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Torts

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In order to recover under Tort Law, John Pahanish (P) must establish that one of the defendants breached a duty. To establish a breach of duty, P ^{must} establish that the defendants were negligent or should be held strictly liable. P could prove Danielle's (D) negligence, Eric's (E) negligence, but more importantly Western Trail's (W) negligence along with making a strict liability claim against them. P may even be able to prove the manufacturer's negligence as well. P could prove that D and E didn't use reasonable care by not inquiring of the prior riding experience of each rider and by not ensuring that the equipment was attached properly. P could hold W negligent through vicarious liability. P may try to use res ipsa on the defendants to add the manufacturer to the potential payout.

Negligence of D

Negligence is the failure to exercise the reasonable care that a reasonable person would exercise under the same or similar circumstances. Reasonable care is the care that an ordinary prudent person would exercise. Reasonable care is a balancing act between the cost to take a safety precaution and the risk associated with an activity. D failed to use reasonable care by not inquiring of the prior riding experience of each rider and by not ensuring that the equipment was attached properly. Learned Hand explains this relationship by stating that it is reasonable to undertake a safety precaution if the burden or cost of that precaution is less than the probability of injury multiplied by the gravity of the injury. Applied to the current case, the cost of permanently stitching the girth onto the saddle was minimal compared to the probability that an accident could happen coupled with the gravity of P's injury; therefore, D failed to use reasonable care. Hand's equation is useful; however, when it is difficult to quantify the variables, such as in the current case, it is more difficult to apply. There ^{is} other evidence of D's negligence. P could use the jury's experience to determine D's negligence on a nontechnical issue. Based on their experiences, a juror could conclude that not discovering rider experience and ensuring the safety devices were attached properly is not reasonable. P would also want to investigate what the industry is doing to protect its patrons. If the industry has mandatory checklists including rider interviews and equipment checks, then this could be persuasive evidence of D's failure to take reasonable care. It should be noted however that industry standards may be used only as a floor not a ceiling when providing evidence of reasonable care. The final say will be left to the

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court.

Negligence of E

E's negligence can be established much in the same way as D's. More evidence of negligence can be found. Post-accident repairs are usually not admissible as evidence of negligence with exception to when D denies ownership, denies the feasibility of the precaution, or "opens the door" to the plaintiff. P wouldn't be able to use the stitching of the girth onto the saddles after the incident as evidence of negligence; however, P could use any violation in equipment preparation by E or D to establish that they didn't take the necessary "rulebook" precautions. Even if they weren't in violation, they could still be held liable by not having the proper list of precautions.

Negligence of W

D and E may not be good targets because of their limited money; however, W has much deeper pockets making it a better candidate to sue. W could be held vicariously liable for the negligent acts of D and E. D and E are employees of W of whom W has control over their activities. The accident occurred during the course and scope of D and E's employment; while they were furthering W's business. By meeting these two criteria, W could be held liable for the negligent acts of D and E. A statutory violation could be used to establish negligence. W also failed to obtain a license. This would be a statutory violation according to section 2-710 of the Linden Agri. Code Annotated. The biggest difficulty in establishing negligence based on this statutory violation would be that the purpose of this statute was most likely to generate money rather than to protect P; therefore, it may be difficult to establish the violation as negligence or evidence of negligence. However, if its purpose was to protect P and W doesn't have an excuse, then the violation could be negligent itself (negligence per se) or at least evidence of negligence, depending on the jurisdiction. ~~1~~ 1

Strict Liability of W

There are some activities that hold the defendant strictly liable for his/her actions even if reasonable care is used. P may argue that W should be held strictly liable because horseback riding is an abnormally dangerous activity (ADA). An ADA creates a risk so unusual, in magnitude and circumstance, that it holds the defendant strictly liable even if they used reasonable care. The Restatement 2nd of Torts gives factors to consider when distinguishing ADAs. In considering the factors it may be difficult to conclude that horseback riding is an ADA. W's horseback riding has a moderate degree of risk, the gravity of the possible injuries

range, the risks can usually be eliminated by reasonable care, it is common in this location, it is done in an appropriate place, and the social value of the activity is somewhat low. Taking into consideration of these factors may lead one to conclude that horseback riding is not an ADA. P may try to show that W should be held strictly liable due to the ownership of the ferocious animal as evidence of Gregs horse kicking P's horse. In order to hold W strictly liable; however, P would have to show W's ownership of the horse and that W knew or should have known that the horse was ferocious and could be a threat to P. It would be very difficult to prove that W should have known the horse to be ferocious. P also wouldn't be able to make a nuisance claim--invasion of P's property rights even though P had a reasonable expectation not to have his horse kicked by another horse--because P came to W as a paying customer and was riding W's property. The only other way that P could hold W strictly liable is to find a statute that would hold him as such.

Negligence of Manufacture *perks*

not quite In the current case, W could claim that the saddle was faulty and that if it had not been defective, that P wouldn't have fallen. One strategy that may prove effective is to make a claim of res ipsa loquitur against W and the Manufacturer, the thing ~~stands~~ *speaks* for itself. Res ipsa occurs when the court can make an inference of negligence based on the evidence of injury where there is a lack of evidence to prove negligence. Res ipsa is good to use when the defendant has superior access to evidence of negligence. In the current case, this may be a good way of shifting the burden of proof to the manufacturer and W to sort out who the negligent party was. The restatement 2nd of Torts states that the accident must be of a type that wouldn't normally occur absent ~~&~~ negligence, that the defendant had exclusive control over the agency of the accident, and that all other *plausible* possible causes are sufficiently eliminated. P would have difficulty in proving the second element of res ipsa because both the Manufacturer and W could have had some control over how the accident came to fruition. P would have difficulty in proving the last element of res ipsa because a couple of possible causes include a defective saddle or the girth not being stitched to the saddle.

Conclusion

P does have a strong negligence case against D and E; however, they may not be the most financially attractive defendant. P should definitely go after W because of its deeper pockets on a basis of negligence. P should also involve the deep-pocketed manufacturer in a claim for

negligence as well. The strict liability claims against W look fairly weak.

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END OF EXAM

CHECKLIST

- ☒ Overview
- ☒ Breach of Duty
- ☐
- ☒ *Negligence* theory
- ☒ Defined as the failure to use reasonable care
- ☒ (Western Trails would be vicariously liable for D, E
- ☒ Failure to match horse to rider could be negligent
- ☒ Failure to secure saddle could be negligent
- ☒ Industry custom?
- ☒ Rulebook violation?
- ☒ *Jury Experience*
- ☒ Res ipsa for saddle coming off?
- ☒ Type of kind of accident suggesting neg.?
- ☒ Are other plausible causes sufficiently eliminated?
- ☒ Negligence per se
- ☒ Was purpose of statute to prevent accidents like this?
- ☒ Jurisdictional variations on NPS
- ☒ Suggestion of post-accident repair of saddle inadmissible
- ☐
- ☒ *Strict Liability?*
- ☒ Not an abnormally dangerous activity
- ☒ No nuisance b/c no property interest
- ☒ SL for Animals?
- ☒ Was either horse dangerous?
- ☐
- ☐
- ☐
- ☐
- ☐

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