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### 1. Is State Hospital liable for Cook's negligence?

An employer can be held liable for the torts of their employees under the doctrine of **respondeat superior**. However, this doctrine does not apply to torts committed by independent contractors. Therefore, the issue here is whether Kimberly Cook (C) constitutes an independent contractor or an employee of State Hospital's (SH).

Whether a person constitutes an employee or independent contractor depends on the alleged employer's level of control over the person's work.

Here, SH contracted with Cook's Catering to provide meals to patients, staff, and visitors. Cook's Catering is owned and operated by C and not by SH. This fact alone strongly indicates that C is an independent contractor and not an employee of SH.

As a result, SH cannot be vicariously liable for Cook's negligence.

However, SH can still be held liable for breaching its non-delegable duty to keep the premises safe.

### 2. Does State Hospital owe Patrick a duty to protect him from Frank?

As a state-owned hospital, SH has a **non-delegable duty to keep the premises safe** which can be asserted by Patrick (P) under a negligence theory.

The prima facie case for negligence is: (1) **duty**; (2) **breach**; (3) **causation**; and (4) **damages**.

- **Duty**

A person owes a duty of care to all **foreseeable plaintiffs**. Foreseeable plaintiffs are those within the **zone of danger** per Cardozo in *Palsgraf*. Here, P is a patient at SH. Since patients are within the zone of danger of in SH, P constitutes a foreseeable plaintiff.

- **Duty to Act**

The law generally does not impose a duty to act unless a fiduciary relationship exists. If such a relationship exists, then defendant has a duty to keep the plaintiff's person or property safe. A fiduciary relationship exists in this case between patient (P) and hospital (SH). Therefore, the law imposes a duty to act on SH.

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- **Breach**

A defendant breaches their duty when their conduct does not fulfill the duty. Here, SH breached its duty to act to keep the premises safe by reassigning the security guard from the hospital kitchen to the hospital lobby and entrance area. As a result, P can establish breach.

- **Actual Causation**

Actual causation is the factual cause of the the plaintiff's injury and can be established under the but-for test, which determines whether the plaintiff's injury would not have occurred but for the defendant's breach. Here, SH breached its duty to act by reassigning the security guard which left the kitchen unsupervised by any employees. P will argue that his allergic reaction could have been prevented had a SH employee been in the kitchen to administer an epi-pen. As a result, reassigning the security guard was the actual cause of P's allergic reaction.

- **Proximate Causation**

Proximate causation prevents the defendant from being held liable for unforeseeable harms. Here, it was foreseeable that if left unattended, a hospital patient could suffer injuries related to their ailments. As a result, the type of harm that P suffered (allergic reaction) was a foreseeable harm caused by not providing supervision.

- **Damages**

P can recover compensatory damages for SH's failure to keep the premises safe. There are two types of compensatory damages: (1) economic and non-economic compensatory damages. P can claim economic damages for his medical expenses, lost wages, etc. and possibly non-economic damages such as pain and suffering, etc. However, P cannot recover punitive damages since it is a negligence case.

### **3. What defense(s), if any, may Davis reasonably assert against the claim that she was negligent for her decision to reassign the security guard from the hospital kitchen?**

The duty of care as, applied to Davis (D), must be determined under the **business judgment rule**.

Under the business judgment rule, an officer fulfills their duty of care if the officer **reasonably believed** that their decision was made in the **best interest** of the organization.

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Here, D is the Chief Executive Officer of SH. Thus, D is subject to the business judgment rule. D reassigned the security guard from the kitchen because she reasonably believed that an anonymous person was going to carry out "a massive attack on the hospital." And it was reasonable for D to believe this was going to happen after she had received a series of threatening messages stating this plan of attack.

As a result, D fulfilled her duty of care as Chief Executive Officer of SH as provided by the business judgment rule.

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**END OF EXAM**