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1. Is State Hospital Liable for Cook's negligence ?

Negligence

Negligence requires duty, breach, causation and damages

Duty

To whom is a duty owed? Under majority view, foreseeable plaintiff and plaintiffs in zone of danger. Under minority view, everyone.

Here, State Hospital funded by the State had entered into a contract with Cook's catering business to provide on-site means service to patients, staff and visitors. Under majority view, because Frank, former patient, entered the hospital kitchen and mixed peanut power into a serving tray full of mashed potatoes. This led to Patrick suffering severe injuries because he was a foreseeable plaintiff as he was a patient and was trying to eat his meal during lunchtime. Moreover, he was in the zone of danger because he was in the kitchen when neither Kimberly Cool nor any of her employees were present. Additionally, under minority view, anyone that was in the kitchen and became ill because of Frank mixing the peanut power would be a foreseeable plaintiff.

Thus, duty owed is established.

Standard of care

A catering business must act as a reasonable prudent business unless there is a special relationship.

Reasonable prudent

Here, because State hospital had hired Kimerly cook, to provide on-site meal service to patients, staff, and visitors they should have been present in the kitchen at the time and not left to use the restroom. This is because during lunchtime a prudent business providing meals to patients must be available, so they can assist patients. This is the reason why State Hospital funded Kimberly. However, the fact that neither Kimberly nor her employees were present during a time that patients need their food, She and her staff members failed to act like reasonable catering business to help the employees.

Thus, the catering business was not prudent

Special relationship

A special relationship exists between employer-employee, doctor patient, and special duties relating to landowners

Landowners

Landowners could be liable to a party due to unanticipated trespassers, anticipated trespassers, licensee, or Invitee.

Licensee

A licensee is someone coming onto someone's property for social work as a guest. Licensee has a duty to warn of known issues with the premise and as a reasonable person try to correct the issue.

Here, Frank arguably could be considered as a licensee as he was a former patient and had left the hospital presumably awhile ago, so the hospital had no duty to Frank as a (doctor to patient relationship). However, because people come in and out of an hospital to visit their loved ones. Kimberly cook and her colleagues should have been present to witness Frank mixing peanut power into a serving tray full of mashed potatoes. Although, the business would argue that Frank entered the hospital proper the lunchtime this argument would not hold. This is because a catering business unravels its food and business prior to lunchtime, so when lunchtime becomes available it can host the patients, staff and visitors. If Kimberly cook was present wither colleagues, they could have warned Patrick not to consume the mashed potatoes because an employer of the company would be able to witness that Frank was mixing peanutrow power into a serving tray full of mashed potatotes.

Therefore, Frank could be considered a licensee.

Invitee

An invitee is someone that comes on the premises of another for business purpose. Unlike anticipated trespassers or licensee, Invitee has a duty to also inspect the premises.

Here, Patrick is a current patient of the hospital, so he would be considered an invitee because he is benefiting from the services the hospital is providing him as he is presumably paying for the hospital. On the other hand, Kimberly would argue that Patrick is not an invitee because the hospital is publicly funded and managed by the state. Thereby, that patients are using the hospital for free and not for service purposes. This is important because Kimberly would argue

because Patrick would not be considered an invitee. She and her colleagues did not need to inspect to see whether the mashed potatoes were tampered with. Additionally, she would argue because this a publicly funded hospital that there are too many patents for them to have them all under their supervision.

On the other hand, the hospital would argue because Patrick was an invitee then Kimberly and her colleagues should have inspected the food prior to serving it to patients as Frank had tampered with the mashed potatoes prior to lunchtime. The hospital would argue because Frank tampered with the food prior to serving patients, visitors, and employees. Kimberly and her colleagues should have inspected the food.

Unanticipated trespassor

Here, Kimberly Cook would argue that they had no duty because she would argue that Frank was an unanticipated trespasser as he was a former patient of the hospital. However, this argument most likely would not hold with the court because this is a State Hospital and Kimberly had contracted to provide services to patients, staff, and visitors. Thereby, Kimberly should have anticipated that people would come in and out of the hospital.

Anticipated trespassor

Like invitee, when a party is aware of anticipated trespassors they have a duty to warn of known conditions and use reasonable care to fix the problem.

Here, Kimberly cook would argue because Frank was a former patient she did not have a duty towards him. However, this argument would not hold because Kimberly Cook was aware they had contracted with the State Hospital to even provide services to visitors, which illustrates that they did have the anticipation someone would come.

Breach

Breach occurs when a persons' conduct falls below the standard of care.

Negligence per se

Negligence per se establishes duty and breach. The elements are that the statute protects people from a class and the harm that statute is trying that harm.

Here, the hospital would argue because that because the statute provides that food must be never left unattended before, during, or after meal services that it was trying to protect Patrick. This is because Patrick consumed the food during lunchtime hours when Kimberly and her colleague should have been presented. Additionally, the statute is most likely trying to protect patients from food that is left unattended before, during, or after meal service. The hospital would argue because Patrick had the mashed potatoes during lunchtime when Frank had tampered with the food prior to lunchtime. I twas trying to protect people from being ill.

Therefore, negligence per se is established.

Causation

There are two types of causation that must be established: cause in fact and proximate cause.

But for case

But for the actions of the defendant, the cause would not have happened.

The hospital would argue but for Cook and her employees not being present before lunchtime

then Patrick would not have been gotten serious allergy to the peanuts and suffered as a result.

Proximate cause

Proximate cause is a harm that is foreseeable.

Here, the hospital would argue that the harm was foreseeable because Frank tampered with the mashed potatoes prior to lunchtime. That due to the intervening cause of Frank tampering with the mashed potato it led to to Patrick becoming sick.

Supervening cause

Supervening cause cuts off liability if it is an act of god, intentional tort, or criminal act.

Here, Kimberly would argue that Frank committed a criminal act by coming onto the hospital kitchen when the CEO of the hospital was warned by Davis that someone would be carrying a "massive attack." Presumably, the anonymous tip was Frank and Kimerly would argue she should not be liable for the actions of Frank because CEO was warned and because Frank tampered with the mashed potatoes to hurt someone this would constitute as an criminal act.

All in all, cause in fact is established, but proximate cause is debatable.

Damages

A person must have an actual injury or property damage. A pure economic loss is not viable.

Here, Patrick suffered serve injuries, so this element is established.

2. Does State Hospital Owe Patrick a duty to protect from from Frank?

Vicarious liability

An employer could be liable for the actions of his employee based on the doctrine of vicarious liability. If the employee, deviated from his scope of employment then the employer would not be liable.

Here, State Hospital did owe a duty to Patrick because he was benefitting from the services provided to him and he was under the direction of the hospital. Moreover, because Denis Dave, CEO, received series of anonymous email messages that someone was threatening to carry out a "massive attack" at the hospital. He was warned by this, so he decided to hire security guards to patrol the kitchen area lobby and entrance area. The fact that he works for the State Hospital and did not share this important info concerning the threats with anyone else at the hospital. He failed to act as a prudent employee working under the direction of his employer. The hospital would be liable because Davis was working during the scope of his employment when he had reassigned the security guard to patrol the areas that he wanted him to patrol. Thereby, the hospital would be liable because Davis was working during the scope of his employment and as a result the hospital would be liable to protect Patrick from Frank.

Therefore, hospital would be vicariously liable to Patrick.

3. What defenses may Davis reasonably assert that she was negligent for her decision to reassign the security guard from the hospital kitchen?

Indemnification

Under the doctrine of vicarious liability, if a party is liable to the employer-employee (or vice versa) the parties can seek indemnification.

Here, Davis would assert the defense that if he is liable to Patrick because he was working under the direction of the hospital and the jury returned a verdict against Davis. he should be able to retrieve some sort of monetary compensation for the damages from State Hospital, his employer, because he would argue that the State Hospital hired me, so if he is liable then the hospital should be liable as well.

Therefore, Davis most likely would be able to get indemnification

Assumption of risk

When the plaintiff assumed the risk knowingly and voluntarily

Here, Davis would argue that because the hospital knowingly hired him based off his resume or performance they would know what sort of employee they would be getting. Moreover, because

he had the position of CEO, he would argue that the hospital knew he is competent enough to take over the hospital as a CEO and they voluntarily hired him to do the job as a CEO for the hospital. However, the hospital would argue they did not know about the information concerning the threats nor did voluntarily allowed Davis to carry one without both parties doing anything about the massive attack.

Therefore, most likely this defense would fail.

Pure comparative fault

Plaintiff is at fault based on their percentage of fault.

Here, Davis would argue that he should be able to retrieve something from the judgement if he is party at fault.

Modern comparative fault

Plaintiff is at fault if percentage at fault is more than fifty percent

Here, if the jury finds that Davis percentage of fault is lower than fifty percent. He would be able to retrieve something.

Contributory negligence

This defense is abolished in majority of jurisdictions.

Here, If Davis resides in a state that contributory negligence is viable and a court finds the hospital viable. He would not be liable for his actions. However, the hospital under the "last clear doctrine" could argue that because Davis was the last person knowing about the massive threats then he should be liable as the State Hospital did not know about the information regarding the threats.

Therefore, this defense most likely would fail.

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