

Monterey College of Law

Torts Final Examination

Spring 2024

Professor J. Martin

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

Torts Final Examination
Spring 2024
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QUESTION ONE

The DENT CORPORATION (hereafter, "DENT"), manufactures and sells laser beam pointers, and the item becomes a fast-selling product. The DENT laser-beam pointer emits a red, low-power beam of light that casts a small point of red color upon its target. The laser-beam pointer is used by teachers and speakers, or as a novelty item.

DICK purchases a DENT laser-beam pointer and, one week later, easily opens the item's case by removing a single screw. DICK inspects its power source. DICK removes the battery inside the product and replaces it with another battery, the subsequent battery being four times as powerful as the original.

The next night DICK is with a group of friends and displays the DENT laser beam pointer, showing how the emitted beam of light casts a point of red color. PEG, a friend within the group, wants to inspect the laser-beam pointer so she attempts to grab the item out of DICK's hand. When she does so, the laser-beam pointer becomes briefly aimed at one of her eyes and the beam of light permanently injures her vision in that eye.

An expert who has inspected and tested the product will testify that the substitution of the higher-powered battery made the product's light beam more intense and therefore unsafe for human eyes. DICK is without assets and PEG desires to bring an action against DENT.

DISCUSS: PEG vs. DENT CO. in Strict Products Liability
(Do NOT discuss Negligence or Warranty causes of action)

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QUESTION TWO

PATTI is a grammar school teacher in Monterey. She visited DAVE, an accountant who prepares federal tax forms, and she provided him with her 2023 income data, including information that she received additional income for several articles she wrote under a false name. PATTI's articles appeared in The Revolution Reporter, a periodical that is radically critical of American politics and which espouses the violent overthrow of the American government.

DAVE had served in the American military and considered himself a patriot. He was concerned about PATTI's status of being both a grammar school teacher and a contributor to a politically radical periodical. Without PATTI's permission, DAVE wrote a letter to the Monterey NEWS, a newspaper of general circulation. DAVE's letter stated, "PATTI, a teacher of tender minds, also writes for The Revolution Reporter".

The NEWS thereafter printed a story identifying PATTI by her real name and place of occupation. The article described PATTI as a "bomb-throwing anarchist" who was "corrupting innocent Monterey children in her classroom". In fact, PATTI was not an anarchist, nor had she ever thrown a bomb, nor had she ever mentioned her political views to her students.

Shortly after the article appeared in the Monterey NEWS, PATTI was removed from her classroom by the Monterey School District and she was informed that her services as a teacher would not be needed for the following year. PATTI is furious at both DAVE and the Monterey NEWS. She consults you regarding a lawsuit.

DISCUSS: 1. PATTI vs. DAVE in Invasion of Privacy

2. PATTI vs. NEWS in Defamation

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QUESTION THREE

PAUL is an inventor and machinist who wishes to build a machine that mounts race-car rubber tires on special metal wheels. PAUL designs the apparatus to be powered by hydraulic rams capable of applying pressures of up to 6,000 pounds of force. One of the necessary parts of PAUL's design is a pressure gauge that informs the machine's user of dangerous pressures.

PAUL drives to DAN's mechanical supply store where he shops for a pressure gauge and tells DAN about the intended use of the product, specifically mentioning that the race-car tires and special-metal wheels can only withstand 5,000 pounds of pressure. DAN shows PAUL a "DABBS X-800" pressure gauge and tells PAUL:

1. "The DABBS X-800 is a superior product", and
2. "The DABBS X-800 is capable of monitoring pressures up to 8,000 pounds".

Because of DAN's statements, PAUL buys the X-800 gauge for \$1,000.

While the DABBS X-800 is a superior product that can reliably monitor pressures up to 8,000 pounds, the item sold to PAUL was actually a DABBS X-200, an older model worth only \$100 and incapable of monitoring pressures beyond 2,000 pounds. All DABBS pressure gauge products look and weigh the same but the internal components differ, allowing different levels of pressure capacity. DAN had merely changed labels in order to charge PAUL the additional cost.

PAUL assembled the machine he intended to invent and he installs the pressure gauge purchased from DAN. During testing of the machine, PAUL is not sufficiently warned by the DABBS X-200 and, unknown to PAUL, the machine generates 6,000 pounds of pressure. As a result, PAUL's machine explodes and PAUL is seriously physically injured.

PAUL comes to your law office and tells you about DAN's lies and his harms.

DISCUSS: PAUL vs. DAN in Fraud

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TORTS FINAL EXAM -- SPRING, 2024

QUESTION ONE -- MODEL ANSWER

PEG vs. DENT CO. in Strict Products Liability

1. Seller -- The Defendant must be a "seller" of the item and "in the business of selling that item" and the facts state that DENT manufactures and sells laser-beam pointers.
2. Product -- The facts call DENT's laser-beam pointers a "fast-selling product". It is a tangible product -- a device that emits a beam of light.
3. Defect -- The SPL doctrine requires that the product should reach the user, or injured party, in the same condition as it left the manufacturer/seller and that it should contain a defect that causes Plaintiff/Claimant's injury.
 - A. Here, the product was altered by DICK when he substituted the original battery with a more powerful battery, making it "unsafe for human eyes".
 - (1) Therefore, DENT may allege that it should not be liable because of the intervention of a 3rd party who altered the product and created the defect after point of sale. DENT would be arguing that DICK was the ultimate proximate cause. Such an argument would deny a manufacturing defect.
 - B. PEG may argue that the pointer's defect is, in fact, a design defect because DICK was able to easily open the item's case by removing a single screw. Because alteration was so easy, the product's danger became likely and foreseeable and the latent danger of the product was not addressed with any substantial protections.
 - (1) On a "consumer expectation test", PEG would argue that the product did not perform as safely as an ordinary consumer would expect when used in a reasonably foreseeable manner. Further, PEG would argue that consumers would expect a product would not be made defective so easily -- with only one screw holding the case together, it was entirely foreseeable that users would modify the product.
 - (2) On a "risk-benefit test", PEG would argue that the benefits of the design (an easily-opened case) do not outweigh the risk/danger from such a design. The benefit is negligible while the danger becomes substantial.
4. Causing -- DENT will likely argue that DICK's alteration of the product was the ultimate proximate cause. PEG could reply that such alteration was foreseeable.
5. Physical Harm -- The facts clearly state that PEG's vision was "permanently injured".
6. User/Consumer -- While PEG is neither the purchaser nor the user of the product, she is a "bystander" and, modernly, has standing to sue.
7. Plaintiff's Conduct -- The modern SPL doctrine allows consideration of Plaintiff's conduct and here PEG is described as "attempting to grab the item" from DICK's hand. DENT would liken PEG's behavior as similar to foolishly grabbing a gun.
 - (1) That behavior could be seen as increasing the risk of harm and, because PEG's injuries are within that particular risk, her behavior could be seen as a contributing cause that could diminish any recovery.
 - (2) PEG's behavior would not be an assumption of risk because PEG did not recognize the true risk of harm -- the product was not like a gun. AOR requires knowing the risk and willingly proceeding.

TORTS FINAL EXAM -- SPRING, 2024

QUESTION TWO -- MODEL ANSWER

PATTI vs. DAVE in Invasion of Privacy

1. Public Disclosure of Embarrassing Private Facts
 - A. A right of privacy is usually associated with tax forms. PATTI's meeting with DAVE seemed to be a professional visit, and PATTI likely paid for DAVE's services, putting DAVE in a position of trust and confidentiality.
 - B. DAVE's letter certainly created publicity to others as it was sent to a newspaper.
 - C. Private true facts were disclosed (PATTI's real name and her sources of income).
 - D. The information disclosed to the newspaper was likely offensive to community notions of decency.
 1. While some radical-left members of the community might approve of PATTI's views, it is likely that the majority of the community would be offended by anyone who was an "anarchist" who "threw bombs" and who corrupted young Monterey students.
 2. Some members of the Monterey community were so offended that they removed PATTI from her job.
 - E. DAVE's defense might involve the privilege of Public Interest, also known as Newsworthiness.
 1. DAVE might contend that, as a "patriot", he was duty-bound to inform the community about someone in a position of public trust, and that a truthful letter to a newspaper was appropriate. All Monterey citizens, he could contend, would have an interest in that topic.

Patti vs. NEWS in Defamation

1. Defamation
 - A. The NEWS article was certainly a publication to 3rd parties because NEWS has "general circulation" and the article would be read by many.
 - B. The information in the article would be defamatory because it describes her as violent ("bomb throwing") and harmful to children ("corrupting").
 1. Members of the community would likely hold her up to contempt. Being fired as a teacher shows that she was being avoided by members of the community.
 - C. But-For Causation is shown as she was fired "shortly after" and her damages included her loss of her occupation and wages. She additionally suffered emotional harm because she was "furious".
 - D. NEWS may utilize a Conditional Privilege, saying they had a duty to inform society of a certain danger. That privilege would likely fail because NEWS added false information about PATTI and that the privilege would have been abused.
 - E. NEWS may utilize a Constitutional Privilege of Free Speech, per the 1st Amend. and argue that PATTI, as a public figure, must show the article contained Malice. PATTI would argue that whatever her status, a privilege under the 1st Amend. Would not protect knowing lies or reckless indifference to the truth.

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TORTS FINAL EXAM -- SPRING, 2024

QUESTION THREE -- MODEL ANSWER

PAUL vs. DAN in Fraud

A. Did DAN make a misrepresentation?

- (1) When DAN said the X-800 was a "superior product", he was only stating an opinion which was arguably true.
- (2) When DAN said the X-800 was "capable of monitoring pressures up to 8,000 pounds", that was a statement of fact which was also arguably true.
- (3) When DAN sold PAUL an X-200 that was re-labeled by DAN as an X-800, that was a misrepresentation of fact -- indeed, a lie.

B. Was the misrepresentation about a material fact?

- (1) "Materiality" is about quality or importance and the test is whether an average/reasonable person would consider it to be important, to the extent that it would be a basis for reliance, or a sale.
- (2) In this case, PAUL had specific needs (a pressure gauge that would warn the user of pressures) because the product's use had to be within a certain pressure limit. To PAUL an accurate and reliable pressure gauge was both material and a necessity. The machine would be dangerous without a pressure-warning device.

C. Was the misrepresentation made with an intent to induce reliance?

- (1) It can be argued that DAN changed labels with the intent to charge more money. This was a buy-sell situation and DAN's motive was very likely to influence PAUL to purchase for a higher price.

D. Was there an inducement in fact?

- (1) The facts state that "because of DAN's statements", PAUL purchased the mislabeled item. He relied on DAN's knowledge -- DAN's overall knowledge as the owner/operator of a mechanical supply store, and because DAN showed specific knowledge about the product. Therefore, PAUL's reliance was reasonable and his reliance would not be seen as a form of Contributory Negligence.

E. Did the fraud cause harm?

- (1) The doctrine of common law fraud is that it protects reliance on representations made during commercial transactions, thus becoming a marketplace rule to protect commerce and capitalism. In short, Fraud protects against economic harm. As for a consideration of causation, the explosion would likely not have occurred, but-for DAN's misrepresentations.

A. PAUL is "seriously injured" by the explosion of the machine when 6,000 pounds of pressure is generated. Those physical damages would not be covered by Fraud but would relate to Negligence or SPL.

B. PAUL purchased a falsely-labeled X-200 for \$1,000. when it was actually only worth \$100., so PAUL's economic harms would start with \$900. Whether PAUL could recover for other economic losses (loss of sales/profit) would depend on proof at trial.

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1)

I. Peg vs. Dent Co.

Is Dent, as the manufacturer and seller of the laser-beam that damaged Peg's eye, liable under a strict products liability action?

A. Strict Products Liability

According to the Restatement of Torts, 2nd §402A, to prove strict products liability the following elements of the prima facie case must be established: (1) a seller, in the business of selling, sold (2) a product that was (3) defective which was used (4) without change and it (5) caused (6) physical harm (7) to the consumer or bystander.

1. Seller

In this case, the Dent Corporation manufactures and sells laser-beam pointers and they are in the business of selling as opposed to occasionally selling on eBay.

2. Product

In this case, the product that was sold was a laser-beam, which would be a product and not considered a service.

3. Defective

The restatement classifies defects into three categories: (a) manufacturers defect, (b) design defect, and (c) informational defect.

a. Manufacturers Defect

A manufacturers defect is when the product deviates from its intended design.

In this case, there does not appear to be a manufacturers defect, as there is not evidence in the fact pattern to suggest that the laser-beam did not originally deviate from the intended design of "emitting a red, low-power beam of light and casting a small point of red color upon the target."

b. Design Defect

A product design is defective when a foreseeable risk could have been avoided by a reasonable change in design and it evaluated by three tests: (i) Consumer Expectation Test, (ii) Risk-Benefit Test, and (iii) Alternative Design Test.

i. Consumer Expectation Test

A product design is defective when the foreseeable risk of harm is beyond that which would be expected by an ordinary consumer.

In this case, the product design was not the cause of the harm, therefore it was not a foreseeable risk of harm. There could be an argument that the replacing of the battery with a stronger battery would be a foreseeable risk and that Dent could have designed the laser-beam so that it was more difficult to switch the battery.

ii. Risk-Benefit Test

A product design is defective when the magnitude of the risk outweighs the benefit of the product.

IS THIS THE TEST?

In this case, the risk of permanent eye injury would outweigh the benefit of being able to use a laser-beam pointer for teachers and speakers or as a novelty item.

iii. Alternative Design

A product design is defective if the plaintiff can prove that the product could have been reasonably changed to reduce or eliminate the risk.

In this case, the plaintiff could have an argument that the product design was defective, if they could prove that with a modification, Dick would not have been able to replace the battery with a battery that is four times the strength by simply removing once screw. If Peg could show an alternative design, that would not have had an unreasonable design change, that would not have allowed Dick to make the change, she may be able to prove a design defect based on the alternative design test.

c. Informational Defect

An informational defect exists if the foreseeable risk could have been avoided by the reasonable provision of instructions or warnings.

In this case, there are not facts to prove or disprove an informational defect.

4. Used Without Change

To prove the liability of the seller, the product must be used without significant change.

WAS THE ALTERNATION FORESEEABLE?

In this case, the defendant would have the strongest case against liability in that, Dick made significant changes to the product. One week after purchasing the

laser-beam, Dick removed a screw, removed the battery inside the product and replaced it with another batter that was four times the power of the original. In addition, an expert inspected and tested the product and will testify that "the substitution of the higher-powered battery made the product's light beam more intense and therefore unsafe for human eyes."

5. Causation

To determine the defendant's liability (a) actual and (b) proximate causation must be determined.

a. Actual Causation

The common test to determine actual causation is the "but-for" test.

In this case, but-for the laser-beam pointer briefly being aimed at one of her eyes, Peg would not have suffered permanent injury to the vision in her eye. This would meet the but-for standard and provide evidence of actual causation.

b. Proximate Causation

Proximate causation is commonly tested by the foreseeability of the risk of harm and also by examining if a reasonably prudent person in the defendant's situation would have foreseen the risk of harm suffered by the plaintiff.

In this case, it would be harder to prove proximate causation as it is not clear if a reasonably prudent person in Dent's situation would have foreseen the risk of harm by the laser-beam pointer, in its original condition.

6. Physical Harm

Physical harm must be directly related to the product for a strict liability action.

In this case, Peg suffered permanent injury to the vision in her eye after the laser-beam was aimed at her eye for a brief time. In addition, the expert that tested the product will testify that the product's light beam was more intense after the battery substitution and was therefore unsafe for human eyes.

7. Consumer or Bystander

Originally products liability was restricted to the consumer of the product, but has since been modified to include bystanders to ensure products are being designed and manufactured in a manner that will keep the public safe from unreasonable and foreseeable harm.

In this case, Peg would be considered in that population. She was a bystander that was in a reasonably foreseeable situation with the product. As the laser-beam is intended for use by teachers and speakers, it is foreseeable that it would be used around other people and could possibly shine in a bystander's eye.

B. Defenses

To reduce or bar the defendant's liability, they may raise defenses to strict products liability, including: (1) comparative negligence, (2) misuse, and (3) assumption of risk.

1. Comparative Negligence

Comparative negligence can diminish or bar the liability of the defendant if they can prove that the plaintiff's actions contributed or caused the injury incurred in relation to the product.

In this case, Dent could claim that Peg, by attempting to grab the laser-beam out of Dick's hand, could have contributed to her eye injury. If she had been sitting

down watching where the laser-beam was pointing, she would not have had the beam aimed directly at her eye.

2. Misuse

For the defense of misuse, the injured plaintiff's conduct will only be considered if it was (a) voluntary and unforeseeable, and (b) if the plaintiff voluntarily and unreasonably used the product and knew of the risk of harm and appreciated the dangers.

In this case, the defense will argue that Dick voluntarily misused the product when he replaced the battery source with one that was four times as powerful. They would argue that this was an unforeseeable misuse of the product, as it was not designed to use a battery of that strength. The defense will argue that he unreasonably used the product and that he should have known of the risk of harm and appreciated those dangers. The plaintiff will argue that Dick did voluntarily misuse the product but may not have been aware of the risk of harm or appreciate the dangers. Peg will also argue that she did not know about the modification and therefore as a bystander, she did not voluntarily misuse the product. In addition, the plaintiff can claim that the misuse was foreseeable, as it may be a common occurrence to make the laser-beam stronger, if it only took the removal of one small screw to switch out the battery.

3. Assumption of Risk

The defense can reduce or bar liability by proving that the plaintiff assumed the risk of harm by using a defective product knowingly.

In this case, Dent will argue that Dick assumed the risk and that Peg, acting with Dick, also assumed the risk of using the defective product.

C. Conclusion

It is likely that Dent will not be liable, at least not fully, for the damage done to Peg's eye. Dent can prove a defense under comparative negligence, misuse and assumption of risk, at least to substantially diminish their liability for the permanent injury to the vision of Pam's eye. Pam's strongest claim will be that Dent should have foreseen the design defect that allowed Dick to modify the laser-beam in a fashion that made it unsafe for human eyes.

2)

① **Patti vs. Dave in Invasion of Privacy**

Public disclosure of private fact ★

Public disclosure of private fact is an act, causing the publicity of another, which is a public disclosure of a private fact. It must be highly offensive to the standards of decency within a community, done with malice, and done without consent or privilege.

An act causing publicity of another → NECESSARY? (No)

Here, Dave wrote a letter to the Monterey news about Patti's articles in the Revolution Reporter. Although the Monterey news is only a local news outlet, it provides news to all of Patti's community as Patti is a teacher in Monterey. As news of Patti's articles would likely decrease her reputation amongst her community, Dave committed an act which caused Patti's publicity.

Public disclosure of a private fact

Here, Dave specifically identified Patti and exposed her pseudonym, telling the local news outlet that she was a teacher who wrote for the radical news publication. As Patti took steps to ensure this information remained private and Dave disclosed it, he publicly disclosed a private fact.

Offensive

In order for this tort to apply, the fact must be highly offensive to a reasonable person. Although Dave will attempt to argue that writing for a radical news publication would not offend a reasonable person, he would likely be unsuccessful in this claim. Monterey is a relatively small city which contains a military post. Therefore, it is likely to assume that many residents of Monterey are either service-members themselves or are tangentially

related to a service member. The fact pattern mentions that Dave himself (a veteran) was so offended by Patti's articles that he felt the need to let his local community know. The fact pattern also mentioned that Patti was so afraid of her articles becoming public that she wrote under a pseudonym for increased privacy. Therefore, Patti's private fact would be highly offensive to a reasonable person.

Done with malice

As indicated above, Dave disclosed Patti's private fact out of a sense of patriotism and because he knew Patti was a teacher. Dave demonstrated his malice by identifying Patti's pseudonym and informing the news that she was also a teacher. → ?

Without consent or privilege

Defenses

Qualified Immunity

Qualified immunity encompasses the ideas of public and private concern which could override an individual's right to privacy. good

INTERESTING ANALYSIS

Dave will argue that he was concerned about Patti's status as a grammar school teacher and felt that her local community had the right to know that someone who writes articles for an extremist news publication is a teacher. Had the news publication only been critical of the American government, Dave would have most likely been unsuccessful in this claim. However, the fact pattern specifically mentions that The Revolution Reporter espouses a violent overthrow of the American government. Public schools are an American governmental institution and it is reasonable that parents of young school children should know that their children's teacher espouses these beliefs. In an examination of qualified immunity, Patti's individual contributions to the publication would likely need to be examined. If Patti was only writing in support of anti-American

policies, Dave's claim would likely fail. However, if Patti's writings specifically espoused for violent action, Dave's claim could succeed.

Intrusion Upon Another's Seclusion

An act, done with intent, causing the intrusion upon another's seclusion which would be highly offensive to a reasonable person causing injury to the plaintiff's peace of mind, without consent or privilege.

Act - here, Dave was an accountant who peered into Patti's private tax documents in order to deduce she was writing articles under a false name. Although Patti willingly gave Dave her tax documents, it was only for the specific purpose of doing her taxes. Patti did not consent for Dave to pry into the specific details of her documents in order to deduce information about her private life. Therefore, Dave committed an act that also would have been highly offensive to a reasonable person as a reasonable person would find it offensive that their accountant was engaged in these activities.

intent - see supra

highly offensive to a reasonable person - see supra under offensive to the community

injury to plaintiff's peace of mind - Patti demonstrated her fear of her political beliefs becoming public knowledge by her using a pseudonym. As Patti lives in the same community as the paper was published, it is foreseeable that her peace of mind would be disturbed.

without consent or privilege - see supra

I DISAGREE WITH THIS PART BEING USED. PATTI DISCLOSED THE INFO TO DAVE, WHERE WAS THE "SECLUSION"?

— WAS HER FALSE NAME BEING OVERT?

False light

An act, causing publicity to others, which puts the other in a false light, which would be highly offensive to a reasonable person, without consent or privilege.

an act causing publicity to others - see supra

Which puts the other in a false light

Here, Patti will argue that she specifically published her articles under a pseudonym in order to maintain her public persona of an unbiased teacher. The fact pattern specifically mentions that Patti never mentioned her political views to her students. Patti would argue that maintaining the image of being unbiased is important to her career as a teacher. As Dave specifically identified her as a teacher of tender minds to the Monterey News, Patti will argue that this put her in a false light which would negatively affect her future career prospects.

→ WHAT WAS FALSE "IN DAVE'S LETTER?"

Highly offensive to a reasonable person - see supra under offensive to the community

Without consent or privilege - see supra

Conclusion

Although Dave could attempt to raise the defense of qualified immunity, Patti would likely be successful in her claim of invasion of privacy.

2

Patti vs. News in Defamation

Defamation

Defamation is the publishing of defamatory material to a third party who perceives it as defamatory and understands it applies to the plaintiff, causing damages.

Here, the Monterey News printed a story identifying Patti by her real name and place of occupation. The story specifically made two defamatory claims:

1. Patti was a bomb throwing anarchist
2. Patti corrupted innocent children in her classroom.

The fact pattern indicates that none of these claims were true. Therefore, The Monterey News published defamatory material about Patti to a third party (The City of Monterey)

Monterey is a small city containing a military base (see supra for further analysis), therefore, it is reasonable to state that the citizens of Monterey would perceive the defamatory statements published by the Monterey News as defamatory.

The Monterey news identified Patti by her real name and place of occupation, therefore, the citizens of Monterey would understand that the defamatory material applied to Patti.

Damages

Defamatory statements may be of two types, libel and slander. As the statements made by the Monterey News were in the form of a published news-paper, they would fall under libel.

Libelous defamatory statements are presumed to be inherently damaging. Although the Monterey News would argue that the statements were not libelous on their face, they would likely be unsuccessful in this claim as the statements were libelous per quod and Patti can prove both general and pecuniary damages (Patti's reputation in the community was damaged and she lost her employment.

Defenses

Common law defenses to defamation include fair comment, absolute immunity, truth, qualified immunity, and consent, and freedom of the press. Additionally there is a constitutional defamation defense which came about post - NY Times which the Monterey News could also attempt to raise.

The Monterey News would most likely attempt to raise the defense of freedom of the press and a constitutional defense. Freedom of the press is the best defense here because, as a news publication, Patti must show the Monterey News acted with actual malice in order to overcome the defense of freedom of the press.

KNOWING OR
RECKLESS FALSITY

Here, The Monterey News published that

1. Patti was a bomb throwing anarchist
2. Patti corrupted innocent children in her classroom.

Despite receiving no information of the sort from any source. Therefore, The Monterey news acted with malice as their statement was a lie.

Conclusion

Due to the factors listed above, Patti will likely be successful in her claim against Monterey News.

3)

I. Paul vs. Dan in Fraud

Is Dan liable for the tort of Fraud by misrepresenting the Dabbs X-200 as the Dabbs X-800 pressure gauge to Paul?

A. Fraud

For a cause of action in fraud the plaintiff must prove the following elements of the prima facie case: (1) a false misrepresentation of (2) material facts (3) done with scienter (4) with the intent to induce the plaintiff (5) and the plaintiff justifiably relied upon those facts (6) to their detriment.

1. False Misrepresentation

A false misrepresentation is a lie or intentional omission of facts intending to persuade the plaintiff.

In this case, Dan did not lie about the specifications of the Dabbs X-800 when he told Paul that it was a "superior product" and it was "capable of monitoring pressures up to 8,000 pounds." Dan did provide an intentional false misrepresentation to Paul when he changed the labels and sold Dan the Dabbs X-200 which was an older, less expensive model that could not monitor pressures above 2,000 pounds. The facts state that Dan changed labels in order to charge Paul the \$1000 value of the X-800 instead of the \$100 value for the X-200.

2. Material Facts

Material facts would be information that would weigh significantly in the plaintiff's decision.

In this case, Dan's misrepresentation was the reason Paul purchased, what he thought was the X-800, "Because of Dan's statements, Paul buys the X-800 gauge."

3. Done with Scienter

To be considered fraud, the false misrepresentation must be done with scienter, that is intentionally lying or acting with negligent disregard.

In this case, Dan knew that Paul needed a pressure gauge that could handle forces up to 6,000 pounds. Though the information regarding the X-800 was true, Dan acted with scienter, when he changed the label and sold Paul the X-200 that Dan knew would not be able to sustain the pressures of Paul's invention.

4. Intended to Induce

To establish the prima facie case of fraud, the false misrepresentation must be intended to induce the plaintiff.

In this case, the fact pattern states that Dan intentionally changed the labels in order to induce Paul to buy the gauge and pay the additional cost.

5. Justifiable Reliance

Justifiable reliance is presumed unless the misrepresentation is not false.

In this case, Paul justifiable relied on Dan's false misrepresentation because he thought he was purchasing the X-800 which was a superior product and could handle the pressures produced by his invention. The fact pattern states that because of Dan's statements, Paul bought the X-800, showing that he thought he was purchasing the X-800.

6. Detriment

The elements of fraud include detriment to the plaintiff that was caused by their justifiable reliance on the false misrepresentations.

In this case, Paul installed the pressure gauge he purchased based on Dan's false misrepresentaion, and when he tested the machine it exploded and seriously injured Paul.

B. Defenses

There are serveral defenses against fraud, including (1) puffing by the defendant, (2) superior knowledge by the plaintiff, (3) plaintiff's ability for further testing.

1. Puffing by the Defendant

Puffing by the defendant is when they are just trying to make a sales pitch by embellishing the facts.

In this case, Dan was not only puffing. If he would have made statement that the X-800 was a superior product, but that was not entirely true, maybe there was another product that was superior, he would have been puffing. Teh fact pattern states that the X-800 was actually a superior product. Dan's ~~fraud~~ was that he lied and sold Paul the X-200 while claiming it was the X-800.

2. Superior Knowledge by the Plaintiff

If the plaintiff has, or should have superior knowledge about the product, then this will disprove the justifiable reliance element of the tort.

In this case, there is nothing in the fact pattern to show that Paul had superior knowledge. He is an inventor that may have knowledge regarding mechanical

items, but the fact pattern states that the pressure gauges look and weigh the same, so it would be hard to distinguish between the two.

3. Plaintiff's Ability for Further Testing/Investigation

If the plaintiff had the ability and time to complete further investigation or testing, this may eliminate the liability of the defendant.

In this case, it would have been difficult for Paul to test the product. Believing it to be the X-800 which is rated above the pressure of his invention, he would be able to rely on the warranty of the product and would not reasonably test it further.

C. Conclusion

In this case, Paul has a very strong case for Fraud. Dan used false representation of the material fact with scienter with the intent to induce Paul to justifiably rely on those facts which resulted in both economic and physical harm to Paul. Paul would most likely be awarded damages for both the economic loss of his invention, medical bills, any loss of income due to the injury and possibly pain and suffering.

END OF EXAM