

3)

1. Liability of State Hospital for Cook's negligence

Facts indicate that Cook was found negligent for failing to comply with state health code.

Tort law recognizes vicarious liability. Under vicarious liability, an employer is liable for the torts committed by the employee. The liability is extended while the employee commutes to work during his work hours or for actions that fall under his work category. No duty is owed when the employee is coming to or going back from work but if he/she is travelling for work purposes, torts occurred during that time period falls under vicarious liability.

No duty is owed under vicarious liability to independent contractors. Unless, the contractor is hired for non delegable duties or abnormally dangerous activities. Non delegable activities are pertaining to safety for work purposes. If contract is based on the two activities, vicarious liability is owed.

Here, the facts indicate that State hospital (H) entered into a contract with Cook's catering (C), business owned by Kimberly Cook, to provide on-site meal services to patients, staff, and visitors.

Based on the contract it can be assumed, C is hired in an independent capacity by H for food service. So, we should look at the liabilities for independent contractor. Food services are not abnormally dangerous activity but they do adhere to safety of the consumers. Many individuals are allergic to food items, peanut being the most common as indicated by FDA. Food and catering business should take utmost care for safety of their consumers and thus this falls under non delegable work duty.

As per the rules, since C was hired as independent contractor and her duties are non delegable, H is vicariously liable for C's negligence under vicarious theory.

2. H's duty to Patrick (P) to protect him from Frank (F)

Negligence- A defendant (D) is found to be negligent if he/she violates duty, standard of care, breach, is a causation and incurs damages to Plaintiff (p).

Duty

Under Cardozo theory a duty is owed to any p who is in foreseeable harm of danger. Under Andrews theory, duty is owed to all p.

Here, P is a potential plaintiff who can be foreseeable as he consumes food in the H. Under, both theories, duty of owed.

Standard of care

D owes a duty of standard of care as a reasonably prudent person is owed. Under negligence per se theory, standard of care duty is owed if the p falls in the 1) class of persons, 2) type of harm 3) causation by p.

Statute- State health code provides that food served in a H must never be left unattended before, during, or after meal services in order to prevent contamination or tempering.

1) Class of people

Here, the statute indicates the statute is to prevent contamination or tampering of food. P since would be the one consuming the food as he is a patient of H and C is catering to H, he falls under the class of person.

2) Saved from harm

Here, statute is typically for the type of harm that was caused by F to P. P was harmed by tampering of the food by F.

3) Causation by p

Actual and foreseeable

Here, but for the in presence of employees in the kitchen, the tampering would not have happened by F who entered the kitchen that caused P harm. However, causation is by p who here is C and not H. Determination should be if H is liable. As established above, H can be liable for actions by C. Moreover, the damage was done in the hospital kitchen, a place of H. But for D's assignment of security to lobby from kitchen, the harm may have been prevented.

Breach

P is a patient at H. H owes a duty to their patients from the foreseeable trespassers. Here, F is a former patient. Is is foreseeable to have former patients likely to trespass or he can be an invitee. H breached the duty by not supervising the entry of kitchen and reassigning security to lobby from kitchen area.

Damages

The p is required to show actual damages rather than just economical damages

Here, P suffered several injuries.

3. D's defenses

Welfare of the state Hospital

As a state hospital, and a CEO of a state hospital, D has the power and responsibility given by the state police power to look out for the welfare of its patients.

Here, D received serious of email messages that threatened to carry out massive attack at hospital. D responded to the threats in accordance to the powers bestowed by state hospital. Manning of the entire lobby where alleged attacks might occur is more important than kitchen, which the C was already present.

She can indemnify costs from C for her own negligence under comparative negligence defense.

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