

Empire College of Law
Torts II
Final Examination
Spring 2024
Prof. J. Stogner

Instructions:

Answer Two (2) Essay Questions

Answer 25 Multiple-Choice (MBE) Questions

Time Allotted: 3 Hours

QUESTION 1
(One Hour)

Denny owned Denny Drones, a sole proprietorship. The company manufactured and sold small drones, which flew with the use of external propellers and were equipped with a hanging claw to carry items and a tiny video camera. The drones came with a brochure which stated: "Perfect for the private transport of items between neighbors, overhead videography, and general frolic. Fun for the whole family and safe for use by children age 10 and up." Paulo, a shoemaker, who coincidentally lived on the same street as Denny, purchased two of Denny's Drones. One day Paulo's ten-year-old twins, Tim and Tom, found the drones in Paulo's bedroom closet and, without Paulo's knowledge, took them out into the backyard, where they decided to engage in aerial combat with the drones. Paulo came out into the backyard just as the two drones, with Tim and Tom at the controls, collided in mid-air. A piece of external propeller flew off one of the drones and struck Paulo in the face, cutting him deeply.

Paulo was angry at Denny. After he was stitched up at the hospital, he came home and managed to repair one of the drones. He then flew that drone over Denny's house, hovering it there 50 feet above Denny's backyard, videotaping, to collect intel on Denny. Later, viewing the video, Paulo was surprised to see that his drone had videotaped Denny sunbathing in the nude. Paulo posted the video of Denny sunbathing in the nude on Paulo's Facebook page. It was viewed by hundreds of people. Humiliated, Denny wrote on his Facebook page that Paulo's shoes were "purposely designed by Paulo to fall apart," and that "no one should buy Paulo's lousy shoes." Denny's Facebook posting was read and shared by hundreds of people. Denny's post was untrue. Paulo's shoes were actually excellently crafted and long lasting. After Denny's Facebook post, Paulo lost 25% of his business.

What are Paulo's potential causes of action against Denny, and what are Denny's defenses, if any? Analyze.

What are Denny's potential causes of action against Paulo, and what are Paulo's defenses, if any? Analyze.

QUESTION 2
(One Hour)

Dilbert owned a deli in which he employed Dora. One day Primpy entered the deli, sat down at a table and ordered a pastrami sandwich. As Dora was delivering the sandwich on a porcelain plate Primpy said rudely: "Put it down and leave me alone." Offended, Dora carelessly slammed the plate down on the table in front of Primpy and a small piece of porcelain broke off the plate, flew up, and embedded in Primpy's right eye. Primpy screamed and Dilbert ran out from the kitchen. He immediately ushered Primpy out to his car and drove her to the hospital. In the hospital waiting room, angry that Dilbert would employ such a careless waitress, Primpy called the police and falsely reported that on the way to the hospital Dilbert had threatened to kill her if she tried to sue for her injury. Dilbert was arrested and charged with criminally threatening Primpy. The case was eventually dismissed, because Dilbert had been secretly recording the ride to the hospital on his cell phone and the recording proved no threats had been made.

After the criminal charges had been dismissed, Primpy decided to open up a competing deli next door to Dilbert's deli. Her purpose in opening the deli was to drive Dilbert out of business. Primpy even lured Dora away from Dilbert's deli by offering her more money to work in Primpy's deli instead of in Dilbert's. Dora, who promised to be more careful when setting down plates, agreed to quit at Dilbert's deli and come to work at Primpy's deli. Before long, Dilbert's regular customers began to go to Primpy's deli instead of Dilbert's. He lost so many customers and so much money that he was forced to close. But Dilbert still had a lease on his closed deli so inside he set up massive speakers which he pointed at Primpy's deli, and opened all the windows. Dilbert played Slipknot and Nickelback albums at top volume all day, causing Primpy and her customers great annoyance. Primpy got so upset about the loud music one day that she rushed into Dilbert's closed deli while he was away, ripped the speakers out and threw them in a nearby dumpster.

What are Primpy's potential causes of action against Dilbert, and what are Dilbert's defense, if any? Analyze.

What are Dilbert's potential causes of action against Primpy, and what are Primpy's defenses, if any? Analyze.

Monterey College of Law

ID: _____ (Student ID)

Exam Name: Torts-ECL-Sp24-Stogner-R

Exam Date: May 2, 2024

File Name: _Torts-ECL-Sp24-Stogner-R_20240502212808111_final.xmdx 177

Exam Length: minutes (Started @May 2, 2024, 6:30 PM; Ended @May 2, 2024, 9:28 PM)

Downloaded: May 2, 2024, 8:41 AM

Uploaded: May 2, 2024, 9:29 PM

GRADE _____

Total Number of Words in this Exam = 3511

Total Number of Characters in this Exam = 20985

Total Number of Characters in this Exam (No Spaces, No Returns) = 17474

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Paulo (P) v. Denny (D)

Products Liability

Those in the chain of distribution are strictly liable for dangerous products.

Negligence

Negligence is the creation of an unreasonable risk to a foreseeable plaintiff, resulting in personal injury or property damage. It is comprised of four elements: duty, breach, causation, and damages.

Duty

Duty is the obligation (owed to those in the zone of danger) to act with due care (what a reasonably prudent person would do in the same or similar circumstances).

As a manufacturer of a product that will be placed in the stream of commerce for anyone to buy, a reasonably prudent person would craft a product that will not harm or injure a prospective buyer or user. Therefore, D owed a duty to P, and all other users.

Breach

Breach is the failure to act with due care.

By creating a product whose propellers easily detach when they come into contact with another object, which could easily harm those nearby, and which did fly off and injure someone, D breached his duty.

Causation

Causation is comprised of two parts: actual cause and proximate cause. Actual cause is the factual analysis showing the relationship between defendant's careless act and plaintiff's harm. Proximate cause is the reasonably close legal relationship between defendant's careless act and plaintiff's harm. Proximate cause may be broken four ways: remoteness, unforeseeability (in Wagon Mound jurisdictions), superceding intervening acts, and public policy.

But for D's creation of the dangerous drone with propellers which easily fly off, P would not have been struck in the face and cut deeply, therefore D actually caused P's harm.

Tim and Tom took possession of the drone and used it for combat, which is an independent act, completely separate from D's potentially negligent creation of the drone. Therefore, even if it was foreseeable that other would use the product, the fact that Tim and Tom used the drone for combat rather than its intended use likely constitutes a superceding intervening act which breaks proximate cause.

Damages

Damages requires proof of personal injury or property damage.

Paulo had to go to the hospital for stitches, therefore there was personal injury.

While there was a duty, breach, and damages, the fact that Tim and Tom intervened and used the drone in a way not intended likely means that P will not be successful in a cause of action for negligence.

Breach of Express Warranty

Express warranty is a written material or oral statement made by one in the chain of distribution which suggests that a product is safe, and which the user or consumer justifiably relies upon.

The drone came with a brochure from the manufacturer (i.e., someone in the chain of distribution) which told consumers that the product was safe for use for children 10 and up. Given that P had two 10 year old boys, it's very likely that he purchased not just one, but two drones, with the goal of giving the drones to his sons. Therefore, while the facts are not clear, there was presumably reliance. As such, there was likely a breach of express warranty. P likely has a cause of action for breach of express warranty.

Breach of Implied Warranty

All products that enter the stream of commerce have an implied warranty that the products will perform as expected. The warranty applies to anyone in the household.

The drone was intended for transporting items, videography, and general frolic. Therefore, P would be justified in expecting the drone to be safe for these activities. However, Tim and Tom were using the drones for combat, which was not contemplated by the manufacturer. Therefore, P will likely not succeed in a cause of action for breach of implied warranty.

Manufacturing Defect

A manufacturing defect is a flaw in one of many items produced which makes it unreasonably dangerous. It is governed by section 402A of the Restatement, which requires that the seller is

in the business of selling those goods and that there has been no substantial change in the condition of the product since it left the manufacturer's facility.

Here, there are no facts to indicate there was a defect in this particular drone which made the propeller particularly prone to flying off. Therefore, there is no cause of action for manufacturing defect.

Design Defect

A design defect is a flaw which causes every item produced to be unreasonably dangerous. A majority of jurisdictions require the plaintiff to submit an alternative design.

There are no facts to suggest that all drones manufactured have a defect which makes their propellers prone to flying off. Therefore, there is no cause of action for design defect.

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Failure to Warn

Failure to warn is the absence of a warning, or an inadequate warning, for dangerous products. There is a presumption that warnings would have been heeded.

Based on the fact the drone was intended to be used by families, there is no open and obvious danger. However, propellers spin quickly to propel the drone. Anything that spins quickly could be dangerous, since there is a risk of being cut. Furthermore, it is foreseeable that if the drone came into contact with another object, it could be damaged and eject broken pieces. Therefore, it's possible that a warning was necessary. Given that a warning was likely necessary, and no warning was included on the drone or in the packaging, there was a failure to warn. P likely has a cause of action for failure to warn.

Defenses

Because the manufacturer did not anticipate this kind of use, the manufacturer may be able to raise the defense of unforeseeable misuse.

Negligent Misrepresentation

Negligent misrepresentation occurs when the defendant makes a statement which (1) he knows is for a serious purpose, (2) that plaintiff will justifiably rely on it, and (3) that if erroneous, plaintiff will be injured in person or property. Plaintiff must suffer damages.

D provided a brochure which made a statement about the safety of the drones. D must have known that it was for a serious purpose since safety, particularly of a product with propellers which will be used by children, is vitally important. D must have known that P would rely on the statement since the brochure was clearly intended to persuade parents of children to purchase a drone that their children could use, inducing reliance by the parents. D must have known that

if the brochure was wrong that P could be injured based on the fact that a drone is a serious piece of equipment with fast-moving propellers that could easily and foreseeably injure someone. P was struck, cut deeply, and required stitches, therefore he suffered damages. Therefore, P likely has a cause of action for negligent misrepresentation.

Defamation

Defamation is a falsehood of and concerning plaintiff, which is published to a third party, resulting in reputational harm. Defamation may be oral (slander) or written/recorded (libel).

The facts tell us that it was false that P's shoes fall apart. The statement specifically names P, therefore it concerns P. The statement was posted online, therefore it was published. And it resulted in a 25% loss of business. While this is certainly harmful to P, there are no facts to suggest that readers of the post thought less of P or contemplated him in anyway. Therefore, there is no reputational harm and this is not defamation.

Injurious Falsehood

A falsehood maliciously published to a 3rd party with the intention of causing economic damage, and which results in damages.

The facts tell us the statement about the quality of the shoes was false. It was posted with malice because D was humiliated and presumably wanted to get even with P. The statement was published online. Because the statement relates specifically to P's livelihood-- making shoes-- it can be assumed that D was intended to damage P's business. The statement caused a 25% loss of business, so P did suffer damages. Therefore, P has a cause of action for injurious falsehood.

Interference with Prospective Economic Relations

The defendant intentionally acts in a way that interferes with plaintiff's economic expectancy. A majority of jurisdictions require that the act be wrongful.

We can presume that D acted intentionally based on the fact that he was humiliated and presumably wanted to get even with P. D specifically names P's shoemaking, which indicates his intention to interfere with P's shoemaking business by causing people to not buy his shoes. And D's act did interfere based on the 25% loss in business. The loss of sales was accomplished by wrongful act, because D had committed the tort of injurious falsehood (supra). Therefore, P has a cause of action for interference with prospective economic relations.

Prima Facie Tort

Defendant intends to cause economic harm to plaintiff, and does cause economic harm.

As previously established, D was humiliated and makes a statement specifically about P's shoemaking which presumably was intended to cause economic harm to plaintiff. The statements he made did cause economic harm since P's business suffered. Therefore, P has a cause of action for Prima Facie Tort.

D v. P

Trespass to Land

The intentional, unauthorized entry on the land of another.

P intended to enter D's land based on his goal of collecting intel on D. There are no facts to suggest that the D consented to the entry, therefore it was unauthorized. While P was not technically on the land because the drone was hovering over and not in contact with any part of D's property, D has control over some of the airspace over his property. Here, 50 ft is likely low enough to D's house that D could be considered have control over it. Therefore, even though no part of the drone made contact, D has a cause of action for trespass to land.

Intrusion

The invasion into a private conversation, place, or matter where the plaintiff has a reasonable expectation of privacy, and which is highly offensive to a reasonable person.

P enters D's backyard by drone. The backyard is a private place since the average person likely has fencing around their yard which blocks the area from view. Based on this common feature of backyards, most people would assume that their yard is private and would have a reasonable expectation of privacy there. Because most people do not expect to be viewed (let alone recorded) in their backyard, the presence of a drone which is recording them would be highly offensive. Therefore, D has a cause of action for intrusion.

Publication of Private Facts

The widely disseminated publication of true, private facts concerning plaintiff, which is highly offensive and lacking in legitimate public interest.

P posted a video of D sunbathing in the nude to his Facebook page, therefore there was a publication. Hundreds of people viewed the video, which under modern standards where a "viral" video may have millions of views may not seem like many people. However, given the highly sensitive subject material (nude video), sharing with hundreds of people is likely enough to be considered widely disseminated. The video is not doctored in anyway and the depiction of D is true. The content is private, however, since most people would be very uncomfortable with the nude bodies being published online. To that end, the unconsented publication of nude videos would be highly offensive to a reasonable person. There is also no reason that the public would need to know about D's sunbathing habits. Therefore, D has a cause of action for public disclosure of private facts.

False Light

A publication which offensively creates an untrue perception of plaintiff.

The nude video was posted on Facebook, therefore there was publication. While it is true that D sunbathes nude, D is humiliated by this post. Based on D's humiliation, it could be said that the post created an offensive perception of D. The facts are not clear what the response to the post was, therefore it is unlikely that any reader formed an untrue perception of D. Therefore, despite the humiliation suffered, D likely has no cause of action for false light.

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Primpy (P) v. Dilbert (D)

Vicarious Liability

Under the doctrine of Respondeat Superior, an employer may be held strictly liable for the actions of the employees. Employees must be within the course and scope of their employment.

Negligence

Negligence is the creation of an unreasonable risk to a foreseeable plaintiff, resulting in personal injury or property damage. It is comprised of four elements: duty, breach, causation, and damages.

Duty

Duty is the obligation (owed to those in the zone of danger) to act with due care (how a reasonably prudent person would act in the same or similar circumstances).

As a waitress who is responsible for delivering plates of food to patrons, Dora has a duty to set plates down carefully so that patrons are not cut by sharp chips of porcelain, or burned by hot plates. A reasonably prudent waitress would use care in making sure that food is delivered in a way that does not injure patrons. Therefore Dora owed a duty.

Breach

Breach is the failure to act with due care.

By slamming the plate down carelessly so that a porcelain chunk broke off and hit a patron in the eye, Dora breach her duty.

Causation

Causation is broken down into two elements: actual cause and proximate cause. Actual cause is the factual analysis showing the relationship between defendant's careless act and plaintiff's harm. Proximate cause is the reasonably close legal relationship between defendant's careless act and plaintiff's harm. Proximate cause may be broken four ways: remoteness, unforeseeability (in Wagon Mound jurisdictions), superceding intervening acts, and public policy.

But for Dora carelessly throwing the plate down, P would not have had porcelain embedded in her right eye. Therefore, Dora actually caused P's harm.

There are no facts to suggest that any of the exceptions which break proximate cause apply, therefore there is proximate cause.

Damages

Damages requires proof of personal injury or property damage.

P had to go to the hospital to be treated for porcelain which embedded into her right eye. Therefore, there was personal injury.

Because Dora owed a duty, breached her duty, there was actual and proximate cause, and damages, Dora was negligent. Since she was in the course and scope of her employment at the deli based on the fact that she was serving a pastrami sandwich, D may be held vicariously liable. Therefore, P has a cause of action for negligence against D.

Intrusion

Intrusion is the invasion of a private place, conversation or matter in which the plaintiff has a reasonable expectation of privacy and which is highly offensive to a reasonable person.

Any conversation in the car may be considered private because P was the only other person in the car with D, and any conversation held in the a car generally cannot be heard by anyone outside. P had a reasonable expectation of privacy because most people do not expect to have their statements secretly recorded. If fact, secret recording would be highly offensive to a reasonable person because the average person assumes that they are not being recorded when they have a conversation. Therefore, P has a cause of action for intrusion.

Private Nuisance

Private nuisance is the unreasonable interference or invasion of plaintiff's use and enjoyment of their land.

While D may have been entitled to listen to Slipnot and Nickleback, playing that music at top volume with the speakers directed at P's establishment is unreasonable because it was not necessary for D to enjoy his music. D's music interfered with P's use of her land because it caused **great** annoyance both P and her customers. Because it was not just P who was annoyed, but a group of people, this indicates that the P's annoyance was not merely a hypersensitivity, but a reasonable annoyance which constitutes a private a nuisance. Therefore, P likely has a cause of action for private nuisance.

Public Nuisance

Public nuisance is the the unreasonable interference with a right common to the public. The plaintiff must show that they suffered a harm different in kind from the rest of the general population.

There is no indication that D's use of the speakers interfered with a right common to the public, nor that P suffered a harm different in kind from the rest of the public. Therefore, P has no cause of action for public nuisance.

D v. P

Criminal Malicious Prosecution

Defendant maliciously institutes legal proceedings against plaintiff without probable cause which are terminated in favor of plaintiff. Damages may be presumed.

P falsely reported that D had threatened to kill her which cause D to be charged criminally. P acted with malice based on the fact that she was angry that D would employ such a careless waitress. The case lacked probable cause because the facts tell us that the statement was false and because D was able to prove that the statements were false based on the video. The case against D was dismissed based on this evidence. Therefore, D has a cause of action for criminal malicious prosecution.

Interference with Prospective Economic Relations

Defendant intentionally acts in a way intended to interfere with plaintiff's economic expectancy, resulting in damages. A majority of jurisdictions require that the interference be accomplished by wrongful conduct.

P acted intentionally because the facts tell us she wanted to drive D out of business. The goal of driving someone out of business shows an intention to interfere with potential sales, which would constitute D's economic expectancy. D ultimately lost so many customers that he was forced to close which shows a significant loss in business, therefore there were damages. However, there is no indication that P committed any kind of tort in opening the competing deli. Therefore, even she maliciously opened the deli, D likely has no cause of action for interference with prospective economic relations.

Prima Facie Tort

Defendant intentionally acts to cause plaintiff economic harm, and plaintiff suffers economic harm.

P intended to drive D out of business by opening up a competing deli, therefore P's acted intentionally to cause D economic harm. D lost all his regular customers and suffered such a great loss of business that he was forced to close, therefore D did suffer economic harm. Therefore, D has a cause of action for prima facie tort.

Interference with Existing Contracts

Defendant knows that plaintiff is in a contract. Defendant intentionally does an act he knows will have the effect of breaching the contract with plaintiff. Plaintiff suffers damages.

P knew that Dora was employed (i.e., in an employment contract) with D because she was injured while being served by Dora at D's deli. P intended to drive D out of business and wanted to lure Dora away. She specifically offered Dora more money than D so that Dora would quit her job at D's deli. Therefore, P intentionally acted in a way she knew would result in a breach of D's contract with Dora. As previously established, P's new competing deli and the loss of Dora caused D to lose all his regular customers and forced him to close his deli, therefore D suffered damages as a result of this act. Therefore, D has a cause of action for interference with existing contract.

Trespass to Land

The intentional, unauthorized entry onto the land of another.

P clearly intended to enter based on the fact that she was annoyed with D's music and wanted to rip the speakers out. P was not authorized to be there based on the fact that the deli was closed and D was not present. The deli was D's property. Therefore, D has a cause of action for trespass to land.

Trespass to Chattel

An intentional act which: (1) impairs the condition, quality, or value of chattel, (2) substantially interferes with plaintiff's right to possess chattel, or (3) injures plaintiff, plaintiff's property, or something else in which the plaintiff has a legally protected interest.

P ripped the speakers out and threw them into a nearby dumpster. P was acting intentionally based on the fact that she was greatly annoyed by D's use of the speakers. While it's possible that by ripping the speakers out, P damaged the speakers, the fact that she threw them in the dumpster certainly deprived D of the right to possess the speakers. As his property, the speakers are D's chattel. Therefore, P caused a substantial interference with D's right to possess the speaker. As a result, D has a cause of action for trespass to chattel.

Conversion

An intentional act which completely or very substantially interferes with plaintiff's right to possess chattel.

As previously established, P was acting intentionally based on the fact that she was greatly annoyed by D's use of the speakers. By throwing the speakers in the dumpster where they will presumably be taken to the dump where D cannot retrieve them, P caused a complete interference with D's right to possess the speakers. Therefore, D likely has a cause of action for conversion.

END OF EXAM