

Question 4

Employer hired Driver to operate a delivery van. Before allowing Driver to operate the van, Employer checked Driver's prior job references, required Driver to undergo a physical examination by a medical doctor, and provided Driver with extensive training in motor vehicle safety. Medic, the medical doctor who examined Driver, discovered that Driver had a sleep disorder that caused Driver to spontaneously fall asleep and that Driver had on several occasions fallen asleep while driving. Driver pleaded with Medic not to inform Employer of the sleep disorder. Medic agreed, and omitted this information from the physical examination form that he sent to Employer. Medic also sent a letter to Employer assuring Employer that Driver was "in all respects fit for employment as a delivery van operator." Employer then provided Driver with a daily delivery route and paid him a monthly salary.

While Driver was making deliveries for Employer, the van left the road and struck Pedestrian, who suffered severe injuries as a result.

Pedestrian filed a lawsuit for the damages as a result of the injuries sustained in the accident against Driver, Employer, and Medic.

1. Can Pedestrian prevail under the doctrine of *res ipsa loquitur* concerning Driver's alleged negligence? Discuss.
2. What arguments will Pedestrian make in support of his claims of negligence, what defenses can reasonably be asserted, and who is likely to prevail in a lawsuit filed by Pedestrian against:
 - a. Employer? Discuss.
 - b. Medic? Discuss.

Answer A to Question 4

Pedestrian v. Driver

Driver may be liable for negligence if it can be determined that he owed a duty of due care; that he breached that duty; and that Pedestrian suffered personal injury actually and proximately caused by Driver's negligence.

Duty

Driver owes a duty under the circumstances to conform to a standard of care of a reasonable prudent person for the protection of others against unreasonable risk of harm.

Driver owes a general duty of care to drive safely for the protection of others on the roads. Here, Driver knew that he often fell asleep on the road and by operating the delivery van he owes a duty to exercise reasonable care to others on the road.

Breach

Breach is a failure to conform to the standard of care for the protection of others against unreasonable risk of harm.

Driver failed to conform to required standard of care when his van left the road and struck Pedestrian because he knew that he was susceptible to falling asleep and took the risk that he would not cause harm to others by operating the van.

Therefore, there was a breach of duty.

Res Ipsa Loquitur

Res Ipsa Loquitur may be used to prove breach of duty if it can be shown that the breach of duty is not the type that normally would have occurred if the Driver was not negligent, the instrumentality was under the exclusive control of Driver, and that the Pedestrian did not cause his own injuries.

Here, the fact that Driver left the road and struck Pedestrian is not a type of accident that happened only if the Driver was negligent. There are many other situations that could have caused the Driver to veer off the road, including mechanical failure, defective steering wheels, or emergency reaction. Thus, Drivers negligence is one of the many possible causes. This factor makes it highly unlikely that Res Ipsa Loquitur could be used in such [a] situation. Even if the Driver has exclusive control of the car that struck Pedestrian, and Pedestrian did not cause his own injuries, Res Ipsa Loquitur cannot be used if the Driver can show that accidents like this can happen due to the above mentioned factors.

Therefore, Pedestrian cannot establish breach of duty under Res Ipsa Loquitur doctrine.

Causation

The breach of duty must be the actual and proximate cause of Pedestrian's injury.

Here, there is not enough information from the facts to show that the accident was actually caused by Driver's breach of duty of care.

Assuming that Res Ipsa Loquitur can be used to establish breach, then Pedestrian's injuries were actually and proximately caused by the Driver's negligence.

Damages

Pedestrian must suffer personal injury in order to recover under negligence.

Here, Pedestrian suffered severe injuries.

Therefore, there was an injury.

Conclusion

Because there was a duty, breach of duty, causation and damages, Driver will be liable for negligence.

Pedestrian v. Employer

Vicarious Liability

An employer is vicariously liable for the negligence of his employees committed within the scope of the employment relationship.

Here, Driver was negligent as discussed supra. Employer hired Driver to operate the van and is thus an employer within the meaning of vicarious liability. Driver's negligence occurred within the scope of the employment relationship because Driver was making deliveries for Employer when the van left the road and struck the Pedestrian.

Therefore, Employer will be held vicariously liable for the negligence of Driver.

Negligent Hiring/Training/Supervision

Employer may be liable for negligence if it can be determined that he owed a duty of due care; that he breached that duty; and that Pedestrian suffered personal injury actually and proximately caused by Driver's negligence.

Duty

Defined supra. The Employer has a duty to make reasonable investigation of the employees it hires for the protection of others against unreasonable risk of harm.

Breach

Defined supra.

Here, Employer made reasonable efforts to investigate Driver's prior job references and physical conditions.

Causation

Defined supra.

Here, Employer did cause the Pedestrian's injury since but for the hiring of Driver, Pedestrian would not have been injured. Further, Driver's negligence was the proximate cause since it was foreseeable to Employer that if its employees were negligent while driving the delivery van, the company would be liable.

Damages

Defined and discussed supra.

Conclusion

Since Employer did not breach its duty of care, it would not be liable for negligent hiring or supervision.

Pedestrian v. Medic

Negligence

Defined supra.

Special Duty

A special duty to control the act of third parties exists where there is a special relationship based on contractual relationship.

Because Medic is under a contract with Employer to make any information through the physical examination of Driver known to Employer, Medic owes a duty of care to give vital information about Driver's health to Employer.

Breach

Defined supra.

Medic breached the duty when it did not inform Employer about Driver's medical condition that would be crucial to Employer's decision to hire Driver.

Therefore, Medic breached the duty of due care.

Actual Causation

Defined supra.

But for Medic's information in the physical examination of Driver, Employer would not have hired Driver and Driver would never have caused the injuries to Pedestrian.

Therefore, there was actual causation.

Proximate Causation

Defined supra.

Medic would assert that the consequence of Driver injuring Pedestrian was not the type of risk that makes their breach of duty a foreseeable type of harm. This argument would not succeed since Medic knew that Employer's Driver was required to make deliveries as part of the jobs.

Therefore, Medic's breach of duty was the proximate cause of Pedestrian's injury.

Intervening Cause

An intervening cause that is unforeseeable breaks the chain of causation and relieves Medic of further liability.

Medic would argue that Driver's negligence in driving, knowing that he is susceptible to falling asleep, was an intervening cause that cuts off Medic's liability for harm to Pedestrian.

However, this argument would not succeed since Driver's negligence is foreseeable and Medic, Driver and Employer would be held jointly liable for Pedestrian's harm.

Damages

Defined and discussed supra.

Conclusion

Since there is a duty, breach of duty, causation and damages, Medic will be liable for negligence.

Answer B to Question 4

1. Res Ipsa Loquitor

“The Thing speaks for itself.” Res Ipsa Loquitor is a doctrine that is used to prove negligence when there is no actual proof of the act, when the result does not occur in the absence of negligence, and when the instrumentality is in exclusive control of the defendant.

Here the facts show that the Driver, while making deliveries in his work van, left the roadway and struck Pedestrian. Pedestrian was severely injured. The van was under the exclusive control of Driver. But the event could have occurred in the absence of negligence. For example Driver could have suffered an epileptic seizure or been not paying attention. There are too many other ways that Driver might have come to hit Pedestrian for this doctrine to apply.

Res Ipsa Loquitor will not apply.

2. Pedestrian v. Employer

Vicarious Liability

When an employee is in the course and scope of his employment responsibilities then the company he works for will be held responsible for his action.

Here Driver is an employee of Employer, hired to drive a delivery van. Driver was in the course of work when he hit and injured Pedestrian. Employer will be held vicariously liable for Driver’s actions.

Negligent Hiring

Negligence is the duty owed to another, a breach of that duty and that the breach of that duty is the actual and proximate cause of damages to the plaintiff.

Duty

Employer had the duty of a reasonable delivery service to insure not to create risk to those around them. This included the duty to insure that their hiring procedures are adequate.

Breach

When Employer was hiring Driver they went to great lengths to ensure that he would be an adequate driver. They checked his prior job references. They required him to undergo a physical exam with [a] medical doctor. They provided him with extensive training in motor vehicle safety. The facts show that they went beyond the normal here and were very safety conscious. It would be up to Ped's lawyers to prove that employer breached, but it would be difficult.

Employer will be found not to have breached their duty of care.

Actual Cause

But for Employer hiring Driver, Ped would not have been injured.

Therefore Employer is the actual cause of Ped's injury.

Proximate Cause

Employer will argue that Driver's actions, in convincing Med to falsify his response was a supervening cause that cut off liability to Employer.

The facts indicate that while at his medical appointment that the Dr. found a sleep disorder. This disorder would cause Driver to spontaneously fall asleep. Driver even told Med that he had on several occasions fallen asleep while driving. Medic agreed to omit this info from the examination form he sent to Employer and also sent a full letter stating that Driver was "fit for employment in all respects as a driver." Had Employer known the truth they would not have put Driver to work as a driver. Due to Medic's deceit this is too remote a possibility for Employer to [be] responsible for. In fact it is criminal on Medic's part, and criminal behavior will be found to break the chain of causation.

Employer will be found to not be the proximate cause of Ped's injuries.

Damages

Employer will not be held liable for any damages to Ped. Although if Ped is successful against Employer then Employer will be allowed to sue Driver and or Medic to recover their costs.

Defenses

Supra

Ped v. Medic

Negligence

Supra

Duty

Here Medic had a duty to act as a reasonable medical doctor. He will be held to a standard of care of that of reasonable doctors in the same field of medicine in his local area. Modernly Drs. have started to be held to the standard of their nationwide community of Doctors.

Medic had a duty of care.

Breach

When Medic agreed to omit this critical information from the medical exam he showed a conscious disregard for the standard of care of a reasonable Dr. A reasonable Dr. would see that people who spontaneously fall asleep should not be driving delivery vans, or even driving at all. Driver even admitted to having fallen asleep before while driving. Instead of this alerting Dr. to a real problem, Dr. chose to ignore it. He was being paid by Employer just to check if these people were safe to drive.

Medic breached his duty.

Actual Cause

But for Medic falsifying the medical records, Ped would not have been injured.

Medic is the actual cause of Ped's injury.

Proximate Cause

There was no break in the chain of causation between Medic's falsifying of the medical record, and it is foreseeable that information, if omitted, would cause Driver to hit Ped.

Medic is the proximate cause of injury.

Damages

Medic will be held responsible for all of Ped's general damages that flow from the tort, medical expenses and pain and suffering.

Defenses

It would be difficult for Medic's lawyers to find any defense for Medic's behavior.