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CAROL V. DAN

STRICT LIABILITY- DOG BITE

A defendant is strictly liable when he is engaged in an abnormally dangerous activity or when owns a dangerous animal with known dangerous propensities.

Here, Carol will argue that Dan is strictly liable for her injury when the puppy gave her a nasty bite on her hand. However, Dan will counter that the puppies are eight-weeks old and have never bitten a human before. Further, he will argue that the bite occurred without warning when Carol was examining the puppies. Because the puppies are only a few weeks old Dan had no knowledge that would lead him to believe the puppy had a known dangerous propensity. A dog owner will be found strictly liable after a dog has bitten more than one person because on the first bite it as not been determined that the dog is a biter.

Therefore, Dan will not be held strictly liable for Carol's dog bite.

NEGLIGENCE

Negligence occurs when a defendant breaches the ordinary standard of care and the plaintiff suffers damages. For Negligence the plaintiff must prove that the defendant owed her a duty, he breached that duty, the breach caused her injury, and the plaintiff must suffer damages.

GENERAL DUTY

There is a general duty to act as a reasonable person under the same or similar circumstances. There are two methods to determine to whom a duty is owed. Under the **Cardozo** method a defendants owes a duty of care to those potential plaintiffs that within the "**zone of danger.**" The "**zone of danger**" being the area surrounding the negligent act. Under the **Andrews** method a defendant owes a duty of care to the entire world.

Here, Dan owed Carol a duty of care under both the **Cardozo** and **Andrews** methods because she was within the zone of danger when she was injured Here, the zone of danger would Dan's home.

Therefore, Dan owes a general duty of care to Carol.

SPECIAL DUTY

There are special duties rules where a heightened standard of care is required because of a defendant's relationship with the plaintiff; such as a landowner occupier. There are three types of status of a plaintiff on the land; (1) a trespasser; (2) licensee; (3) invitee. No duty of care is owed to a trespasser. A licensee is a person who is on the land for a social purpose. A landowner owes a licensee the duty to warn about dangerous conditions on the land. An invitee is someone who is on the property for a business purpose. A landowner owes an invitee the duty to warn about the dangerous condition and make it safe.

Here, Carol would likely be considered an invitee because she came to Dan's home to look at the puppies Dan was selling. Dan is a dog breeder so it is reasonable to believe that he operates his business from his home. Dan will argue that he did not have a special duty to Carol because her injury did not occur because of a dangerous condition on the land. He will argue that the injury Carol received should be considered under the general duty of care rules because it occurred when she was examining a puppy and was further aggravated when he mistakenly rubbed heavy-duty solvent into her wound. He will argue that the puppies (as established above) are not known to be dangerous and there was no dangerous condition for him to warn and make safe. However, Carol will indicate that the special duty rule applies to anything that occurs on the land.

Therefore, Dan also owes Carol a special duty.

BREACH

Breach occurs when the duty owed is overlooked and the plaintiff is injured.

Here, Carol will argue that Dan breached his duty of care when he allowed her to examine the puppy and subjected her to injury. Further, she will argue that he again breached his duty when he rubbed heavy-duty solvent into her wound. Dan will argue that Carol assumed the risk of being bitten when examining the puppies because a reasonable person would know when dealing with a puppy there is always the potential for the puppy to bite, especially at a young age. Dan will further argue that he accidentally grabbed the solvent thinking it was antiseptic as he was trying to render aid to Carol's injury. Carol will argue that a reasonable person would know the difference between heavy-duty solvent and antiseptic.

Therefore, there is a breach.

CAUSATION

There are two types of causation; actual and proximate.

Actual

Actual cause occurs when "but for" the defendant's negligence the injury would not have occurred.

Here, Carol will argue that "**but for**" Dan's negligence in allowing her to examine the puppy, she would not have been bitten. Carol will also argue that "but for" Dan negligently grabbing the solvent she would not have had her nasty bite exacerbated.

A court will likely find that there was no actual causation relating to Carol examining the puppy. However, there will be actual causation for Dan rubbing the solvent into her bite.

Proximate

Proximate cause occurs when there is a foreseeability of injury based on the chain of events.

Here, Carol will argue that after she was bitten by the dog it is **reasonably foreseeable** that Dan (as a dog breeder who likely has people in his house regularly to sell puppies to) would attempt to render aid if a puppy bit a potential customer. However, Dan will argue that it is not foreseeable that he would grab the solvent and not antiseptic. Carol will counter that the causation extends to Dan treating the injury only.

Therefore, There is proximate cause.

Therefore, there is causation.

DAMAGES

A plaintiff must suffer damages to recover for negligence.

Here, Carol suffered a nasty bite on her hand. She will be able to ask for **compensatory damages** for her injury including medical bills to treat the nasty bite.

Therefore, there are damages.

Therefore, Carol will successfully prove negligence.

DEFENSES

ASSUMPTION OF RISK

A defendant can argue as a defense to negligence that the plaintiff assumes the risk of being injured.

Here, Dan will argue that Carol assumed the risk of injury when she came into his home to examine puppies. A **reasonable person** would know that there is always the potential for a dog bite to occur when examining dogs that are unfamiliar with the plaintiff. In this instant Carol was examining an eight-week old puppy. The dog is not old enough for Dan to have knowledge if it has any dangerous propensities to warn about. Dan will further argue that because Carol assumed the risk of being bitten she also had the option to decline his assistance in treating the dog bite because Dan is a dog breeder not a medical professional. Therefore, she assumed the risk of potentially receiving inadequate medical treatment. A court will agree that Carol assumed the risk.

Therefore, Dan will successfully argue that defense of assumption of risk which will bar Carol's recovery.

BATTERY

A battery is the intentional harmful or offensive touching of the person of another.

Here, Carol will argue she was battered when Dan rubbed the heavy-duty solvent into her open wound. She will argue that the solvent was harmful because it caused her pain. However, Dan will indicate that there is no intent because he did not mean to cause Carol pain and did not know that he grabbed solvent instead of antiseptic.

Therefore, there is no battery.

BOB V. DAN

STRICT LIABILITY

A defendant is strictly liable when engaged in an abnormally dangerous activity or dealing with wild animals or animals with known dangerous propensities. A defendant is liable for injuries caused when fleeing the animal.

Here, Bob was confronted by Dan's pet chimpanzee which was in a side room. A chimpanzee is considered a wild animal because it is not known to be domesticated and is uncontrollable. Further, the sight of a chimpanzee is likely to cause fear in people not its owner. The chimpanzee gave Bob a deep gash to his head as he ran past it which is an injury. However, Dan will argue that he had the chimpanzee in a room at the

end of the hall and told Bob not to go into that room. This he will argue was enough to show that the animal was secure and not wandering around Dan's property. This will not act as a defense to strict liability because the animal is still present and is a wild animal.

Therefore, Dan is liable in strict liability for Bob's injuries.

NEGLIGENCE

GENERAL DUTY

Dan owes Bob a general duty of care because he is on his property (which would be the zone of danger) and is present in the world.

Therefore, Dan owes a general duty of care to Bob.

SPECIAL DUTY

There are special duties rules where a heightened standard of care is required because of a defendant's relationship with the plaintiff; such as a **landowner occupier**. There are three types of status of a plaintiff on the land; (1) a trespasser; (2) licensee; (3) invitee. No duty of care is owed to a trespasser. A licensee is a person who is on the land for a social purpose. A landowner owes a licensee the duty to warn about dangerous conditions on the land. An invitee is someone who is on the property for a business purpose. A landowner owes an invitee the duty to warn about the dangerous condition and make it safe.

Bob will argue that he is owed a heightened duty of care because he was on the property as an invitee to examine the puppies for sale. Dan will acknowledge this but will however point out that the injury occurred in a dark room at the end of the hall that Bob was told not to go into. Dan will argue that because Bob did not have permission to go into the dark room at the end of the hall that once he entered the room he became a trespasser and is owed no special duty.

Therefore, there is no special duty of care owed as far as the entry and events that occurred in the room at the end of the hall.

BREACH

Here, Bob will argue that Dan breached his duty of care by having the chimpanzee in a room near the bathroom. Because Bob was hurriedly trying to find the band aids to help Dan in rendering aid to Carol he made a wrong move when it came down to selecting which door in the hallways he was the bathroom. The two doors were near each other.

Bob will argue that a reasonable person would not keep their chimpanzee so close to the bathroom where visitors to the home are likely to traverse.

Therefore, there is a breach.

CAUSATION

"**But for**" Dan owning the chimpanzee and keeping it near the bathroom Bob would not have suffered injuries.

Bob will argue that his injuries were proximately caused because the bathroom and door with the Chimpanzee are near each other. He will argue that it is **foreseeable** for a visitor the home to make a mistake as to which door is the bathrooms because the do not live in the home.

Therefore, there is causation.

DAMAGES

Dan suffered from a deep gash to his head. He will be able to seek **compensatory damages** for this injury to have his medical bills paid.

Therefore, there are damages.

Therefore, Bob has proved Negligence.

DEFENSES

ASSUMPTION OF RISK

Dan will argue that Bob assumed the risk of injuries coming on to his property to examine puppies. However, Bob will argue that he may have assumed the risk of injury from the puppies but there was no assumption of risk for injuries received from a chimpanzee because he did not know it was on the property and did not enter the property to interact with the chimpanzee.

Therefore, Dan cannot successfully argue the assumption of risk.

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