicarious Liability

Defined and discussed in Paula v. University

Negligence

Defined supra.

Duty

Defined and discussed supra.

Breach

Defined and discussed supra.

Actual Cause - Successive Tortfeasors

"But for" University's failure to adequately monitor and failure to warn of the bacterial infestation Art would not have become ill with the bacterial infection. Further, Paula's act of stuffing Art's pillow into the ventilator duct, Art would not have become ill. Therefore, the successive negligent acts of University and Paula resulted in Art becoming seriously ill due to the bacteria infestation that existed in the student housing.

Therefore, University is the actual cause of the Art's injuries

Proximate Cause

It is foreseeable while a bacterial infestation previously existed in the student housing, and although steps were taken to remedy the situation, the bacterial infestation could still exist, or come back. Thus, when Art became ill from the same bacterial infection it was foreseeable.

However, University will contend that Art only became sick from the bacteria when Paula stuffed his pillow into the ventilator duct in order to accumulate as much bacteria as possible. Moreover, Paula's conduct was intentional, creating an intervening act releasing University from liability.

While University has some merit in its argument, it is still likely that the court will find that University's act of allowing the bacterial infestation to exist in the student housing with knowledge

that this had occurred previously, it is foreseeable that students, including Art, would become sick.

University is the proximate cause of Art'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 supra.

University will argue since Art was aware of the previous bacteria infestation he had knowledge that he could become sick for the bacteria. Further, Art stated that "at that price, it's worth the risk." By his moving into the student housing with such expressed statement acknowledging and assenting to the risk, Art had comprehension and an appreciation of the danger, and voluntarily elected to encounter that danger.

However, Art was not aware that the bacterial infestation still existed in the housing. Art was with Paula when she asked if it was safe to move in. Based on the Director of Housing response that it was safe he decided to move in. Hence, in the face of Director's assurances of safety, he was not aware of the risk and did not voluntarily encounter the risk.

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