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

Negligence

In order to establish a prima facie case for negligence the defendant must have owed a duty to the plaintiff, breached the duty owed, causation (actual and proximate) and damages resulted.

Duty

Duty is measured by reasonability. Did the actor act in a manner that a reasonably prudent person would or in reasonable in the course of business.

Here, State Hospital, a public hospital funded and managed by State, entered into a contract with Cook's Catering, to provide on-site meal service to patients, staff and visitors. Because the incident occurred at a hospital, whether state run or privately run, a hospital owes a duty to protect their patients, staff and visitors from harm as well as ensure vendors and contractors are properly providing services.

State Hospital hired Kimberly Cook of Cook's catering, to provide on-site meal service to patients, staff and visitors. While Cook's was not an employee of the Hospital and likely considered an independent contractor because Cook's was using the hospital kitchen to provide meal service and the incident occurred at the kitchen Hospital would be responsible for tortious acts conducted on-site by a contractor, in this case negligence. Hospital is under a duty to ensure that Cook's is following necessary guidelines in provide meal service, regarding health and safety codes and is conforming to the terms of the contract. Whether or not they jointly and severably liable, contributory negligent or if Cook's owes the hospital indemnification should the judgement be for the other party, is up to the courts to determine.

The theory of respondeat superior (employer responsible for employees tortious acts) would potentially be used here if it is found that Cook's could be considered an employee of the hospital because she was using Hospital's on-site kitchen and not using an external facility. The kitchen was managed by the Hospital and anyone staffing the kitchen would be as well.

Moreover, Denise Davis, the CEO of Hospital due to anonymous threats by email that there would be a "massive attack" at the hospital had recently reassigned a security guard from patrolling the hospital lobby and entrance area. Because the guard was no longer stationed at the kitchen Frank, a former patient was able to enter the hospital kitchen and contaminate the food.



### Negligence Per Se

When there is a statute that is enacted in order to prevent the harm that has occurred and protect the people that were injured it is negligence per se.

Here, there is a state health code that provides that food served in a hospital must never be left unattended before, during, or after meal service in order to prevent contamination or tampering. Patrick the patient that was injured as a result of Frank's contamination of the food was negligence per se because he was the person and the incident that the statute was meant to protect.

Therefore, Hospital is liable for Cook's negligence.

### Breach

When a duty is owed and the defendant has failed to conform to the duty or act, a breach of duty occurs.

Here, Hospital failing to supervise Cook's activities in the kitchen and maintain that the kitchen was in compliance with the state health code, Hospital has breached its duty to act a reasonably prudent hospital in ensuring that or preventing contamination from occurring.

Therefore, Hospital has breached its duty.

### Causation



Actual causation is the "but for" standard and proximate is the foreseeability of an event/incident occurring.

Here, "but for" Hospital failing to monitor health and safety activities of the Kitchen and those working in the kitchen the contamination occurred. Was the contamination of food foreseeable by Hospital by removing the security guard from the kitchen and not monitoring Cook's activities where she was permitted to leave the kitchen unattended? Contamination is foreseeable in these instances and should have been prevented by Hospital.



Therefore, Hospital is the cause of the injury that resulted due to contamination.

### Damages

As a result of the contamination, Patrick a patient who had a serious allergy to peanuts suffered severe injuries. While the facts do not indicate what exactly those severe injuries were, it can be presumed that there were added costs to his care and hospital stay as a result of his allergy

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and his treatment.

Therefore, there were damages as a result.

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

Negligence/Negligence Per Se

See rules and discussion above.

Duty

There are varying types of duty depending upon the property events occurred. (Invitee, Trespassor)



Here, Patrick was a patient of Hospital when his food was contaminated with peanut powder and he suffered sever injuries. Patrick was an invitee of the hospital because the hospital is open to the public and was there to retain hospital services.

Therefore, the Hospital owed Patrick the highest level of duty to protect him from any potential dangers that could occur while he was a patient at the hospital, including Frank from entering the kitchen and contaminating the food.

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

Contributory Negligence



Davis may assert contributory negligence as a defense of her removal of the guard from the kitchen against Cook's.



Davis will claim that she was acting in the best interest of the hospital in relation to the threats she had recived and placing the guard at the entrance. Davis will claim that because Cook's and kitchen staff left the kitchen unattended, the contamination would not have happened.

Res Ipsa Loquitur

Res ipsa loquitur states that the negligence would not have happened because it was in control of the defendant.

Here, Davis may assert res ipsa because Cook's was in charge of manning the kitchen at all times and the contamination would not have occurred if staff was there to prevent Frank from being able to enter the kitchen.

Conclusion

Because Cook's was found to be negligent for failing to comply with the state health code ,Davis could prevail using one of these defenses for the events that occurred at the hospital resulting in Patrick's severe injuries.

Question #3 Final Word Count = 1032

**END OF EXAM**