MONTEREY COLLEGE OF LAW
HYBRID
TORTS SEC. 2
FINAL EXAMINATION
SPRING 2024
PROF. L. HOLDER

General Instructions:
Answer Three (3) Essay Questions
Total Time Allotted: Three (3) Hours

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QUESTION 1

Hans Niemann is a curly-haired 20-year-old American chess grandmaster. Magnus Carlsen is a five-time world chess champion. Carlsen is a 32-year-old Norwegian, who has been the world's top-ranked player for 15 years.

Last September, Neimann and Carlsen played in an over-the-board game (as the in-person version of the game is known) in a prestigious live tournament in St. Louis called the Sinquefield Cup. Three weeks after the game, Carlsen released a statement to the press accusing Niemann of having cheated in the game by surreptitiously playing moves relayed from an outside source. After Carlsen's press release, Chess.com, which has more than 145 million members, and which had broadly publicized Carlsen's accusation, prepared an analysis and released a 72-page report concluding that Niemann had cheated in more than 100 games on its platform and that "his progress in over-the-board chess had been uncharacteristically fast." Though Chess.com presented no evidence that Niemann had cheated in over-the-board play, it barred Niemann from the site. The previous year, Neimann had won over $600,000.00 in Chess.com tournaments. Neimann admitted that when he was younger he cheated in "a few" online games hosted by Chess.com, but Neimann vehemently denied ever cheating in over-the-board games.

Expert analysis showed "instances of cheating" by Niemann in around 32-55 games on the Chess.com platform; far less than the 100 suggested by Chess.com. No evidence was found that Neimann had ever engaged in over-the-board cheating.

Niemann filed a defamation suit against Carlsen. What result? Discuss.

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QUESTION 2

The viewing platform at the Tate Modern Gallery was once considered one of London's best free viewpoints. Over recent years, however, it has caused controversy with neighbors.

Between 2006 and 2012, four blocks of flats were built on the south bank of the River Thames. These modern flats were almost entirely surrounded by floor-to-ceiling glass panels.

Starting in 2006 and finishing in 2016, the Tate Modern built an extension – the Blavatnik Building – with a viewing platform installed on the top floor.

While boasting panoramic views of London, the platform also allowed hundreds of thousands of visitors a year to see directly into the adjacent flats.

The tenants complained that visitors to the viewing platform frequently took photographs of their living quarters, posting these on social media. Some even viewed the interiors with binoculars.

Josie, an owner of a flat visible from the Tate Modern viewing platform, whose living and bedrooms had appeared on social media, filed a nuisance lawsuit seeking damages and an injunction to prohibit visitors from accessing certain of the Tate Modern viewing platforms on the basis that museum visitors interfered with the use of her property.

Presume U.S. nuisance law applies. Will Josie prevail in her nuisance action? Discuss.


BAR
SHOP

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QUESTION 3

ARC manufactures a two-seater convertible, the Roadster. The Roadster has an airbag for each seat. ARC was aware that airbags can be dangerous to children, so it considered installing either of two existing technologies: (1) a safety switch operated by a key that would allow the passenger airbag to be turned off manually, or (2) a sensor under the passenger seat that would turn off the airbag upon detection of a child's presence. Both technologies had drawbacks. The sensor technology was relatively new and untested, and the safety switch technology had the risk that people might forget to turn the airbag back on when an adult was in the seat. The safety switch would have increased the price per car by $5, and the sensor would have increased the price per car by $900. Research showed that most riders were adults and that the airbags rarely hurt children who were properly belted into the seat. No federal or state regulation required either a safety switch or a sensor. ARC chose to install neither.

At page 36 of 328 in the owner's manual, ARC warned: "Airbags plus lap-shoulder belts offer the best protection for adults, but not for young children and infants. Neither the vehicle's safety belt system nor its airbag system is designed for them. Young children and infants need the protection that a child restraint system can provide. Always secure children properly in your vehicle." Nothing in the passenger compartment gave notice of airbag danger to children.

Karol, her husband Oscar, and their eight-year-old daughter Chloe live in California. Karol bought a new Roadster as a gift for Oscar. On his first day of ownership, Oscar took Chloe to an ice cream shop. On the way home, Oscar accidentally ran the Roadster into a bridge abutment. The airbags inflated as designed and struck Chloe in the head, causing serious injury. Chloe was seat belted into the seat. She would not have been hurt if the airbag had not struck her.

Oscar sued ARC in strict products liability on Chloe's behalf. Discuss.

ANSWER OUTLINES

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QUESTION 1

Niemann v. Carlsen
Defamation

Common law defamation: (1) The defendant published (2) defamatory material (3) of and concerning the plaintiff, (4) which caused damages.

Modern rule - must also prove falsity and fault as part of prima facie case.

Public figure actual malice (NYT): a public figure is either (1) a public official or (2) a private citizen who has attained a sufficient degree of notoriety, whether generally or in relation to a specific matter. There are two types of public figures of notoriety: general public figures (well-known celebrities or famous athletes.) and limited-purpose public figures (someone who voluntarily and substantially participates in a public controversy, usually to influence public opinion or to affect the outcome of the controversy. More rarely, this category can include someone drawn into a controversy involuntarily).

Matter of public concern (Dun & Bradstreet, Inc. v. Greenmoss Builders): A matter of public concern is a matter of legitimate news interest, not limited private interest. Matters of public concern include those implicating political and social concern, as well as those involving the public health, safety, morals, welfare, and policy.

Republisher Chess.com – not a defendant but goes to damages. The person who first published the statement can be liable for any foreseeable republication by others. Even repetition by the person defamed can be actionable, but only if this repetition is “the natural and probable consequence” of the initial publication.

Damages: libel/slander; general/presumed; special

Defenses: Qualified privilege: interest of the recipient – a definable group of people having a common interest in a particular thing.

Conclusion

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QUESTION 2

Josie v. Tate Modern
Nuisance

Raise and dismiss: “A public nuisance is an unreasonable interference with a right common to the general public.” Restatement (Second) of Torts § 821B. Rights common to the general public, or “public rights,” usually encompass matters concerning the public peace, safety, comfort, or convenience.

A private nuisance is a substantial, unreasonable interference with another person’s use or enjoyment of her property. A defendant is only liable under a private nuisance theory if, among other things, his use of his own property significantly encroaches upon another’s interest in the private use and enjoyment of her land. See Restatement (Second) of Torts § 822.1

Interference must be either: (1) Intentional and unreasonable, or (2) Unintentional, but negligent, reckless, or such as would give rise to strict liability in tort. See Restatement (Second) of Torts § 822.

Substantial: “a harm of importance, involving more than slight inconvenience or petty annoyance. The law does not concern itself with trifles, and therefore there must be a real and appreciable invasion of the plaintiff's interests” or “a real and appreciable interference with the plaintiff's use or enjoyment of his land before” he may prevail in a nuisance action. Id. at § 822, comment c.

Unreasonable: For a nuisance based on intent or negligence, the interference with plaintiff’s use of his land must be unreasonable. To be characterized as unreasonable, the severity of the inflicted injury must outweigh the utility of defendant’s conduct. In balancing these respective interests, courts take into account that every person is entitled to use his own land in a reasonable way, considering the neighborhood, land values, and existence of any alternative courses of conduct open to defendant.

1. The extent and character of the harm.
2. The social value the law places upon both the purpose of defendant’s conduct and the particular interest of the plaintiff that has been invaded.
3. The extent to which the defendant’s conduct, and the plaintiff’s invaded interest, are well-suited to the particular locality.
4. The burden or expense that either party must incur in order to avoid the harm.
5. The impracticability of preventing the harm.

See Restatement (Second) of Torts §§ 826-829, 831.

Remedies: Damages / Permanent damages / Injunction

Defenses: zoning ordinance or other legislative license permits is relevant but not conclusive evidence that the use is not a nuisance / “Coming to the Nuisance”

Conclusion

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QUESTION 3

Chloe v ARC
Products liability
Strict liability

Products liability deals with the liability of a person who sells a product to another who is injured by the product.

Commercial supplier: A person who is in the business of selling or distributing products can be liable for a defective product's harm to others or others' property. A commercial supplier of the product includes a manufacturer, wholesaler, retailer, or anyone else who sells the product on a more-than-casual basis in the regular course of business, if that supplier is in the chain of distribution from the initial manufacturer to the plaintiff.

Existence of a defect. There are three basic kinds of defects: (1) manufacturing defects, (2) design defects, and (3) informational defects, or unreasonable failure to give adequate instruction or warning.

Design defect if (1) the product as designed is unreasonably dangerous (2) if used or misused in a reasonably foreseeable manner. Courts generally use one or both of two tests to identify a design defect: (1) the consumer-expectation test and (2) the risk-utility test, also called the reasonable-alternative-design test.

Informational defect if (1) it fails to include reasonable warnings or instructions about reasonably foreseeable risks, and (2) the omission makes the product unreasonably dangerous. [Restatement (Third) of Torts: Products Liability § 2.]

Reasonable Warnings or Instructions: To be reasonable, a warning or instruction must be legally adequate in both its content and its presentation. [Restatement (Third) of Torts: Products Liability § 2, with comments

Strict products liability is imposed if (1) the actor was a commercial supplier of the defective product, (2) the product was defective when it left the actor's control, (3) there was no significant change in the product's condition between the time it left the actor's control and the time it caused the injury, and (4) the defect actually and proximately caused the injury.

Damages: general damages for pain and suffering / special damages for medical bills and continuing care, education, etc. Punitive damages may be available in extreme cases where the defendant's conduct was particularly evil, indifferent, or outrageous.

Defenses: contributory-negligence / assumption of the risk.

Conclusion

1)

Niemann v. Carlsen ✓

Defamation ✓

To establish a prima facie case of Defamation the following elements must be proven:

Defamatory language adversely affecting the reputation of the plaintiff ✓

"Of and Concerning" the plaintiff meaning a reasonable viewer, reader, or listener would understand the defamatory language referred to the plaintiff ✓

Publication ✓

Damages to the plaintiff's reputation ✓

If the matter is a matter of public concern, two additional Constitutional issues must be evaluated ✓

Falsity of the defamatory statement ✓

Fault: ✓The defendant must have acted with actual malice ✓meaning they acted with knowledge of the falsity of the statement ✓or with reckless disregard to the truth or falsity of the statement. ✓

Defamatory Language:

Language that is defamatory is language that adversely affects the plaintiff's reputation. This causes him to be lowered in the esteem of the community or to be avoided. ✓If language is not defamatory on it's face it, in order to prove inducement and innuendo ✓ which are also actionable a plaintiff must introduce additional extrinsic facts. ✓

In this case Carlsen called a press conference accusing Niemann of having cheated in their September chess game at a prestigious live tournament in St. Louis called the Sinquefield Cup. Accusing someone of cheating is defamation "on it's face."✓ His press conference also got Chess.com to get involved with an in-depth investigation which afterwards barred Niemann from the site. This would qualify as being caused to lose esteem in the community and being barred is being avoided. ✓

"Of and Concerning the Plaintiff"

The plaintiff must prove a reasonable viewer, listener, or reader would understand defamatory language referred to the plaintiff. ✓

In this case it is also pretty clear that Carlsen's statement accusing Niemann of cheating referred to Niemann and therefore this element has been proven. ✓

Publication

The defendant must have published their defamatory statement to a third party.✓ Intent to publish is all that is needed to establish intent. **(or negligence)**

In this case, Carlsen issued a press release ✓so clearly he published to many third parties. ✓ And he clearly intended to publish his statement as he called a press conference.✓ One of the parties that saw the press conference was Chess.com which has more than 145 million members. Therefore, Carlsen published his statement to a third party.✓ Speaking of Chess.com....

Republication ✓ **GOOD!**

A defendant can not only be liable for his own initial defamatory statement, but he can also be liable for any republication that flows from the initial defamatory statement.✓

In this case, not only did Carlsen speak at a press conference, his statements were picked up by Chess.com which broadly publicized Carlsen's accusation, prepared an analysis, and

released a 72-page report concluding that Niemann had cheated in more than 100 games on its platform and that his progress in over-the-board chess had been uncharacteristically fast." In general terms both the primary publisher and the republisher can be liable for the defamatory language. ✓ If I were Niemann's lawyer I'd be advising my client to also pursue a case against Chess.com if it can be proved Carlsen committed defamation, but the call of this question says to stick to the defamation suit against Carlsen so onward with the analysis. **Good!**

Falsity

If the matter is a matter of public concern, ✓ **(NYT, infra)** the Court has determined that under the 1st Amendment protections to free speech and additional two elements must be proven.

First of all the statement has to be proven to be false. ✓

Carlsen accused Niemann of having cheated in the game. The republication by Chess.com insinuated that Niemann had progressed in over-the-board chess in an uncharacteristically fast manner. And Niemann admitted that when he was younger he cheated in "a few" online games hosted by Chess.com. ✓

However, on the flip side, he vehemently denied ever cheating in over-the-board games ✓ (which would be the type he played with Carlsen and which Carlsen accused him of being a cheat). ✓ Also, expert analysis shows that while Niemann was estimated to have cheated in 32-55 games on the chess.com platform; far less than the 100 suggested by chess.com NO EVIDENCE ✓ was found that Niemann had ever engaged in over-the-board cheating. ✓

Because Niemann admitted to some cheating at Chess.com but vehemently denied ever cheating on over-the board games and he has the backing of the expert analysis that says there is NO EVIDENCE that he ever engaged in over-the-board cheating I will conclude that the defamatory statement by Carlsen was false. ✓

Fault

In matters of public concern the courts have two standards of determining liability depending on whether the plaintiff is a public figure or a private figure. In determining if a matter is of public concern the courts look at the totality of the situation including the content and context in which the defamatory language occurred.

NYT v. Sullivan standard must be used to prove fault if the plaintiff is a public figure. The defendant must have acted with actual malice meaning they acted with knowledge of the falsity of the statement or with reckless disregard to the truth or falsity of the statement. It's a subjective standard. A public figure is one that has achieved fame or widespread notoriety or is at the center of a public controversy.

Matter of public concern (Dun & Bradstreet, Inc. v. Greenmoss Builders): A matter of public concern is a matter of legitimate news interest, not limited private interest. Matters of public concern include those implicating political and social concern, as well as those involving the public health, safety, morals, welfare, and policy.

Gertz is the standard used when a private figure is the plaintiff. In this case the Court has left the ability to determine the standard of liability up to the individual states but if that standard is less than actual malice (like instead it's just negligence) then actual damages must be proven.

Some may say that chess isn't as big of deal as the Grammies or major league baseball. However, we've got a five-time world chess champion chess grandmaster as the plaintiff. Chess.com, the website involved in this issue has over 145 million members. Perhaps it's not like Monday night football but this writer is going to give it to the nerds and state that Niemann is a public figure.

In that case, Niemann will need to prove that Magnus Carlsen acted with actual malice when he called a press conference accusing him of having cheated. Proving actual malice is a subjective standard and the facts don't tell us much about how Magnus Carlsen actually felt about Niemann. We know that he was the world's top-ranked player for 15 years. Perhaps he was threatened by this new up and coming chess player who progressed 'uncharacteristically fast.' Calling a press conference to call someone a cheat takes a bit of effort. If he acted with reckless disregard that would mean he harbored serious doubts about the truth or falsity and decided to publish anyway. Did he actually

✓Or serious doubts re truth or falsity

BELIEVE that what he was saying was true? This is really the critical part of determining whether or not Carlsen defamed Niemann...determining if he acted with actual malice. Best thing to do would be to get him up on a stand under oath and ask him questions to determine this. For the sake of this analysis, however, we simply don't know the state of Carlsen's mind and because of that it is likely actual malice cannot be established.

Damages ✓

In order to determine damages it must first be determined whether the defamatory language was libel or slander. ✓

Libel

Libel is language that is published in more permanent form.✓ This generally includes things like books and magazines, but it can also be things like the press release Carlsen released.✓When libel has been determined general damages are presumed. ✓

Slander

Slander is language that is spoken and is more impermanent. ✓Because of this we have two categories to look at when evaluating slander for damages

Slander Per Se: ✓

If the defamatory language covers four particular topics it is called slander per se and damages are also presumed. ✓This includes prejudice against someone's business or profession, crimes of moral turpitude (or as the Restatement says crime that can be punished by imprisonment), loathsome disease, or lack of chastity or serious sexual misconduct. ✓

Slander Per Quod: ✓

All other types of slander fall under slander per quod and damages are not presumed, rather special damages must be claimed. ✓

In this case, Carlsen issued a press release, this is written language which would be Libel and general damages are presumed. ✓

General Damages ✓

are non-economic intangible damages that result from physical, emotional, or mental injury. These include pain and suffering and loss of reputation. ✓

Special Damages ✓

are economic damages that include things like lost wages and loss of business. ✓

In this case, Carlsen was banned from Chess.com after the press release and subsequent dubious investigation by chess.com. The prior year he had won over $600,000 in chess.com tournaments. This year because of the ban he had not received anything. This would be a specific damage. ✓

Punitive Damages ✓

are damages awarded by the court if malice can be proven and as a way to deter future continuing bad behavior. ✓

Conclusion ***Defenses - Qualified privilege: interest of the recipient – a definable group of people having a common interest in a particular thing. Don't chess people have a right to know? (may be lost if the statement is outside the scope of the privilege or made with actual malice)***

Because Niemann qualifies as a public figure, he would need to prove Carlsen's defamatory statement under the additional Constitutional elements which include proof of actual malice. Because the facts do not give us much to go on regarding Carlsen's subjective state of mind it is highly likely that Niemann cannot pursue defamation against Carlsen. If he is able to prove actual malice however, he would be able to pursue general damages for loss of reputation and loss of income.

Checkmate. :-)

83 Very good essay. Missed some minor discussion of rule/defense. Otherwise well organized and clear; reasoning clear and cogent. Analysis applied the facts to an accurate statement of the law and reached a conclusion. Answer reflected a qualify understanding of the subject matter

2)

Josie v. The Tate Modern ✓

Private Nuisance ✓

Interference must be either: (1) Intentional and unreasonable, or (2) Unintentional, but negligent, reckless, or such as would give rise to strict liability in tort. See Restatement (Second) of Torts § 822

A private nuisance is a substantial, unreasonable interference with the plaintiff's use and enjoyment of property she possesses or has an immediate possessory interest to. ✓

Substantial Interference

The interference must be considered substantial.✓ This means the average person in the community would find the interference offensive, annoying, or inconvenient, it would not be because the plaintiff is hypersensitive or using her property for a specialized use. ✓

Hundreds of thousands of visitors a year visit the Tate Museum and the Blavatnik Building which has a viewing platform installed on the top floor. This platform allows these visitors to see directly into the adjacent flats which are almost entirely surrounded by floor-to-ceiling glass panels. Josie is claiming this has interfered with the use of her property because she has had her living room and bedrooms appear on social media and some visitors have even viewed the interior with binoculars. More critically there are also other tenants, not just Josie, who are complaining that visitors to the viewing platform frequently took photos of their living quarters, posted on social media and had their interior rooms viewed with binoculars. This all would be pretty offensive, annoying, and inconvenient to have hundreds of thousands of people looking into your flat. Because other individuals in the building have also complained, Josie has made her case that the interference has been substantial. ✓ Good bringing in the other complaining parties to show Josie is not hypersensitive

Unreasonable Interference ✓

The severity of the injury to the plaintiff must outweigh the utility of the defendant's conduct.✓ In balancing out these respective interests, courts will access that every body is

entitled to the reasonable use and enjoyment of their property, they will consider the neighborhood and the property values, and will look at the existence of alternative courses of conduct open to the defendant. ✓

In this case, Josie, is faced with the daily occurrence of thousands of people looking into her house, taking photos of her living quarters, posting those photos on social media and even having people viewing her living area with binoculars. Talk about living under a microscope. Then again, she did buy an apartment next to the Tate knowing the design of her flat would have floor to ceiling glass panels adjacent to the viewing platform.

Utility of defendant's conduct - balancing

On the other hand here is the Tate Gallery which has long been considered one of London's best free viewpoints. The Tate could make the case that allowing members of the general public up into the viewpoints is a social justice issue. Is it fair that the posh River Thames modern building inhabitants should be the only one to enjoy the view? +
Furthermore, they may point out that the modern apartments were entirely surrounded with floor-to-ceiling glass panels and the inhabitants knew what they were getting into when they bought their flats. Is this a case of the rich flat owners trying to force the general public out of spaces they want to be in? +

Then again, both the flats and the Blavatnik viewing platform started construction in 2006. The flats finished in 2012 and the platform finished in 2016. Did the tenants really understand the intrusion potential when this new building was under construction? +

Alternative Courses of Conduct

A case could be made that if the flat owners didn't want people looking into their apartment windows they could put up blinds or curtains. ✓ The flat owners no doubt moved into the apartments because of those floor to ceiling windows and putting up curtains would curtail their use and enjoyment of their property as they would be unable to enjoy the views. ✓

Could the Tate limit the visiting hours of the viewing platform? That may cut into their

profits of running the gallery. Could the Tate require visitors to not use binoculars or take photos while visiting the viewing platform? Conclusion on unreasonable?

Ownership or Possessory Interest in Property

Private nuisance is a non-trespassory interference of a plaintiff's use or enjoyment of property they own (as opposed to trespass which is a physical invasion). ✓ In order to claim private nuisance there must be possession of the property. ✓ Josie is an owner of a modern flat on the River Thames. She is bothered by the visitors looking into her windows as it is interfering with her use and enjoyment of her property. She has standing to bring a suit of private nuisance. ✓

Conclusion ✓

While addressing this nuisance is tricky, because of the extent of the injury to Josie, it is likely she has proved her prima facie private nuisance elements of substantial and unreasonable interference and we can move on to defenses and damages. ✓

Defenses ✓

Coming to the Nuisance ✓

Barring a prescriptive right, the defendant cannot force surrounding neighbors to endue a nuisance. ✓ Every person has a right to the reasonable use and enjoyment their property. ✓ However, one must have purchased the property in good faith not solely for the purpose of a harassing lawsuit. ✓

In this case, the Tate existed first and it already had a viewpoint. They could claim the defense of coming to the nuisance. ✓ The blocks of flats were built starting at the same time as the Tate built the Blavatnik building and viewing platform. While the facts don't tell us when Josie actually bought her flat, we do know that as the Tate was there first, ✓ she would have been aware of the original viewing platform. ✓ The facts also don't tell us that she purchased her flat solely for the purpose of a harassing lawsuit. ✓ Also, there is no

prescriptive right that the Tate has to the views. However, the Tate would say that having visitors on the viewing platforms which are some of London's best free viewpoints are a reasonable use and enjoyment of their property. Josie would say her right to not have individuals looking into her property would be reasonable. The Tate could state that Josie bought her flat knowing it had floor to ceiling windows that would be able to be viewed from the existing viewpoints. However, the Tate does not have an open and shut defense of coming to the nuisance because Josie has just as much right as the Tate does to enjoy and use their respective properties in reasonable manners.

Defense: zoning ordinance or other legislative license permits is relevant but not conclusive evidence that the use is not a nuisance

Damages

In general the legal remedy is monetary damages. General damages can be for non-economic losses such as pain and suffering and other sorts intangible damages that result from mental, physical, or emotional injury. However, many jurisdictions limit or prohibit general damages for private nuisance. There are also special damages which are pecuniary or economic losses such as loss of wages or loss of business.

In this case, Josie has not mentioned any sort of non-economic losses and furthermore most jurisdictions don't allow for them in private nuisance. While she has filed the suit seeking damages there aren't any specific special damages or at least none appear in the fact pattern. She has however asked for an injunction so let's look at that.

Injunction

If the legal remedy is unavailable or inadequate courts may consider an injunction which is a form of equitable remedy. An injunction is a court order that would require the Tate Modern to do or not to do something. In considering whether an injunction is appropriate, courts will weigh the relative hardships of the respective parties.

In this case it is likely that legal remedies in the form of damages would be unavailable or inadequate. In considering if an injunction is appropriate we need to look at the relative hardships of the respective parties.

If the Tate was barred from allowing visitors up to the Blavatnik Building that would be a loss of experience for hundreds of thousands of individuals visiting those platforms every year. ✓On the other side of the equation there are four blocks of flats which, at least the ones facing the Tate, will have hundreds of thousands of individuals looking into their living quarters every year. ✓There are more people visiting the Tate than there are living in the apartments next door. +Furthermore, the residents who bought the flats knew they had floor to ceiling windows that would be facing other buildings. ✓

It would seem that a partial injunction would be equitable. It would not make sense for the Tate to be barred from letting the hundreds of thousands of visitors a year from being able to see some of the best views in London. Especially since the flat owners bought those flats knowing they had floor to ceiling windows and a large building next door that already had viewing platforms. The Tate should not be barred from allowing visitors up into the viewing platforms. The hardship to the Tate from that course of action would be too extreme. However, the platforms facing the flats would have restrictions on what the visitors could do including forbidding the use of binoculars and limiting the viewing platform to being open to the public only during regular business hours. This would allow the residents of the flats to have some time during the evenings when they wouldn't have hundreds of individuals staring into their living quarters while still allowing the general public to access some of the best views in London (for free).

So limited injunction?

Permanent Damages ✓

In lieu of an injunction courts will sometimes order permanent damages. ✓In this case if permanent damages were awarded it would be the loss in fair market value of the properties due to the private nuisance. ✓

In Conclusion

Josie did not have enough specific details to be able to consider a calculation of special damages and general damages would not be allowed. A partial injunction limiting the use

of binoculars and only having the platforms open to the general public during regular business hours would provide the equitable remedy of the Tate being able to serve the general public with access for free to some of the best views in London while providing privacy in the evenings for the neighbors across the street. ✓

3)

Chloe v. ARC ✓

Strict Liability ✓

Products Liability ✓refers to the liability that exists for a commercial supplier who produces or supplies a product that injures a plaintiff. ✓There are five theories of liability on which a products liability case can be brought: intentional, negligence, strict liability, implied warranties of merchantability and fitness for a particular purpose, and representation theories (express warranties and misrepresentation). ✓

To establish a prima facie case of strict liability a plaintiff must prove the following elements.

The defendant was a commercial supplier ✓

The defendant produced or sold a product that was defective ✓

The defect was the actual and proximate cause of the plaintiff's injuries ✓

The plaintiff suffered damage to person or property. ✓

Commercial Supplier

A person who is in the business of selling or distributing products
A commercial supplier in the chain of commerce (manufacturer, wholesaler, assembler, retailer) has an absolute duty to supply safe products to foreseeable plaintiffs. ✓

Privity Good

Privity is a contractual relationship that exists between parties of a direct sale. No privity is required in strict liability claims. ✓ (except for some warranty theories)

In this case, ARC manufactures a two-seater convertible, the Roadster. They have an

absolute duty to supply a safe product to foreseeable plaintiffs. ✓While Karol bought the new Roadster and therefore has privity,✓Oscar and Chloe also are foreseeable plaintiffs ✓ and because of that ARC has an absolute duty to them as well to provide a safe product that will not cause injury. ✓ Good

Existence of a Defect

The defect must have been in existence when it left the control of the commercial supplier.✓There are three types of product defects to evaluate when looking at a strict liability case. Good Also, there was no significant change in the product's condition between the time it left the actor's control and the time it caused the injury

Manufacturing Defect ✓

The product was manufactured and was different from all the other products manufactured in that line and it was also more dangerous than expected. ✓An example would be a bottle of soda that was manufactured in such a way that there was a defect in the glass which caused it to explode in the hands of the customer. The bottle was different from all the other bottles manufactured and more dangerous than expected. + Courts will use the Consumer Expectation Test ✓in determining manufacturing defects. Product performance must meet minimum safety expectations by an ordinary consumer using the product in a reasonably foreseeable manner.

In this case, there are no facts that tell us the Roadster that Karol bought was different and more dangerous than any other Roadsters produced. ✓So this is not an example of a manufacturing defect. ✓However, we can still evaluate this under the Consumer Expectation Test which is Carol would have expected the Roadster to meet minimum safety expectations while she and her family were driving it in a reasonably foreseeable manner.

Design Defect ✓

The design of the product resulted in a defective condition unreasonably dangerous. ✓

The courts have two tests to determine whether a design defect was present.

The Risk Utility Test: The danger of the design > utility to society ✓
↑ is another name for ↓
The Feasible Alternative Test: The plaintiff must prove (usually with the help of expert testimony) that there were modifications to the design or alternative designs that were economically feasible. ✓
consumer-expectation test
ARC was aware the airbags could be dangerous to children. It even considered installing two existing technologies 1) a safety switch operated by a key that would allow the passenger airbag to be turned off manually or 2) a sensor under the passenger seat that would turn off the airbag upon detection of a child's presence. The sensor technology was relatively new and untested and the safety switch tech had the risk that people might forget to turn the airbag back on when an adult was in the seat. The safety switch would have increased the price per car by $5 and the sensor would have increased the cost by $900. ARC will try to claim, research showed that most riders were adults and the airbags rarely hurt children who were properly belted into the seat. ARC decided to install neither. ✓

An expert could testify that there were reasonable, economically feasible alternatives to the design that either only cost $5 or $900. This is a small price to pay to protect children. The design of the car fails both the risk utility test and the feasible alternative test because of that this car has a design defect. ✓
Consumer-expectation test, supra.

Information Defects ✓

An information defect exists when a commercial supplier does not provide adequate safety warnings for dangerous conditions that are not readily apparent or proper and complete operating instructions. ✓

ARC could claim that on page 36 of a 328 owner's manual they stated, "Airbags plus lap-shoulder belts offer the best protection for adults, but not for young children and

infants. Neither the vehicle's safety belt system nor its airbag system is designed for them. Young children and infants need the protection that a child restraint system could provide. Always secure children properly in your vehicle.

Chloe could claim that it is not reasonable to assume that an owner would read a 328 page manual and that listing this paragraph on page 36 does not provide adequate safety warnings for a hidden danger that is not readily apparent. ✓Furthermore, what happens if the manual gets lost? +What happens if it is not in the car? +A driver does not need the manual to operate a vehicle.+It is also entirely possible that they could operate that vehicle without ever reading that critical piece of information about child safety. She can also point out that nothing in the passenger compartment gave notice of airbag danger to children. ✓It would have been a simple matter to provide big yellow stickers at the very least in easily viewable locations informing passengers of the risk and outlining steps to take to properly secure children in the vehicle. ✓

Because of the inadequate warnings in the owner's manual and the lack of warnings within the vehicle as well as complete and appropriate instructions there was an information defect. ✓

Conclusion: ARC sold a defective product because the Roadster had a design defect and informational defects. ✓

Actual / Proximate Cause

The defect must be the actual and the proximate cause of the injury to the plaintiff. To prove actual cause the But, For Test is applied. But for the design defects and informational defects present in the Roadster, Chloe would not have been injured in her head by the airbag. While Chloe was in an accident she was seat belted into the car. The cause of her injury was the airbag inflating. The airbag was the element that ARC was aware could be dangerous to children. ✓

The proximate cause is the legal cause and is determined by the foreseeability test. It is

reasonably foreseeable that a child such as Chloe would ride in the Roadster as children are frequent passengers in cars. ✓ It is also reasonably foreseeable that the parents would not have read the hidden warnings in the manual and been unaware of the danger the Roadster harbored. ✓ It would be reasonably foreseeable that a car would get into an accident such as the one that Oscar and Chloe encountered while going to get ice cream. ✓ It is also reasonably foreseeable that if ARC knew in advance that the airbag was dangerous to children then at some point in the future it would indeed be dangerous as it was with Chloe. ✓

Conclusion: The defective airbag of the Roadster was the actual and proximate cause of Chloe's injury. ✓

Defenses

ARC could try and claim contributory or comparative negligence ✓ but that argument would fail because Karol and Oscar were unaware of the design defect and the informational defects in regards to the airbag when he drove the car to get ice cream. If they try to say Oscar was in an accident that won't work either because drivers get into accidents all the time ✓ and furthermore, Chloe was wearing a seatbelt and her only injury that she sustained was the head injury caused by the airbags as they inflated as designed by ARC. ✓

Assumption of the Risk ✓ will not work either because they did not know the risk and knowing it proceeded anyway.

Compliance with regulations: there were no federal or state regulations requiring either the safety switch or a sensor, ✓ however that is not a dispositive defense either.

Misuse or alteration? there are not facts to suggest a 3rd party altered the car, the defects existed at the time the car left ARC's control. Here it is. This is actually a prima facie element

In short, there are no defenses available for ARC to claim.

Damages

General Damages ✓

are non-economic intangible damages that result from physical, emotional, or mental injury. These include pain and suffering. ✓

Special Damages ✓

are economic damages that include things like medical bills. ✓

Punitive Damages ✓

are damages awarded by the court if malice can be proven and as a way to deter future continuing bad behavior. ✓

When pursuing damages against a commercial supplier and using strict liability one cannot pursue strictly economic loss, there must either be an injury to person or property. ✓For example, if a toaster shorts out but causes no other damage, a plaintiff would have to pursue remedies under implied or express warranty theories.

In this case, Oscar has sued ARC on Chloe's behalf for serious head injuries and so special damages specific to medical bills and other economic loss from her injury would be appropriate. ✓

Conclusion: ✓ARC is strictly liable for the personal injury damages Chloe sustained while riding in the Roadster and being struck in the head by the airbag in an accident because ARC was the commercial supplier of the Roadster, the vehicle had design defects and informational defects, those defects were the actual and proximate cause of the injury, and Chloe sustained physical injuries because of the defect. ✓

END OF EXAM