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Course **F17 Torts-Carey**

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Section 1	30	152	181
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Fred v. Jane, Battery

Duty: 13. Battery: Harmful Contact

An actor is subject to liability to another for battery if

A. he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and

B. a harmful contact with the person of the other directly or indirectly results.

Applying this rule, we see that Jane did intend to cause a battery to her husband, Chip. Under the transfer of intent rule, this intent to cause physical harm to Chip may be transferred to Fred. Jane took an eggroll and threw it at Chip's head. He then ducked and the eggroll hit Fred in the eye. She meant to cause this offensive and harmful contact, and via the transfer of intent, she intended to harm Fred, satisfying the A requirement. The contact did occur, satisfying the B element. She was enraged about the affair



and Chip's denial and purposefully threw the eggroll at her husband's, and thus Fred's, head.

If the Joyful House were in a single intent district, Jane would satisfy that as she did in fact cause the offensive contact, using the eggroll as an agent to perform her battery. She would also be liable in a dual intent district, as she both threw the eggroll and caused the injury and, it may be inferred because she was "enraged" that she was trying to hurt her husband and thus she is liable for the harmful contact as well.

Causation:

But-for test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was the but-for cause of the plaintiff's injury.

Under the but-for test, Jane would prove to be the but-for cause of Fred's injury. Had Jane not thrown the eggroll, it would not have landed in Fred's eyes. After all, eggrolls do not usually just go flying off by themselves. But-for her conduct, the harm would not have occurred.



Substantial factor test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was a substantial factor in causing the plaintiff's injury.

Under the substantial factor test, Jane would also be liable for Fred's injury. After all, Jane's conduct of throwing the eggroll was a substantial factor in Fred's injury as the eggroll hit his eye. Although Chip was the one who moved out of the way and allowed for the eggroll to hit Fred in the eye, the end result of the eggroll hitting Fred, who was assumingly behind Chip and had been long enough for Jane to know, or reasonably should have known, of his presence. Thus the chain of causation was not broken because of Chip's ducking out of the way. Chip's move was not an intervening act and Fred's injury was very foreseeable, thus Jane's conduct also satisfies the substantial factor test.

Damages:

Fred would be able to theoretically collect the 200,000 dollars in past medical expenses as well as the additional

100,000 in future medial payments. He would be able to collect 200,000 in past lost wages and another 1,000,000 in future lost wages. He would also likely to be able to collect for any past and future suffering (he definitely suffered in the past as we are told he "screamed in pain" as the eggroll punctured his eye) and as he can no longer work as a pilot, he will likely suffer in the future. That also goes into his loss of enjoyment of life, which, if he is in a jurisdiction where it is counted as pain and suffering, will be combined with that. If the jurisdiction allows for him to recover LOEL on its own, he will recover for being unable to fly, struggling in life with Wanda and their loss of tennis play, and potentially never being able to eat eggrolls again. There is also a possibility that he will be able to recover punitive damages from Jane. To test this, we will look at the Gore Guideposts.

1. The degree of reprehensibility of the defendant's conduct
>The harm caused was physical as opposed to economic?

Yes, the harm was physical. He got hit in the eye and no longer has any depth perception.

>Conduct evidence of an indifference to or a reckless disregard of health and safety of others?

Yes, Jane was throwing an eggroll without caring who is

might have hit if Chip, the intended victim, ducked.

>Target of the conduct has financial vulnerability.

Not really given the fact pattern. It may be assumed that making so much money and being big in the tennis scene are more wealthy pursuit, but given the facts, I cannot say with any authority whether Fred was financially vulnerable in respect to Jane or not. (On the contrary, I assume Jane might be more vulnerable as if Chip ever had a chance to meet the mail woman, then he was likely at home a lot and possibly out of work because it sounds like they have no children to take care of... unless he worked from home? idk. nevermind.)

>Conduct involved repeated action or was an isolated incident

Somewhat isolated, though the throwing did not stop at Fred even though Jane had already seen some of the harm that resulted from her actions.

>Harm was the result of intentional malice, trickery, or deceit or mere accident

It was very clearly the result of intentional malice.
2. Disparity between the actual or potential harm suffered by the plaintiff and the punitive damages awarded

We do not have enough information in the facts about potential punitive damages and their amount versus the harm

suffered.

3. Difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

Again, we do not have enough information in the fact pattern.

Given the above, it seems unlikely that the jury would award punitive damages as the purpose is to punish the conduct and Jane has probably already suffered enough having to pay so much, being cuckolded by her husband and mail carrier, and getting in trouble for just throwing some appetizers.

Defenses:

He assumed the risk when he sat behind a known adulterer!
(just kidding i'm stressed)

Loss of consortium: Wanda v. Jane

Wanda could sue for loss of consortium as the wife of Fred.

She would likely receive damages for loss of society and companionship (they are no longer able to play tennis

together). She would have to show that they had a strong relationship before the incident, which they likely did as they were out to each and tennis regulars. They have also started to grow apart, even though there is the potential that a shared-netflix binge watch will bring them closer together.

Wanda v. Jane (NIED)

Wanda could sue Jane for NIED as she suffered emotional distress from watching her husband's injury. She would likely not have an IIED claim as Jane had no knowledge that she was the wife of Fred and thus did not reasonably foresee her immense emotional distress at seeing the flying eggroll.

She would not be a Direct Victim and it is unlikely that she would fit into the Fear for One's Own Safety group as the eggroll seemed to hit Fred by surprise and thus Wanda was not fearful by nearly being missed by the flying appetizer. She would thus most likely recover under the Bystander Liability.

1. Impact Rule:

The plaintiff suffers sever emotional distress from perceiving the death or serious injury of an immediate family member and is somehow touched by the defendant



Wanda would not satisfy this rule as she was not touched by either Jane or the eggroll.

2. Zone of Danger Test:

Allows one who is himself or herself threatened with bodily harm in consequence of the defendant's negligence to recover for emotional distress resulting from viewing the death or serious injury of a member of his immediate family. It is unlikely that she would recover in this jurisdiction as she was seemingly not in the zone of danger of the flying eggroll, though it is possible as we don't really know the layout (however we can infer it is unlikely as eggrolls were not flying will nilly, only pork buns later on, but this is for the first eggroll).

3. Foreseeability Test:

Bystander may recover damages for emotional distress if: he is closely related to the injured victim, emotional injury is caused by contemporaneous sense perception of even or conduct that causes injury or by arriving on the scene soon after and before substantial change occurred in victim's condition or location, victim's injury is substantial, resulting in death or serious physical injury, bystander's emotional injury must be serious beyond that which would be



anticipated in a disinterested witness and is not the result of an abnormal response.

In a jurisdiction applying this rule, it is likely Wanda would recover as she was the wife of Fred, she saw the incident take place and thus had immediate sense perception of the harm, she looked on in "horror" as her husband screamed in pain from his substantial injury, and most people, seeing their husband's eye punctured, would suffer from reasonably severe emotional distress.

Damages:

Wanda does not seem to need any damages except, perhaps, loss of enjoyment of life (pain and suffering depending on jurisdictional approach to LOEL if there even is one).

Defenses:

Is having dreams of flying appetizers really reasonable?

In most jurisdictions she would have to exhibit some physical manifestation of her distress. It is not clear that bad dreams are physical manifestations of said distress.

Maybe loss of consortium

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Phillip v. Jane (Negligence)

Duty: That of a reasonable prudent person under the same or similar circumstances in light of foreseeable risks of harm.

Jane had a duty to the foreseeable plaintiffs (anyone in the restaurant) to act reasonably. To act reasonably would be to not throw food around in a public space.

Breach: Unreasonable conduct in light of foreseeable risks of harm.

Jane breached the duty by throwing the pork buns. Although confronting your husband about an illicit affair does make one a little crazy, it was unreasonable (and mental incapacity is not a defense) to start throwing food. She did not act as a reasonably prudent person would. Even after Chip had left, she continued to throw food at the door. That was very unreasonable of her and it breached her duty to be reasonably prudent.

**Causation:**

But-for test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was the but-for cause of the plaintiff's injury.

Under the but-for test, we can reasonably say that Phillip would not have tripped on the cat and broken his arm had Jane not thrown the pork bun in the first place. But-for Jane's conduct, Phillip's arm would not have been broken.

Substantial factor test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was a substantial factor in causing the plaintiff's injury.

Likewise, Jane's conduct was a substantial factor in causing Phil's harm. His arm would not have been broken had he not tripped on the cat. Likewise, even the cat had not walked in, the tripping was a foreseeable act and thus the cat is not an intervening cause.

Scope of Liability:

1. Foresight Rule: The outcome must be foreseeable.

The outcome of Phillip tripping was very foreseeable. A pork bun -- multiple pork buns -- were on the floor and anyone entering or exiting might have fallen.

2. Surprising Rule: When the connection between the defendant's conduct and the plaintiff's injury is too remote, attenuated, or surprising to make it fair to impose liability on the defendant.

It was not surprising that he fell as tripping on the cat was a direct cause of Jane's conduct.

3. General Types of Harm Rule: A defendant is liable for general types of harm suffered by the plaintiff that are the reasonably foreseeable risks of the defendant's conduct, but the extent of the harm and the precise manner in which the harm occur do not have to be foreseeable.

It was a reasonable harm from throwing food that someone would fall, the manner of occurrence was even somewhat foreseeable. Although a cat coming in and eating the pork bun is not foreseeable, tripping because of the pork bun and hurting your arm because of the fall is very foreseeable.

4. Intervening Act Rule: a defendant is liable even if there is an intervening act so long as the intervening act could have been reasonably foreseen.

Does not apply as the cat is not an intervening act and

does not break the line of causation.

Damages:

Jane is liable for all past and future medical expenses (the 3,000), though not the 2,000 as that was an assumed-risk aspect of Phillip's choices.

Defenses:

She does not have any defenses as the eggshell skull rule means that even though Phillip would not have been seriously injured had he not already been sick, Jane is required to "take the plaintiff as is."

Chip v. Jane (assault)

Duty: 21, Assault

1. An actor is subject to liability to another for assault if: A, he acts intending to cause a harmful or offensive contact with the person of the other or a third person or an imminent apprehension of such a contact, and B, the other is thereby put in such imminent apprehension.
2. An action which is not done with the intention state above does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing an, therefor, would be negligent or reckless if the risk threatened bodily harm.

Jane did throw the eggroll at Chip which he might have seen coming. After that, as she kept lobbing food at him, he kept ducking out of the way, reasonably showing his apprehension of a physical harm. She caused an imminentness apprehension of harm from flying food. He even ran out of the restaurant from fear of the pork buns.

Causation:

But-for test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was the but-for cause of the plaintiff's injury.

Under the but-for test, Chip's apprehension would not have come about without Jane's conduct of scaring him. But-for Jane's intend to throw the food, Chip would not have had the fear of future pork buns hitting his face.

Substantial factor test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was a substantial factor in causing the plaintiff's injury.

Under the substantial factor test, Jane was a substantial factor in Chip fearing the future battery of the pork buns.

Damages:

Given the facts, it seems as though Chip has no resulting harm from his assault and thus would be unlikely able to collect any pecuniary damages from the assault.

Defenses:

They are married and although in most jurisdictions, spouses can now collect for intentional torts, there is a possibility that Chip would not be able to bring a tort claim again Jane at all.



other potential weak claims:

Everyone in the restaurant v. Jane for NIED, Fear for One's Own Safety: we do not know how crazy the pork buns were going, but perhaps Jane and Chip were in the back and thus she had to throw them over everyone to get to the door and everyone was terrified.

Synagogue v. Jane for contribution/indemnity? I don't think you can have that unless they are in a respondeat superior relationship, but maybe?

Jane v. Chip/Mary for IIED.

People v. Joyful House for criminal acts of third parties. Have Jane and Chip, known guests at the Joyful House, been violent before this?

Jane v. Joyful House for negligence (though I think it there would be a statute and thus negligence per-se) for not monitoring her alcohol intake as she drank a lot without eating and thus may be responsible for her

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negligence



Question 2!

Robert v. Pie Ladies (Negligence Per-Se)

Duty: Food Code Section 12.2 Food Preparation St. temporary food service establishments shall be conducted in an enclosed shelter or booth that conforms with the following requirements: a) floors shall be of tight wood, asphalt, or other cleanable materials; and b) ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment from weather. Walls and ceilings of the food preparation areas shall be constructed in a way that prevents the entrance of insects or other vermin. Screening material used for walls, doors, or windows shall be at least 16 mesh to the inch...

If plaintiff is class of persons intended to be protected by the statute AND injury was the type of harm against which the law was designed to protect.



Yes, the statute was meant to protect the patrons of the food establishment as it designated how to keep temporary food preparation places clean, it can be inferred that patrons like Robert were the intended benefactors of the clean food, which the statute makes.

The harm -- eating unclean food and getting ill -- was, given the facts, the likely harm the statute was meant to protect against by keeping preparation areas clean.

Breach: in the four jx approaches:

Strict Negligence Per-se: Statute violation = breach.

The statute was violated as the dirt floors do not count as something really "cleanable."

Negligence Per-se: violation of the statute creates a presumption of breach. As none of the excuses apply, it is likely that the Pie Ladie's violation of the statute was a breach of their duty.

Negligence Per-se Lite: violation of the statute creates a presumption of breach which can be rebutted with reasonableness.



Not having wood floors seems unreasonable.

Violation of Statute as Evidence of Breach: Unreasonable conduct in light of foreseeable risks of harm.

The conduct of not having a really clean-able floor was perhaps unreasonable.

Causation:

But-for test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was the but-for cause of the plaintiff's injury.

However, violation of the statute does not show causation. It cannot be inferred from the facts that the entrance of the mouse was caused by the violation of the statute. Under preponderance of the evidence, having a dirt floor (which is the only clear breach of statute) is not necessarily the but-for cause of the mouse getting in. Had they wood floors, would a mouse not get in? (See above when a cat walked in from the door with a patron and no one noticed).

Substantial factor test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was a substantial factor in causing the plaintiff's injury.

Likewise, it cannot be said with any authority that a mouse entering the premises was caused substantially by the dirt floors.

Scope of Liability:

1. Foresight Rule: The outcome must be foreseeable.

No, eating a mouse is not the foreseeable outcome of violating the statute.

2. Surprising Rule: When the connection between the defendant's conduct and the plaintiff's injury is too remote, attenuated, or surprising to make it fair to impose liability on the defendant.

It is likely unfair to impose liability as the injury was too remote, attenuated, or surprising.

3. General Types of Harm Rule: A defendant is liable for general types of harm suffered by the plaintiff that are the reasonably foreseeable risks of the defendant's conduct, but the extent of the harm and the precise manner in which the harm occur do not have to be foreseeable.

The harm was not a reasonably foreseeable result of the Pie Ladies' conduct.

4. Intervening Act Rule: a defendant is liable even if there is an intervening act so long as the intervening act could have been reasonably foreseen.

The mouse was definitely an intervening act to Robert's harm and the result of the harm was not foreseeable.

Damages:

If none of the above matters and they are found liable, the Pie Ladies would be responsible for the 8,000 in medical bills Robert incurs, including any for future medical bills, any lost wages, definitely some pain and suffering, and likely some LOEL, if applicable.

Defenses:

No defenses apply.

Question 2!

Robert v. Pie Ladies (Negligence)

Duty: That of a reasonable person under same or similar circumstances in light of foreseeable risks of harm.

The bakers did have a duty to make sure their food was good and edible and not filled with dead mice.

Breach: Res Ipsa Loquitor: 1) accident must be of a kind that does not occur in the absence of negligence. 2) must be caused by agency or instrumentality within the exclusive control of the defendant. 3) must have not been due to any voluntary action or contribution on the part of the defendant. 4) (in some jx) the explanation for the harm's occurrence is more accessible to the defendant.

Although it is not clear exactly what the negligent conduct was, the mouse ended up in the pie and that generally does not happen in the absence of some negligent conduct. The

pie was in the Pie Ladie's shack for the past twenty four hours and it was very unlikely tampered with by a non-Pie Ladie at some point during the past day. They were in exclusive control of the pie. Robert did not eat the pie knowing there was a mouse in it and thus did not act voluntarily or with any contribution toward the action.

Causation:

But-for test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was the but-for cause of the plaintiff's injury.

But for the negligent conduct, whatever it was, there would not have been a mouse in Robert's food. It is highly likely that but-for his contact with the mouse, he would not have contracted HPS.

Substantial factor test: Requires plaintiff to prove by preponderance of the evidence that more likely than not the defendant's wrongful or unreasonable conduct was a substantial factor in causing the plaintiff's injury.

Likewise, the negligent conduct that give Robert the mouse

in his pie was a substantial factor to his contraction of HPS. Mice don't end up in pies without some negligent conduct, thus the conduct was a substantial factor of the mouse being in the pie.

Scope of Liability:

1. Foresight Rule: The outcome must be foreseeable.

The outcome of eating a mouse was foreseeable, but as the conduct is unknown, it cannot be said that via that conduct the mouse in the pie was a foreseeable consequence.

2. Surprising Rule: When the connection between the defendant's conduct and the plaintiff's injury is too remote, attenuated, or surprising to make it fair to impose liability on the defendant.

Again, under res ipsa the conduct is unknown and thus this does not apply.

3. General Types of Harm Rule: A defendant is liable for general types of harm suffered by the plaintiff that are the reasonably foreseeable risks of the defendant's conduct, but the extent of the harm and the precise manner in which the harm occur do not have to be foreseeable.

Again, under res ipsa the conduct is unknown and thus this does not apply.

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Damages :

The Pie Ladies would be responsible for the 8,000 in medical bills Robert incurs, including any for future medical bills, any lost wages, definitely some pain and suffering, and likely some LOEL, if applicable.

Defenses :

No defenses apply.

Robert v. Cooke County Fair (vicarious liability)

Rule: An employer is liable for the negligent conduct of an employee acting within the scope of the employment, and within any deviation from employment which constitutes a detour and not a frolic.

Depending on what the unknown conduct was, the Pie Ladies were acting within the scope of their employment and thus Cooke County Fair may be liable (it is unclear the nature of their relationship, though as they are a yearly eatery available at the fair, they might fit the definition of employees of the fair).

Damages :

The fair would be liable for 100% of the damages, including the 8,000 in medical bills Robert incurred, any future medical bills, any lost wages, definitely some pain and suffering, and likely some LOEL, if applicable.

They could then sue the Pie Ladies for indemnity.

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