

MONTEREY COLLEGE OF LAW – HYBRID

TORTS – Section 1

Final Examination

Spring 2024

Prof. C. Payne-Tsoupros

Instructions:

Your final examination consists of three essay questions. You have three hours for this examination. Each essay question is worth 100 points. I recommend you spend one hour on each of the essay questions.

For each question, you should limit your analysis to torts issues that we have covered this semester.

Good luck! I look forward to reading your exams.

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Essay Question 1.

Polly is an actor who recently had small roles in major super-hero movies. Polly is a junior in college. She has begun having difficulty keeping up with her coursework and had become anxious about maintaining her G.P.A. She confided in her history professor, Dr. History, about her recent struggles and her concern that she would not be able to submit her upcoming paper on time.

Dr. History advised Polly to visit the counseling center. Polly returned to her dorm room, which she shared with Jenna, who was also in Dr. History's class. Two days before the paper was due, Jenna looked for her paper in her room but couldn't find it. Later in the day, Jenna saw the paper on her desk, where she thought she had originally placed it.

Jenna submitted her paper. She suspected that Polly had taken the paper and copied from it. Jenna told Dr. History about her suspicions. Dr. History pulled out from a stack of papers what he thought was Polly's paper. Jenna saw the paper and recognized the footnotes. Jenna told Dr. History that Polly copied all of the footnotes from her paper.

In class the next day Dr. History told the students: "I don't care what kind of crummy super-hero action star you are; no one gets away with cheating in my class." Polly was in class, heard the statement, and was deeply humiliated.

Dr. History later discovered that she had accidentally shown Jenna her own paper and not Polly's paper. Polly had not copied Jenna's or any other person's paper.

Polly sued Dr. History for defamation based on her statement to the class. Is Dr. History liable to Polly for defamation? Discuss.

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Essay Question 2.

BlendersRUs designed and manufactured the “IceColdBlender,” which it sold in retail stores across the U.S. The IceColdBlender has three components: a base that contains the motor, a glass container for liquids with mixing blades at the bottom, and a removable cover for the glass container to prevent liquids from overflowing. BlendersRUs’s brochure for the IceColdBlender states: “Do you like your drinks ICE COLD? Then IceColdBlender is perfect for you! It makes your favorite cold drinks from milk shakes to frozen cocktails!” A warning label stated: “Do not fill more than 2 inches from the top.”

Portia purchased IceColdBlender from a local retailer. Portia was cooking hot vegetable stew and decided to use IceColdBlender to liquify her vegetables. Portia filled the glass container to the top with hot soup, placed the cover on the glass container, and ran the IceColdBlender at top speed. The rotation of the mixing blades pushed the cover off the container and caused hot soup splashed all over Portia, resulting in severe burns.

The cover of IceColdBlender was supposed to have a locking mechanism, which would have prevented the cover from coming off during operation. The locking mechanism was missing in Portia’s IceColdBlender.

Portia sued BlendersRUs for strict products liability claiming that the product was defective and the warning was insufficient. The jurisdiction does not recognize contributory or comparative negligence as a defense in products liability cases. Discuss.

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Essay Question 3.

MagicCat is a company that puts on magic shows featuring all kinds of cats, from house cats to tigers. Edward is an employee of MagicCats. As part of Edward's duties, Edward runs one of the weekly MagicCat shows. During the show, all cats remain in a cage. MagicCat company policy requires employees to ensure that audience members stay at least six feet away from the cage.

A recent show featured a house cat and a tiger. Both animals had always been extremely calm and gentle. Because of their temperaments, Edward permitted audience members to approach the cage and reach through the bars on the cage to stroke the animals' ears. Patricia reached through the bars on the cage. Her movements startled both animals. The tiger mauled Patricia's arm. The house cat swiped at her face and scratched her eye.

Patricia sued MagicCat in strict liability. Discuss.

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Essay Question 1. Max 100 points

		MAX POINTS	YOUR POINTS
Issue/sub-issues	Defamation	--	
Rules	<p>Defamation =</p> <ul style="list-style-type: none"> ● Defamatory statement = statement causing reputational damage ● Concerning the plaintiff ● Published to a third party <ul style="list-style-type: none"> ○ Libel = via writing/other permanent form ○ Slander = via speech/non-permanent form ● Statement is false <p>If P is public figure, P must also show malice</p> <ul style="list-style-type: none"> ● Public figure = person who achieved fame or notoriety as to become a celebrity or has voluntarily injected herself into the particular controversy as to become a public figure for that specific controversy ● Malice = made false statement knowingly or with reckless disregard for its truth or falsity 	35	
Application	<p>Defamation =</p> <ul style="list-style-type: none"> ● Defamatory statement <input type="checkbox"/> 2 statements: "crummy super-hero action star" (cast dispersion on P's professional reputation) & cheating (casts dispersion on P's character) ● Concerning the plaintiff <input type="checkbox"/> P not specifically named but is identifiable as the actor in the class ● Published to a third party <input type="checkbox"/> statements made openly in front of class <ul style="list-style-type: none"> ○ Libel (not libel) ○ Slander <input type="checkbox"/> statements verbalized in class ● Statement is false <input type="checkbox"/> crummy action star?; Polly had not cheated <p>If P is public, figure, P must also show malice</p> <ul style="list-style-type: none"> ● Public figure <input type="checkbox"/> possible ● Malice <input type="checkbox"/> Dr. History thought it was P's paper, no malice 	60	
Org/structure	<p>IRAC structure</p> <p>Requires little to no re-reading of previous portions to understand analysis and award substantive points</p>	10	
Writing quality	<p>Writing has a logical flow and is easy to understand</p> <p>Formal academic English with grammar rules generally followed</p>	5	
	MAX POINTS TOTAL:	100	

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Essay Question 2. Max 100 points

		MAX POINTS	YOUR POINTS
Issue: Proper plaintiff, proper defendant, proper context	<p>Rule:</p> <ul style="list-style-type: none"> • Proper P = any P injured when using defective product • Proper D = commercial supplier at all levels of distribution chain • Proper context = defective goods <p>Application:</p> <ul style="list-style-type: none"> • Proper P = Portia purchased blender, was injured when using. Yes • Proper D = local retailer which sold IceColdBlender .Yes • Proper context = defective blender. Yes 	10	
Issue: Manufacturing defect	<p>Rule: manufacturing defect = product departs from its intended design (a product manufactured in a form other than the manufacturer intended)</p> <p>Application: Portia's blender did not have the locking mechanism in that cover → departure from intended design.</p> <p>Yes, manufacturing defect</p>	20	
Issue: Warning defect	<p>Rule: warning defect =</p> <ul style="list-style-type: none"> • product contains inadequate instructions or warnings when foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings and • the omission of such instructions or warnings renders the product not reasonably safe <p>Application: foreseeable that users may use blender for hot liquids; warning label should have advised of dangers associated with hot liquids.</p> <p>Yes, warning defect</p>	20	
Issue: Causation, damages	<p>Rule:</p> <ul style="list-style-type: none"> • The defect caused the damage. • P suffered damage. <p>Application:</p> <ul style="list-style-type: none"> • Manufacturing defect: Missing locking mechanism □ locking mechanism would have prevented cover coming off. P suffered severe burns. Yes • Warning defect: Missing dangers of hot liquids □ P needs to show that she would not have been injured but for the inadequate warning. Closer call <p>Yes, liability for manufacturing defect Closer call (could go either way) for liability for warning defect</p>	5	
Issue: Defense – misuse	<p>Rule: D is not liable for an unforeseeable abnormal use of its product that caused P's injury.</p> <p>Application: Foreseeable that a user may use blender for hot liquids. Not unforeseeable/abnormal.</p> <p>No misuse defense</p>	15	
Issue: Defense – assumption of risk	<p>Rule: D is not liable if P voluntarily confronts a known hazard</p> <p>Application: Nothing to suggest P knew of missing locking mechanism and cover would fly off; no thing to suggest P knew should not use hot liquids.</p> <p>No assumption of risk defense</p>	15	
Org/structure	<p>IRAC structure</p> <p>Requires little to no re-reading of previous portions to understand analysis and award substantive points</p>	10	
Writing quality	<p>Writing has a logical flow and is easy to understand</p> <p>Formal academic English with grammar rules generally followed</p>	5	
	MAX POINTS TOTAL:	100	

Essay Question 3. Max 100 points

		MAX POINTS	YOUR POINTS
Issue/sub-issues	Strict liability (wild/domestic animals) Vicarious liability – respondeat superior	10	
Rules	Strict liability (wild/domestic animals): SL for injuries caused to P regardless of whether D exercised due care <ul style="list-style-type: none"> • Wild: SL for injuries caused by wild animals due to their known dangerous propensities • Domestic: SL for injuries caused by domestic animals if owner knows or has reason to know that a domestic animal has vicious propensities Vicarious liability – respondeat superior RS = employer is liable for the torts of its employee so long as the employee was acting within the scope of her employment in furtherance of the employer’s business. <ul style="list-style-type: none"> • includes intentional torts, violations of co. policy 	25	
Application	Strict liability (wild/domestic animals) <ul style="list-style-type: none"> • Wild <input type="checkbox"/> tiger mauled Patricia’s arm. Had always been calm and gentle. SL. • Domestic <input type="checkbox"/> cat scratched Patricia’s eye. Had always been calm and gentle. No SL. Edward liable for injuries to Patricia’s arm caused by tiger. Edward is not liable for injuries to Patricia’s eye caused by house cat. Vicarious liability – respondeat superior <ul style="list-style-type: none"> • employer-employee → Edward is employee of MagicCats • scope of employer’s business → put on cat magic show • despite violation of co. policy <input type="checkbox"/> policy to stay 6 feet away, Edward violated that Yes, MagicCats is VL for injuries to Patricia’s arm caused by tiger.	50	
Org/structure	IRAC structure Requires little to no re-reading of previous portions to understand analysis and award substantive points	10	
Writing quality	Writing has a logical flow and is easy to understand Formal academic English with grammar rules generally followed	5	
	MAX POINTS TOTAL:	100	

1)

The issue is whether Dr. History is liable to Polly for defamation.

Defamation

Defamation occurs when there is defamatory language, which a reasonable person could identify to the Plaintiff, that is published to a third party who understands it, at the fault of the defendant, and it causes damage to ones reputation.

Defamatory Language: Cheating

Defamatory language is language that will likely cause harm ones reputation.

Polly is a junior in college who cares enough about maintaining her G.P.A. that she confided in her teacher. Here, Dr. History's language would lead someone to believe that cheating had occurred. Someone who cares about their education would likely suffer harm to their reputation if they were accused of cheating in front of their classmates.

Therefore, the element of defamatory language in defamation is satisfied when Dr. History accused Polly of cheating in the class.

Defamatory Language: Crummy Acting

Defamatory language is language that will likely cause harm ones reputation.

Here, Polly is an actor who had some roles in major super-hero movies recently. Dr. History's language spoke negatively of her acting skills calling her a crummy action star. Unless someone watches the movie for themselves and comes to their own conclusion, this comment may cause harm to their acting reputation.

Therefore, the element of defamatory language is satisfied when Dr. History said she was a crummy super-hero action star.

Identifiable to P

The defamatory language needs to be identifiable to the Plaintiff to a reasonable person.

Here, Polly is an actor who has recently performed small roles in major super-hero movies. It would be unlikely for a class to be made up of more than one person who recently performed a role in a super hero movie. When Dr. History made the statement in front of the class, she made reference to the fact that the cheater was a super-hero action star. Making it very reasonable for another student to realize that Dr. History is referring to Polly unless the class had multiple students who were recently in super-hero movies.

Assuming Polly was the only student who recently performed in a super-hero movie, the defamatory language would be easily identifiable to her.

Publication

Libel

Libel is language that is in writing or more permanent form. Here, Dr. History's statements were made orally to the class. This was not a permanent form of publication and therefore, would not be libel.

Slander Per Se

Slander per se is language that is so harmful that the mere utterance causes damage. Here, the accusations made were to the ability of Polly's acting and the possibility of her cheating in the class. This kind of language is not so harmful or severe that just the utterance would cause damage to her. Therefore, this would not constitute slander per se.

Slander

Slander is less permanent or physical in form. Here, Dr. History's comments were made orally to the class taking a less permanent or physical form than libel. Therefore, the form of publication would fall under slander and special damages would need to be proven.

Fault

In order to bring a claim of defamation, the defendant needs to be at fault. For publications regarding a private person no malice needs to be proven. For statements regarding a public figure, there needs to be actual malice. Actual malice occurs when a false statement is made that was known or with reckless disregard to the truth.

Here, Polly is an actor who has recently had small roles. Polly would argue that she has only had small roles and therefore, she is a private individual. Dr. History would argue that Polly was recently in major super-hero movies making her a public figure. Due to her being in multiple major movies, Dr. History's argument would probably win and there would need to be actual malice.

Here, a false statement was made when Dr. History implied that Polly had cheated. However, Dr. History was acting on the assumption that Polly did cheat based on Jenna saying that it was her paper when Dr. History thought she was showing Jenna Polly's paper. Polly on the other hand would argue that Dr. History should have checked the name of who the paper belonged to and not just looked at the footnotes. However, Dr. History was not acting with malice.

Therefore, the element of fault by defendant would not be met.

Damage

Assuming the element of fault was met, the next issue would be damage to reputation.

Cheating

Accusing a student in front of class of peers of cheating is damaging to one's reputation.

Therefore, the accusation of cheating does meet the damage requirement.

Crummy Acting

Polly acted in multiple major super-hero movies and it is likely that her classmates have already seen these movies and made up thier mind on her acting ability. Therefore, the accusation of crummy acting would likely not meet the requirement of damage.

Defenses

Opinion

Assuming Dr. History was liable to Polly for defamation, Dr. History would likely raise the expression of opinion as a defense. An opinion is generally not defmanatory unless the facts would lead a reasonable person to believe it was true.

Here, Dr. History's statements of opinion implied that she had crummy acting skills and that she was a cheater. The acting comment is truly an opinion and would not lead a reaonsable person to believe that it was true. Therefore, Dr. History would be able to use opinion as a defense to the statement regarding Polly's acting. Regarding the cheating statement, the person who made this claim was Polly's teacher in front of her classmates. Dr. History being her teacer gives the opinion credibility which would lead a reasonable person to believe that Polly had cheated. Therefore, Dr. History would not be able to successfully raise opinion as a defense to the cheating comment.

Truth

Assuming Dr. History was liable to Polly for defamation, Dr. History would likely raise truth as a defense. Truth is an absolute defense to defamation.

Dr. History would not be able to successfully raise truth as a defense regarding the cheating comment despite believing it to to be true at the time because it was in fact false.

2)

Strict Products Liability

Liability is imposed on the manufacturer, or distributor of a defect product where the plaintiff was injured by the defect. For a strict products liability claim it must be established if there is a proper plaintiff, proper defendant and proper context.

Proper Plaintiff, Proper Defendant, Proper Context

The proper plaintiff is anyone who is injured using the defective product. The proper defendant is a commercial supplier at all levels of the chain of distribution.

The proper context are the defective goods.

Here, the proper plaintiff is Portia because she is the one who gets injured by the defective blender. The proper defendant is BlendersRUs because they designed and manufactured the IceColdBlender making them the commercial supplier at the chain of distribution. The defective blender is the proper context because the blender is defective.

Thus, the proper plaintiff, proper defendant and proper context have been met.

Defect

Manufacturing

A manufacturing defect is when a product departs from its intended design even though all reasonable care was used in the preparation and marketing of the product.

Here, the manufacturing defect is Portia's IceColdBlender missing the locking mechanism it was supposed to have to prevent the cover from coming off during operation.

Thus, there was a manufacturing defect.

Warning Defect

A warning defect is inadequate instructions or warnings of the product when the foreseeable risk of harm to plaintiff could have been reduced or avoided with the provision of reasonable instructions or warning, and the omission of the instructions or warnings renders the product not reasonably safe.

Here, the warnings that are missing on the brochure for the IceColdBlender is that hot liquids could not be placed inside the IceColdBlender. Putting hot liquids into a blender is a foreseeable risk of harm because nowhere on the brochure does it state a warning or instruction to not place hot liquids inside of it. This inadequate instruction or warning rendered the IceColdBlender to not be reasonably safe because Portia put hot vegetables into the blender because there was no warning against and suffered severe burns because of it.

Thus, there was a warning defect.

Causes and Damages

The defect must have caused damages.

The plaintiff must have suffered damages.

Here, the defect is the missing locking mechanism which caused the lid of the blender to pop off and cause damages to Portia. Portia suffered severe burns.

Thus, there was cause and damages.

Defenses

Assumption of Risk

Assumption of risk is when the hazard is known to the plaintiff and the plaintiff voluntarily confronts the hazard.

Here, Portia did not know the blender was missing the locking mechanism, so she did not know of the hazard of using the blender without it.

Thus, assumption of risk cannot be used as a defense.

Misuse

Misuse is a product is unforeseeable abnormal use of the product injures plaintiff.

Here, it was not unforeseeable abnormal for Portia to use the Blender to put hot things in it because there was no warning on the blender. So it was foreseeable that Portia would have used the blender for hot liquids because there was not anything warning to advise otherwise.

Thus, misuse could not be a defense.

Conclusion

Thus, Portia can recover for the strict products liability claim because the product was defective and the warning was insufficient.

3)

Strict Liability

A defendant is strictly liable for injuries that result from inherently dangerous activities. Strict liability applies to the keeping of wild animals.

Here, MagicCat is a company that puts on magic shows featuring all kinds of cats, from house cats to tigers. Edward, an employee of MagicCat had always observed the cats and tiger to be gentle. So, even though MagicCat company policy requires employees to ensure that all audience members stay at least six feet from the cage, Edward allowed members of the audience to approach the cage and reach through the bars on the cage to stroke the animals' ears. When Patricia reached through the bars on the cage, she startled the tiger, a wild animal, mauled her arm. The house cat swiped her face and scratched her eye.

Vicarious Liability

Under the doctrine of vicarious liability an employer is liable for the actions of employees who are acting in the course of their duties (respondeat superior), including the commission of intentional torts.

Here, Edward is an employee of MagicCats.

Edward did not follow MagicCat's company policy that requires employees to ensure that the audience members stay at least six feet away from the cat/tiger cage. Nonetheless, when he permitted audience members to approach the cage and reach through the bars to stroke the animal's ears, he was acting in the course of his employment, regardless of the company policy.

Thus, under a theory of vicarious liability, MagicCat is liable Patricia's injury by the wild tiger.

Tiger Injury

Strict Liability applies to the keeping of wild animals. The tiger is a wild animal.

Thus, MagicCat will be strictly liable for the injury to Patricia caused by the tiger because the tiger is a wild animal.

Cat Injury

Owners of pets are strictly liable for injuries caused to other by their pets if they have reason to believe that the animal is dangerous, for example, if the animal had previously bitten or injured someone.

Here, the facts state that the cat had always been extremely calm and gentle.

Thus, because the cat did not have a history of biting or scratching and it is not a wild animal, Magic Cat will not be strictly liable for the injury caused by the house cat scratching her face and eye.

Defenses

Assumption of Risk

The defense of assumption of risk applies when the plaintiff knowingly and voluntarily assumes the risk.

Patricia knowingly and voluntarily assumed the risk of petting the tiger. Any reasonable person would know that petting a wild tiger is dangerous. However, because the tiger is a wild animal and strict liability applies,

Magic Cat will not be successful in this defense for Patricia's injury caused by the wild tiger.

An assumption of risk defense may apply to Patricia's injury from the cat. A reasonable person understands that cat's may scratch when they are frightened by someone, and a cat is not a wild animal. This was a house cat. Patricia assumed the risk of being scratched when she knowingly and voluntarily reached through the bars on the cage to scratch the house cat.

MagicCat may prevail in a defense of assumption of risk with regard to the cat scratches.

Conclusion

Magic Cat will be strictly liable for Patricia's injury by the wild tiger under a theory of strict liability. Magic Cat will not be liable to Patricia for her injury by the house cat because Patricia assumed the risk.

END OF EXAM