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DeWolf

Gonzaga University School of Law

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In analyzing P's prospects for obtaining tort compensation for his injuries, several issues will affect Pullen's (P) chance of recovery:

The doctrine of strict liability may apply to this case. For this doctrine to apply, P will need to prove that this activity constituted an abnormally dangerous activity (ADA). These factors must be considered: 1) is there a high ^{risk} ~~degree~~ of injury? 2) is the kind of harm ~~that would have a~~ grave ~~result~~? 3) is this a common activity? 4) did the use of the fireworks occur in an appropriate place? 5) is this a ^{not} socially useful activity? 6) is there a reasonable way to reduce the risk?] Shooting fireworks does not contain a particularly high degree of social value—thus making the court more likely to apply this doctrine if the other tests are met. The activity carries ^a high degree of risk of the type of injury P suffered, and this activity is not too common in everyday life. While the set-up may seem safe at first impression, perhaps there are regulations that govern this that should be explored. The place that these fireworks were used does seem inappropriate because this class of fireworks is not for personal use at a residential party, but are designed for professional use in a more controlled environment. Using fireworks of this type is definitely not a common occurrence. Based on these factors, it seems that there is a strong probability, that ^{Judge} ~~the finder of fact~~ may see this activity as abnormally dangerous and impose strict liability on K, who was primarily in control and obtained the fireworks, and also the Wests (Ws) as the property owners and co-hosts. [If so, P's contributory negligence, because of his alcohol consumption and failure to follow instructions may not be relevant.] ^{See instr's}

If the above does not apply, P may have a claim against K and W based on the doctrine of negligence per se, since there is a statutory violation. For this doctrine to apply, P will need to

prove that his injury was the type that the applicable statute was designed to protect against. It seems appropriate that since this statute addresses commercial, class B fireworks, that it is designed to protect those who do not have the appropriate skills and training to be using these, thus P seems to be in the class the statute is designed to protect. Also, his injury is the kind the statute is designed to prevent. Do ~~K~~ K and Ws have an excuse? An excuse would be a factor such as: complying would have increased the risk of injury to life or limb (not applicable here); did they have knowledge or should they have had knowledge of the statutory requirement? (this may apply more to K as the purchaser of the fireworks than to Ws as the property owners and co-hosts); was there an emergency situation not of their causing? (does not apply here); were they unable to comply for some other valid reason? (probably not). All of these factors point to the fact that there is probably no excuse for failing to comply and negligence per se seems HIGHLY appropriate to this case. As with strict liability because of the ADA, P's contributory factor of alcohol consumption and his failure to follow instructions will likely not apply if the court finds negligence per se.] Watch instr's

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If neither doctrine is applicable, does ordinary negligence apply? As hosts of the party, Ws and K both had a duty of care not to expose their guests to an unusual degree of risk of injury and that they did breach this duty. Particularly the Wests, as property owners, have a duty to keep their property free of extraordinary risk to invitees. K was in control of the fireworks and had a duty of care to others involved. To determine if they were negligent, the court will ask how a reasonably prudent person (RPP) would have acted in this situation. It seems appropriate that a RPP would have made sure that the fireworks were handled in a safe manner and that they only obtained the class of fireworks that the law allowed them to have. It also seems proper that a RPP would insure that the fireworks display followed the requirements of the statute regarding the set-up, permit, licensing of the operator, safety precautions, etc. Since none of

these were done, both Ws and K did not act in a manner that the court will likely find meets the objective test of the RPP. If ordinary negligence applies, P's alcohol consumption and his failure to follow K's instruction to stop will be much more strongly scrutinized as a contributing factor than in the case of strict liability and negligence per se.

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How did Krehbeil (K) obtain these class B commercial fireworks? If the law requires these to be available only to special classes of users, P may have a claim against the person that sold K the fireworks. Also, the doctrine of respondeat superior may hold the seller's employer liable if he was acting within the scope of his job when he sold P the fireworks (which seems very likely if these were purchased from a vendor and not another person). Since the statute requires a permit to discharge this class of fireworks, does it also restrict who may purchase them and what is the burden on the seller? These are factors to be explored and the seller and their employer are strong candidates to be additional defendants.

Res ipsa loquitor will not apply in this case because since this is not the type of event that will probably happen ~~except~~ in the absence of negligence, the fireworks may not have been under the exclusive control of K and Ws, and all other factors of the accident have not been ruled out.

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