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Section 1	2671	13169	15820
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Total	3186	15669	18832

Answer-to-Question-_1_

Pierre v. Bubba: Battery

1. Rule: 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 and (b) a harmful contact with the person of the other directly or indirectly results.

Analysis:

(a): Did the actor intend to cause a harmful contact?

Intent to contact: Bubba appears to have intended to contact. He first approached Pierre, then voluntarily raised his arm and punched Pierre in the face. However, did he intend to cause a harmful contact?

Intent to cause harmful contact: We are given no facts on whether or not Bubba intended to harm Pierre. However, a punch to the face is normally expected to cause harm and Bubba would therefore know of the result and intend the result. However, there is a question of whether or not a mentally ill person could have the ability to form an intent to harm beyond simple contact. This would be a question for the jury and one which would only arise if in a dual intent state. Most jurisdictions require both the intent to contact and the intent to harm to both be present. however, a few jurisdictions have recognized a single intent rule that only requires the intent to contact.

Conclusion: Bubba would be liable in a single intent jurisdiction

because he voluntarily raised his hand and made contact. In a single intent jurisdiction, there would be a question of whether a mentally ill person would be able to form the intent necessary to intend harm as well as mere contact.

2. Causation

Rule: The plaintiff must establish "but for" the alleged wrongful conduct, the plaintiff would not have been injured.

Analysis: But for the Bubba punching Pierre in the face, he would not have sustained a broken nose. This is a simple analysis as it is clear that the punch to his face is what broke his nose.

3. Damages

a. Past and Future Medical Expenses:

Rule: A defendant is liable for any Medical expense incurred as a result of their conduct. A plaintiff can recover for the full amount of past medical expenses even if a third party (like an insurance company) has paid for some of the costs. However, the plaintiff is likely to be held to a subrogation clause of the insurance policy which will require him to pay the insurance company back from any money awarded.

Analysis: The plaintiff can recover any medical expenses that resulted. The defendant is liable for all the injuries as any subsequent injuries that occurred as a result of his conduct, he is liable for. This means that because the plaintiff ran out of the store in fear, his fall is also accountable to the defendant. If there are any expected future medical costs, those will have to be discounted to the future and account for inflation. There

are three possible ways in which this is done: (1) Market Interest Method, (2) Rea interest Method, and (3) Cancel-out Method. Market Interest Method is the most frequently used but it will be based on jurisdiction. The future medical care will also be mitigated to only reasonable and necessary future medical cost.

b. Past and Future Lost Wages

These are unavailable as the plaintiff did not suffer any lost wages.

c. Past and Future Pain and Suffering

Rule: A plaintiff can recover for any pain (physical suffering) and suffering (mental anguish) which result from the defendant's conduct.

Analysis: the plaintiff will be able to recover for any pain and suffering he incurred as a result of the incident. This number will be calculated based on similar injuries and the awards given then.

d. Loss of enjoyment of life

Rule: Depending on the jurisdiction this may be rolled into pain and suffering or may be regarded as its own area of damages. This is awarded based on the loss of enjoyment of life that the individual may have suffered as a result of the injuries. In some jurisdictions, some level of cognitive awareness of the loss of enjoyment of life is required in order for a plaintiff to receive loss of enjoyment of life.

Analysis: The ruining of Pierre's trip which was a lifelong dream

may be considered in Loss of enjoyment of life. It may also simply fall under his mental anguish. This is also a number that would be defined based on previous cases.

e. Punitive Damages

Rule: Gore Guide Posts

1. The degree of reprehensibility of the defendant's misconduct.

This is measured by

- a. the harm caused was physical as opposed to economic.
- b. The tortious conduct evinced an indifference to or a reckless disregard of the health or safety of other.
- c. The target of the conduct had financial vulnerability.
- d. The conduct involved repeated actions or was an isolated incident.
- e. The harm was the result of intentional malice, trickery, or deceit, or mere accident.

2. The disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award.

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

The court also prefers to award damages within a single digit ratio between the previous forms of loss and punitive damages.

4:1 is the suggested ration but can be mitigated in either direction depending on the severity of the actions.

Analysis: Because this is a single incident and the harm was minimal, the court is likely to award a small punitive damage. This is also more likely because it is an individual rather than

a corporation who would have more funds available to pay the plaintiff.

Pierre v. Clark and StopShop: Negligence (in regards to Bubba's presence)

1. Vicarious Liability

Rule: An employer is liable for an employee's actions when they are acting within the scope of their employment.

Analysis: Any negligence on the part of Clark will also be the liability of the company as he was the cashier during the incident and was not acting outside of the scope of his employment.

2. Duty

Rule: General Duty- One has a duty of reasonable care to foreseeable plaintiffs with regard to foreseeable risks of harm arising from one's conduct.

A property owner owes a duty to take reasonable precautions to protect invitees from foreseeable criminal acts of a third party when he act is foreseeable under the totality of the circumstances test. The totality of the circumstances test states that a court considers all of the circumstances surrounding an event, including the nature, condition, and location of the land, as well as prior similar incidents, to determine whether a criminal act was foreseeable.

Analysis: Clark has this general duty to everyone who enters his

store. Pierre was a foreseeable plaintiff as he was a customer. There was also a foreseeable risk of harm that Bubba would approach the customer who was not acquainted with his aggressive and odd behavior. Bubba had previously threatened Clark himself with a Swiss Army Knife. This circumstance also passes the totality of the circumstances test used in the duty to protect against criminal activity. The store, and Clark, knew of the possible dangerous conduct of Bubba, especially as Clark himself was threatened before.

3. Breach

Rule: Unreasonable conduct in light of foreseeable harm.

Analysis: Clark knew of the possible danger that Bubba was to himself and other patrons of the shop. Either the general duty, or the limited duty placed on a shop operator and his patrons, meant that Clark had a duty to protect the patrons from Bubba's actions. It was unreasonable to continue to allow Bubba into the store when Clark and everyone in the town knew him to be a danger to others.

4. Causation

Rule: The plaintiff must establish "but for" the alleged wrongful conduct, the plaintiff would not have been injured.

Substantial Factor: Whether the defendant's wrongful conduct was a substantial factor in contributing to the plaintiff's injuries.

Analysis: As this is an instance of multiple tort-feasors, the substantial factor test should be used. Was the conduct of allowing Bubba to enter the store a substantial factor in

contributing to the plaintiff's injuries. While the store itself did not cause Bubba to hit Pierre, they did not take any precautions to prevent Bubba from injuring someone. Therefore it is a substantial factor that contributed to his injuries to allow Bubba access to the store.

5. Scope of Liability

Rule:

- a. Foresight Test: We limit liability when the connection between the conduct and the injury is too remote, attenuated, or surprising to make it fair to impose liability on the defendant.
- b. 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. If the intervening act was not reasonably foreseeable, the intervening act is superseding and the defendant is not liable.
- c. General Types of Harm Rule: A defendant is liable for the general types of harm suffered by the plaintiff that are the reasonably foreseeable risks of the defendant's conduct. The extent of harm and the precise manner in which the harm occurs, do not have to be foreseeable.

Analysis: The intervening act rule does not apply as there was no intervening act. Under the foresight test, Clark and the store are liable because it was foreseeable that Bubba would injure someone as he had expressed aggressive behavior before. Under the General Types of Harm Rule Clark and the Store are also liable because if a physical altercation did occur a punch is likely and

one to the face often results in a broken nose. It would be reasonably foreseeable that Bubba would get into a physical altercation with another patron and would therefore engage in fighting tactics such as punching which results in broken noses.

6. Damages:

Medical expenses and pain and suffering (including loss of enjoyment of life) as discussed above would also be available here.

Pierre v. Clark and Store Negligence for Condition on Land

1. Duty:

Condition on Land: The water pooling near the ice machine may be considered an activity. It was currently leaking while plaintiff was shopping. However, if it had been forming over the period of a few hours or a few days, it might be considered a condition on land. If it is an activity then the general duty rules apply. If it is a condition, then either the status trichotomy or the reform rule applies.

A) Status Trichotomy:

Rule: An invitee enters another's property with the owners knowledge and for the mutual benefit of both.

A licensee enters another's property with the owners consent and for his own convenience or on business with someone other than the owner.

A trespasser enters another's property without any lawful authority, permission, or invitation.

Analysis: Pierre is an invitee because he entered with the owners knowledge and permission for the mutual benefit of shopping in the store.

Rule: The owner owes a duty to a licensee to use reasonable care to protect the invitee from conditions that create unreasonable risk of harm of which the owner/occupier knows or by exercise of reasonable care should have known.

Analysis: A pool of water on the floor creates the risk of a slip and fall. The owner/occupier should know of the condition with reasonable inspection of their premises throughout the day.

B) Reform Approach: In the management of one's property an owner has acted as a reasonable person in view of the probability of injury to others and although the plaintiff's status as a trespasser, licensee, or invitee may in the light of the facts give rise to such status have some bearing on the question of liability, the status is not determinate.

Analysis: The same analysis applies here. There is a duty because they are an invitee (which only increases the likelihood of liability) and the management did not take proper precautions towards ensuring safety from slips and falls.

C. General Duty

If it fails under status trichotomy, the general duty still applies. Rule: One has a duty of reasonable care to foreseeable plaintiffs with regard to foreseeable risks of harm arising from

ones conduct.

Analysis: The plaintiff is foreseeable as a patron of the store. The harm is foreseeable because water on the floor will cause slip and falls.

2. Breach

Rule: Unreasonable conduct in light of foreseeable harm.

Analysis: The unreasonable conduct would be not monitoring the property for water spills throughout the day. This is especially true for areas near machines that are water based, such as ice machines. It is common for ice machines to leak, therefore the store should be sure to regularly monitor the area for possible water on the floor. If they had properly monitored the premises, the leak would have been discovered and could have been dealt with. The store could have fixed the leak and cleaned up the water or posted a sign while they were waiting for a repair man. The store failed to take any of these precautions.

3. Causation

Rule: "But for" test.

Substantial factor: whether the defendant wrongful conduct was a substantial factor in contributing to the plaintiff's injuries.

Analysis: Because there are multiple tortfeasors, substantial factor is the correct analysis to use. The water being placed on the floor was a substantial factor in the plaintiff falling. If there had been no water on the floor the plaintiff would most likely not have fallen, even though he was fleeing the store due to the actions of Bubba.

4. Scope of Liability

Rule:

- a. Foresight Test: We limit liability when the connection between the conduct and the injury is too remote, attenuated, or surprising to make it fair to impose liability on the defendant.
- b. 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. If the intervening act was not reasonably foreseeable, the intervening act is superseding and the defendant is not liable.
- c. General Types of Harm Rule: A defendant is liable for the general types of harm suffered by the plaintiff that are the reasonably foreseeable risks of the defendant's conduct. The extent of harm and the precise manner in which the harm occurs, do not have to be foreseeable.

Analysis: This passes the foresight test because it is likely that a person walking, let alone running, will slip and fall on

5. Damages:

Any medical and pain/suffering damages (as previously discussed) that the defendant received due to the slip and fall. Combined with the previous analysis this will increase the liability to all injuries. However, it may all be mitigated because Bubba was the one who intentionally injured and scared the plaintiff. The most likely result is joint and several liability.

Joint and Several Liability

Rules: When two or more, independently negligent parties cause a single indivisible harm to the plaintiff, each negligent defendant is jointly and severally liable for all of the injuries, when the injuries are indivisible and causation cannot be apportioned with reasonable certainty. When there are two or more tortfeasors, the burden shifts to the defendant to determine apportionment. When you can't determine a reasonable degree of certainty, joint and several liability applies.

Application to damages: All the defendants are responsible for 100% of the damages. However, the plaintiff can only collect one full compensation. The defendant who pays can sue for indemnity (applies to vicarious liability to have the employee pay for their conduct) or contribution (between defendants to have each pay for their equal share of damages).

Analysis: In this instance, both Clark (and the store through vicarious liability) are responsible for the damages. However, it will be more likely that the store will be able to pay.

Therefore, they will pay all and then sue Bubba under Contribution for his equal share. It is also possible that the store will sue Clark for his portion of the damages under indemnity.

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Answer-to-Question-__2__

Yvonne v. Randy's Negligence Per Se Light

Duty:

1. Was the plaintiff a class of persons the legislature sought to protect?

Most likely the state was concerned with protecting other patrons from sanitation problems caused by having dogs in restaurants. Yvonne was a patron in the restaurant. Therefore she would fit the class of persons the legislature sought to protect.

2. Was the harm the type of harm that the legislature sought to prevent?

The legislature most likely wished to prevent any kind of illness that might arise from having an unclean animal in the restaurant. This would include E. Coli infection.

Breach:

Unreasonable conduct in light of foreseeable harm.

Part A of the statute was followed, however Part B was not. The waitress failed to wash her hands immediately after touching the dog. She used hand sanitizer instead, which most do not consider an adequate substitute in the food industry.

Causation:

Rule: "But for" Test. A reasonable inference of causation based on facts and conditions is sufficient for a showing of causation, so long as the inference is more reasonable and probable than another explanation. If a negligent act was deemed wrongful

because that act increased the chances that a particular type of accident would occur, and a mishap of that very sort did happen, there is enough to support a finding by the trier of fact that the negligent behavior caused the harm.

It would be hard to say within a reasonable certainty that it was the waitress' actions which introduced E. Coli into Yvonne's food. There are many other places that it might have been introduced, including any processing plant that ingredients went through prior to arriving at the restaurant. However, the statute was put in place to prevent this type of harm. Therefore this would be enough for a trier of fact to determine causation. The defendant then is responsible to bring up evidence that the breach was not such a but for cause.

Defense:

Rule: Under Negligence per se light a statutory violation creates a presumption of breach but the defendant may try to show reasonable care notwithstanding statutory violation.

Analysis: In this instance, the waitress could bring up that she did use hand sanitizer after having touched the dog and did not directly handle the food, rather she touched the plate. A jury is likely to find that this would not be sufficient to satisfy the requirement. Hand sanitizer is not as efficient at killing off bacteria as washing ones hands would be. Also, while she did not touch the food, she touched the plate. That would be sufficient to contaminate food due to the rate at which E. Coli reproduces. The restaurant is better off trying to find some other source of

the E. Coli, such as a manufacturer or producer of the food which they were unaware of. This may bring up other possible areas of negligence, such as improper food preparation. However, it would be better to source the E. Coli to someone else, rather than keep it sourced from the dogs on the patio.