

MONTEREY COLLEGE OF LAW

TORTS

MIDTERM EXAM

FALL SEMESTER, 2024

Professor J. Martin

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

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TORTS MIDTERM EXAM
FALL, 2024
Prof. J. Martin

QUESTION ONE

DAN turns his TV to a cable channel showing 120 consecutive hour-long episodes of a show called "Zombie Attack". DAN watches all 120 hours, only rarely dozing and only eating junk food. At the end of the 120 hours, DAN is extremely fatigued and delusional -- convinced that a zombie attack is imminent. DAN also believes that his neighbor across the street, PAM, is a zombie leader.

Five minutes later, DAN's phone rings and it is PAM who calls to tell DAN that his dog has been digging in her yard and she had to chase his dog away. DAN screams into the phone, "I will chop off your zombie head!" Puzzled, PAM hangs up her phone.

Thirty minutes later, DAN is in his front yard looking for zombies when PAM calls across the street from her front yard. She politely asks if DAN could keep his dog out of her yard. DAN draws a metal sword, steps into the street, and shouts back at PAM, "This zombie-killing weapon will do the trick!"

Two houses away, a neighbor named TOM sees DAN with the sword in his hand and hears the word "killing" shouted by DAN. TOM sprints towards DAN and hits him in the head with a metal bar, knocking him out.

An hour later, it has become dark and DAN wakes up in his house, still woozy from being knocked out, still extremely fatigued, and still under the belief that PAM is a zombie leader. DAN sees PAM's car in front of her house and decides he needs to frighten any zombie. DAN takes an open jar of sleeping hornets and sneaks across the street, then places the jar in the car's back seat.

Unknown to DAN, PAM's boyfriend, PAUL, has walked to her house after she phoned and told PAUL about DAN's behavior. PAUL borrows PAM's car to return home and, when the car warms up after a few blocks, the hornets swarm and sting PAUL several times. Due to bee-sting sensitivity, PAUL has to go to the hospital.

1. Discuss PAM vs. DAN using tort causes of action in:

- A. Assault, and
- B. Trespass to Chattels.

Discuss the likelihood of success for each cause of action.

2. Discuss DAN bringing an action against TOM in Battery. What is the likelihood of success for that cause of action?
3. Discuss PAUL bringing an action against DAN in Battery. What is the likelihood of success for that cause of action?

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QUESTION TWO

After reading an advertisement regarding employment positions available at DAVE's Restaurant, PAUL goes to that business intending to apply for employment. The owner, DAVE, instructs PAUL to sit at a table and fill out a written application. DAVE trusts PAUL and leaves to run an errand.

Alone in the restaurant, PAUL notices a place of smoked salmon appetizers in a food service area marked "Employees Only". PAUL is a large individual with a big appetite and the appetizers are a powerful temptation. PAUL looks around and when he believes he is not being watched, he enters the food service area and walks around a one foot tall barrier, to where he samples the appetizers.

Seconds later and while PAUL is still eating the appetizers, he hears someone approaching. Attempting to quickly return to the table where he was instructed to sit, PAUL walks directly over the low barrier and that puts his weight on a trapdoor leading to the basement. The trapdoor was securely installed some years ago with steel hinges but when they were recently replaced, alloy hinges were used which allowed savings of \$30.00.

A local ordinance in force on the day PAUL visits DAVE states: "Any door leading to a basement must be surrounded by a barrier at least three-feet tall and a warning sign to protect any entrant within the building". There was no warning sign at DAVE's Restaurant.

PAUL weighs 300 pounds and the alloy hinges break under his weight. The trapdoor swings open and PAUL falls into the basement, striking his head on the cement floor and receiving permanent injury. Your expert will testify that steel hinges would have supported PAUL's weight but hinges made from alloy materials could not.

DISCUSS: PAUL vs. DAVE in Negligence.

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QUESTION THREE

The business of DIRK DRUG CO. (hereafter "DIRK") is research and development associated with new pharmaceuticals. DIRK has created Dingzoid, a new medicine that may be useful to control the rejection of transplanted organs and limbs because the initial trials of Dingzoid show its effectiveness. Dingzoid is made from the carcasses of wild and domestic animals that are placed in large vats and bathed in certain solvents, creating protein-rich syrup that is a host for specific microbes. The protein-rich syrup has a strong and unpleasant odor.

The soaking of the animal carcasses takes place in vats located at the DIRK research facility, on a street in a largely undeveloped part of Marina, CA. The facility consists of four buildings wherein twenty full-time workers are employed and the facility has been in operation for the past ten years, only involved with the development of Dingzoid. A sign on the front of the DIRK facility says "Dirk Drug Does the Dirty Work" and it has a cartoon of a dead cat on its back.

One year ago, PAM moved into a low-income house near the DIRK facility and she now has the following complaints:

1. She has been consistently bothered by the unpleasant odors and toxic gasses coming from the DIRK facility. She complains of ongoing respiratory problems due to the odors.
2. Twenty years ago, she witnessed her beloved pet cat fall into a wood chipping machine and she is now deeply offended by the cartoon of the dead cat on the DIRK sign. The sign is so bothersome to her that she can no longer practice her religion -- a form of meditation.

PAM insists that all actions of DIRK involving Dingzoid must stop. She informs that she is poor and cannot easily move to another location. PAM asks that you evaluate the outcome of an action against DIRK in Nuisance.

DISCUSS: PAM vs. DIRK

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TORTS MIDTERM EXAM -- FALL, 2024
QUESTION ONE -- MODEL ANSWER

1. PAM vs. DAN

A. Assault

- (1) Act -- DAN does two acts which might constitute an assault, namely:
 - a. The phone call when PAM and DAN were each in their own houses, and
 - b. The confrontation in the street when DAN draws a sword, steps towards PAM, and shouts hostile words at her.
- (2) Intent -- The fact that DAN seems to be under delusional thinking does not mean that he cannot form tortious intent. DAN intended his actions, including drawing a sword and shouting/screaming at PAM
- (3) Causing -- Causation is likely present as DAN's actions would produce an immediate and direct impact on PAM, without intervention by other forces.
- (4) Apprehension of Imminent Contact that would be harmful and/or offensive.
 - a. The phone conversation during which DAN shouts at PAM while still in his house does not portend imminent contact. They are not in sight of each other. On the facts, there seems to be no apprehension by PAM at that time because she hangs up while "puzzled".
 - b. The confrontation in the street involves DAN brandishing a weapon, moving towards PAM, and shouting in a hostile manner. Those acts could very likely produce apprehension of a harmful contact in the mind of a reasonable person.
- (5) Without Consent or Privilege -- There are no facts that indicate a defense.
- (6) Conclusion -- PAM would likely succeed in an action based on Assault, because of the confrontation in the street.

B. Trespass to Chattels

- (1) Act -- DAN's placing the jar of hornets in PAM's car is clearly a volitional act.
- (2) Intent -- Again, DAN's delusional thinking is not a defense.
- (3) Causing -- DAN's touching of PAM's car is actual and immediate, without any intervention by other forces.
- (4) Intermeddling of Another's Chattel which affects a Marketable Interest -- While DAN's brief touching of PAM's car is an "intermeddling", there are no facts which indicate damage to the car. Presumably, the hornets flew away and PAM's car was not lessened in Fair Market Value.
- (5) Without Consent or Privilege -- There are no facts that indicate a defense.
- (6) Conclusion -- PAM would not likely succeed in an action based on Trespass to Chattels, because there was no damage to a Marketable Interest.

TORTS MIDTERM EXAM -- FALL, 2024
QUESTION TWO -- MODEL ANSWER

PAUL vs. DAVE in Negligence

1. When DAVE failed to protect PAUL from hazards within his business, he may have breached a duty to PAUL and PAUL may proceed with an action in Negligence
 - A. Negligence is the Breach of a Duty that Causes Damages.
2. Did DAVE owe PAUL a Duty?
 - A. Traditionally, whether a duty was owed to an entrant of property depended on the status of the entrant.
 - (1) If PAUL was an Invitee because he was a business entrant who was applying for employment, DAVE would have had a high duty to protect PAUL from all hazards, known or unknown.
 - (2) If PAUL was a Trespasser because he went into a forbidden area ("Employees Only") there would have been no duty, other than to avoid intentional harm.
 - A. PAUL may be considered a Trespasser with illegal intent to steal food.
 - B. Modernly, any duty to an entrant depends on general negligence principles.
 - (1) A reasonably prudent restaurant owner might have installed steel hinges on any door leading to a basement.
 - A. PAUL's size was obvious and he was therefore a foreseeable Plaintiff.
3. Did DAVE Breach any duty owed to PAUL?
 - A. On a Hand Formula analysis, the burden of installing better hinges was only \$30.00 while the gravity of potential harm times likelihood of harm was considerable -- PAUL is a large person. Likewise, the cost of an obvious warning sign would have also been small and would have likely abated the risk of harm.
 - B. DAVE's violation of the local ordinance may also show his breach of a duty owed to PAUL.
 - (1) There was an ordinance in force at the time of PAUL's accident.
 - (2) DAVE violated the ordinance by not having a proper barrier and warning sign at the trapdoor.
 - (3) PAUL's harm is of the type the ordinance was meant to protect against -- a fall through a door into a basement.
 - (4) PAUL is a member of the class protected by the ordinance -- those persons who were entrants of the property.
4. There are no Causation problems within the fact pattern involving PAUL.
 - A. Actual Causation: It is likely that "But For" the inferior alloy hinges, PAUL would not have fallen. However, if PAUL's weight was a contributing cause and multiple causation exists, the inferior alloy hinges were a "Substantial Factor".
 - B. Proximate Causation: The harm to PAUL was immediate and direct, with no intervening forces, and with foreseeable results -- a fall resulting in harm. There should be no controversy about DAVE's breach of a duty owed being the Proximate Cause of PAUL's harm.

5. Will DAVE raise any Defenses?
- A. DAVE will likely allege a defense of Contributory Negligence.
 - (1) PAUL went into an area that was forbidden by the sign "Employees Only".
 - B. PAUL will likely reply that the "Employees Only" sign did not specify a clear risk of harm if someone walked on the trapdoor. That is, it was not an effective warning sign concerning the risk.
5. Conclusion
- A. After consideration of the Negligence doctrines, it seems likely that DAVE will be found to have breached a duty to PAUL, thereby causing PAUL's serious bodily injuries.
 - B. If negligence is apportioned according to fault, PAUL's contribution to his own harm would likely be small as he had very little notice, if any, of the risk of harm.

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TORTS MIDTERM -- FALL, 2024
QUESTION THREE -- MODEL ANSWER

1. PAM insists that because the activities of DIRK DRUG CO. are both close to her house and bothersome, she may proceed in an action based on Nuisance.
 - A. The Prima Facie case of Nuisance alleges the nontrespassory invasion of another's interest in the use and enjoyment of land.
 - B. The Restatement of Law 2nd states that the invasion is actionable if it constitutes a "substantial" and "unreasonable" interference.
2. Can the invasions be described as nontrespassory?
 - A. The invasion of "strong and unpleasant" odors would seem to be a non-physical invasion as there is no tangible invasion.
 - B. The invasion of the "bothersome" sign depicting a cartoon of a dead cat is likewise non-physical and it is merely a spectacle rather than an invading force -- and may not be considered an "invasion".
3. Are the invasions substantial?
 - A. PAM complains of "ongoing respiratory problems" due to a facility that has been in operation for ten years. Those ongoing circumstances may point towards a substantial invasion regarding the unpleasant odors.
 - (1) DIRK may point out that PAM complains of "problems" but PAM's medical proof is not mentioned in the fact pattern.
 - B. Regarding the sign that shows a cartoon of a dead cat, that sign might not be considered a substantial invasion because, as mentioned above, it does not really invade PAM's land but is merely an external spectacle that PAM can control by not looking at it.
4. Are the invasions unreasonable?
 - A. The Restatement offers two tests:
 - (1) A nuisance invasion is unreasonable if its gravity outweighs its utility.
 - a. The gravity of the odors seems moderately severe as they are "strong and unpleasant" and PAM's life is certainly impacted. The gravity of the offending sign is less severe.
 - b. The utility of DIRK's activities is high because it is creating a "effective" drug that can help transplant patients, a very pro-social activity.
 - c. DIRK would argue that the effect of the sign is minimal and any unpleasant impact from the odors is outweighed by the utility of the drug.
 - (2) A nuisance invasion is unreasonable if the cost of abatement is low.
 - a. DIRK maintains four buildings wherein twenty full-time workers are employed. To shut down DIRK would mean unemployment for quite a few people and the relocation of the buildings would be very expensive. The relocation of PAM would be much less costly.

5. Would DIRK be able to offer any defenses to a Nuisance action?
- A. DIRK would offer that the actions of its Marina facility are appropriate for the location -- it is in a "largely undeveloped" area. That argument would be similar to a "live and let live" defense that would protect business in a modern society that occur for the common good, or in the course of ordinary life.
 - B. DIRK would also offer a "coming to the Nuisance" defense which would point out that PAM arrived one year ago while the DIRK facility has been in operation for the past ten years. That defense would suggest that PAM "volunteered" to live near the DIRK facility and put up with its activities.
 - C. DIRK would also offer that PAM is extra-sensitive, both as to the odors and the sign. Nuisance is judged by an objective standard -- it protects against invasions that would make a "normal" person suffer. Perhaps, DIRK would say, PAM is emotionally and physically frail. The inability to practice one's religion may not be a harm that would be described by a normal person.
6. In conclusion, it is argued that the ongoing enterprise of DIRK DRUG CO. should be allowed to continue due to its high amount of utility, therefore making it not an unreasonable activity.

* * * * *

1)

I. Parties

In this case, we have Dan (Defendant), Pam (plaintiff), and Paul (also a plaintiff).

II. Pam vs. Dan

Assault: is an act done with intent causing reasonable apprehension of imminent contact, the nature of the contact being harmful or offensive, without consent or privilege. Fear does not have to be instilled so long as the apprehension is present. In other words, the plaintiff does not have to be scared.

- Here, Dan believes that his neighbor Pam is a zombie leader, leading him to believe she must be "stopped." Upon being phoned by Pam, Dan yells to Pam, "I will chop off your zombie head!" These words would be considered threatening to the reasonable person.
- Later, Dan is in his front yard looking for zombies, the nature of this activity showing intent to harm anyone who he believes to be a zombie.
- Dan draws a metal sword, which could be construed as assault with a deadly weapon, and yells, "This zombie-killing weapon will do the trick!" This statement is reasonably likely to create apprehension in another person and the nature of the words and action of drawing a sword are harmful and offensive.
- Later in the facts, it is stated that after being knocked out, Dan is still under the belief that Pam is a zombie and he believes he must "frighten any zombie." This is further proof that Dan intends to harm anyone he believes to be a zombie.

Trespass to Chattels: is intermeddling with another's personal property and causes damages the material value of the chattel without consent or privilege.

- It is stated in the facts that Dan "sneaks" across the street and places hornets in Pam's car. The intent to trespass to her chattels is already shown by the sneaking, also proving the lack of consent from Pam and also no proof of privilege.
- Animals: A defendant is held strictly liable for the damages caused by a domesticated pet. Here, Dan's dog has been digging in her yard. The dog has both trespassed into her property and damaged her yard. Dan will be held liable for the damages his dog has caused.
- It is highly likely that Dan will be held liable for trespass to chattels as to entering Pam's vehicle and the dog getting into Pam's yard.

→ BUT WHERE WAS THE LESSENING OF MARKET VALUE

III. Dan vs. Tom

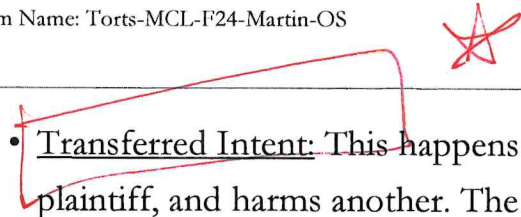
Battery: is an act done with intent causing contact with another's person, the nature of the contact being harmful and offensive without consent or privilege.

- Here, Paul sprints towards Dan and hits him in the head with a metal bar, knocking out Dan.
- Tom was acting in defense of another and it was reasonably foreseeable that someone in close proximity might come to Pam's rescue.
- Tom responded to Dan's assault with reasonable force; Dan drew a deadly weapon, and Tom responded with equal force, sure to cause death or gross bodily injury.
- Although Tom has committed a battery, it was in defense of another so Dan will not in a suit against Tom for battery.

IV. Paul vs. Dan

Battery: Id.

- Here, Dan's placement of the hornets caused Paul injuries that placed Paul in the hospital. The contact was unforeseen, but still harmful.

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- Transferred Intent: This happens when the defendant meant to harm a specific plaintiff, and harms another. The hornets were meant for Pam, but resulted in harm towards Paul. Dan will be liable for the transferred intent to Paul.

V. Conclusion

Pam will win on all causes of action against Dan. Dan assaulted Pam by yelling harmful threats at her, with the intention of actually harming her. Dan entered Pam's car without her consent and his dog got into her backyard where the dog is not allowed. In defending Pam, Tom hits Dan over the head but this action was in defense of Pam so Dan would not win in a suit against Tom. Dan will be held liable for the transferred intent for Paul's injuries as well. Dan has no defenses in his favor.

ORGANIZATION = OK +
LEGAL CONCEPTS = 9/10
ANALYSIS = 9/10

2)

PAUL vs. DAVE NEGLIGENCE

OK PAUL could file for negligence against DAVE because DAVE breached a duty to PAUL that caused him to fall into the basement which resulted in the striking of his head and permanent injury.

NEGLIGENCE

★ Negligence is the conduct that falls below the standard of care which would have been kept by a RPP in the same or similar circumstances in order to avoid foreseeable risk or harm. That is, negligence is the breach of a duty which causes damages.

DUTY

1. Invitees: As a restaurant owner, DAVE has a duty to any invitees who may enter his establishment. The highest duty owed is to invitees. There is a duty to inspect and to warn of any unknown and known dangers.

A. DAVE failed to inform PAUL of the trapdoor leading to the basement. DAVE failed his duty to inspect the alloy hinges on the trapdoor.

BREACH

1. Calculus of Risk

A. Calculus of Risk, also known as the Learned Hand Formula, is $B < LXP$. Burden is less than the probability of loss multiplied by the gravity of loss.

i. The cost of putting in steel hinges onto the trap door of the basement would only be an additional thirty dollars. The burden here is slight.

2. Statute

THIS IS A TYPICAL PAGE OF
ORGANIZATION & ANALYSIS.

A. Per the California Evidence code a statute is breached when:

1. There is a breach to a statute, regulation, or law.

i. There was a local ordinance requiring any doors leading to a basement to be surrounded by a barrier at least three-feet tall and a warning sign to protect any entrant in the building. DAVE did not have a warning sign in his restaurant and there was a low barrier.

2. As a result of the violation there has been an injury.

ii. Since DAVE did not follow the local ordinance, there was no warning sign or three-feet barrier, and PAUL fell into the basement which resulted in the striking of his head and permanent injury.

3. The use of the statute was to prevent these types of occurrences.

iii. This local ordinance was intended to stop the occurrence of people falling into basement trapdoors.

4. The statute was adopted to protect this class of person's.

iiii. This local ordinance was adopted to protect people who are nearby basement trap doors.

3. RPP

A reasonably prudent person would have put a large barrier and a warning sign near or on top of the trapdoor to avoid any unknowing potential persons from standing or coming near it.

CAUSATION

1. Actual cause is the legal determination of a defendant's liability.

A. But For: But for DAVE not putting out a required sign in his restaurant warning of the basement trapdoor, PAUL put his weight onto the basement trapdoor which caused the hinges to break and for him to fall down and injure himself.

2. Proximate cause is the policy determination to limit a defendant's liability.

A. The proximate cause of PAUL'S injury was nearby, immediate, and direct. PAUL put his entire weight on the trapdoor causing the door to swing open which caused PAUL to fall onto the cement floor striking his head. A RPP would foresee that a plate of smoked salmon appetizers would be enticing to PAUL since he was a large man. The appetizers were near the barrier and it was highly likely PAUL would step onto the trapdoor.

B. There is an independent intervening clause because PAUL heard people approaching he needed to hurry back to his seat. However, this is not a superseding clause.

DAMAGES

Considering the fact pattern, damages have been established for the plaintiff.

DEFENSES

1/ Contributory Negligence would not allow PAUL to recover for any damages if PAUL'S voluntary conduct contributed to his harm.

A. PAUL did contribute to his harm. If PAUL had not left his seat to peruse the restaurant for appetizers, there is a chance he would not have stepped onto the basement trapdoor.

i. Last Clear Chance does not apply here since the trapdoors opened suddenly and did not allow PAUL to step away.

2. A modern approach would be Comparative Negligence which analyzes how much of a percentage PAUL'S voluntary conduct attributed towards his harm. This will allow PAUL to recover through either a pure or partial approach.

A. A pure approach allows a plaintiff to recover for any percentage of plaintiff contribution from 0% to 99%.

B. A partial approach allows a plaintiff to recover if their contribution was less than 49%-50%.

C. PAUL will recover from either approach because his actions contributed about 10% to his harm which means he will recover for 90% of the damages.

1. His contribution toward his harm is 10% because he broke DAVE'S trust by leaving his seat and scouring for food and then taking the food without DAVE'S consent. If PAUL had not been so greedy there is a small chance he would not have been injured. There is no guarantee since DAVE could have gotten up from his seat for a different reason (emergency, restroom) and then fell through the basement trapdoor because of it.

CONCLUSION

In Conclusion, DAVE breached a duty to PAUL and DAVE is liable for damages in a tort of negligence.

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ORGANIZATION = OK
LEGAL CONCEPTS = 7/10
ANALYSIS = 7/10

3)

PAM v. DIRK

Ultra Hazardous Activities

I APPRECIATE YOUR COMPREHENSIVE KNOWLEDGE OF S/L BUT THE QUESTION IS ABOUT NUISANCE ☹️

An ultra hazardous activity can be defined as a dangerous activity which is foreseeable and would likely cause a substantial harm to a person. This type of activity would also be uncommon. The people engaging in the activity can be performing their due care, however if there is harm, they can be held as strictly liable. Looking at §520 it notes location, type of activity, burden to move, and social utility as some of the elements to ultra hazardous activities.

Dangerous Activity

The activity that is specified would be the development of new pharmaceuticals. The activity itself does not seem to be dangerous because the business uses the proper care to place the carcasses into the vats where they are cleaned through a syrup. The only thing that the place produces is a strong and unpleasantness odor.

Burden to move

Here, the burden to move may be a substantial amount. This is because Dirk would have to try and find a new location where he has to build a lab with specific features not only to conduct the production of medicine but to keep everything up to standard.

Common

As stated in the fact pattern, it appears that the type of activity that the facility take on is common. The factory has been there for approximately ten years, which would make it common for them to be performing the activity.

Location

The fact pattern states that the facility is located within the largely underdeveloped location of Marina. Therefore, it is not likely that harm would occur due to the lack of developments surrounding the facility.

Social Utility

Here the social utility can be noted as a substantial benefit to society. This is because the production of Dingazoid may be used to control the rejection of transplanted organs and limbs. Therefore, one can infer that the social benefit is high.

Conclusion

In conclusion, Dirk is not strictly liable for ultra hazardous acts.

Defense

Extremely sensitive

A defense that Dirk may be able to claim would be that Pam is extremely sensitive. This may be argued because Pam is not able to practice her religion due to them having a sign of a dead can in their logo. However, a normal person may see this as offensive due to the fact that Pam actually saw her cat go into the chipper and die. If a normal person would experience that, they too may act in a similar manner. Therefore, defense would not apply.

Assumption of risk

Here, Pam assumed a risk of being close to the facility that produces toxic gasses. A person assumes a risk when they know that a hazard/harm is present and continue with the risk, regardless of the consequences. Dirk may claim that she knew that the factory

would undertake hazardous activities, this can be inferred because the facility has been there for ten years. Therefore, Pam may have assumed a risk.

Nuisance

Is defined as a non-trespassory invasion of another's interest in enjoyment of their own land. The defendant has to be the legal cause of the nuisance, the acts must be substantial, and they must be unreasonable.

Legal cause

Dirk would be the legal cause not only because but-for the toxic gasses escaping the facility Pam would not be sick, but also because the odor and toxic gasses are reasonably and foreseeable that would go into the surrounding neighborhoods and make people sick. The gases also fall within a zone of danger as the harm is not remote. Therefore, Dirk is the legal cause.

Substantial

For something to be substantial, it must be more than just a mere feeling, it has to be something real. Here, because Pam is not only bothered by the odors and toxic gasses but is actually having respiratory issues, the nuisance would be substantial. In addition, the odor is on going because it has been bothering her consistently. Therefore, making it substantial.

Unreasonable

For something to be considered unreasonable, the gravity of harm must outweigh the social utility. Here, the harm may not outweigh the social utility. As taken from the facts, the production of the dingzoid medicine would likely prove effective in controlling the

rejection of organs and limbs. Therefore, the gravity of harm, which would be respiratory issues, would not outweigh the social utility/benefit.

Conclusion

Dirk is strictly liable to Pam for the nuisance .

Defense

(1) Coming to the nuisance

As a defense, Dirk can claim that because Pam moved into the low-income houses near the facility, she went to the nuisance.

(2) Live and let live

The social good coming from the nuisance is greater than the harm that is being done. The public can benefit from the medicine that is being produced. Therefore, this defense would apply.

(3) PLAINTIFF'S EXTRA-SENSITIVITY → ON PAGE 2

END OF EXAM

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