

SAN LUIS OBISPO COLLEGE OF LAW

TORTS II

FINAL EXAMINATION

SPRING 2025

PROF. E. Ulz

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

SLO
Torts II
Spring 2025
Prof. E. Ulz

QUESTION 1

Padma's friends invited her to go camping over spring break. In anticipation of the trip, she decided to treat herself to a new pair of hiking boots.

Dirk's Shoe Palace recently began selling "Brilliant Boots," with high-tech features like GPS tracking and a phone app that monitors the wearer's heart rate. Despite the cool features, most serious hikers avoid Brilliant Boots because they are too uncomfortable for long treks.

Padma told Dinah, the salesperson at Dirk's, that she needed boots comfortable enough to hike all day. Dinah was an experienced hiker. She disliked Brilliant Boots personally, but due to her weekly sales quota, she recommended them to Padma. Dinah did warn Padma not to submerge the boots in water or the tech features might stop working.

On the first day of the trip, Padma took a twenty-mile hike. The boots weren't comfortable, but Padma kept hiking. She began to get blisters. About ten miles in, she crossed a small stream and her boots got wet. An electrical component inside the boot shorted out and caught fire. Padma's foot was badly burned and she had to be rescued by helicopter. She was flown straight to the hospital and missed the rest of the camping trip.

Padma sues Dirk's Shoe Palace for her injuries on theories of strict products liability, breach of warranty, and misrepresentation. Will she succeed? Discuss.

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QUESTION 2

For more than twenty years, Dorcas and Dagwood have bred Doberman pincer puppies and trained them for K9 work with the military and police. They live with their dogs on a twenty-acre ranch. The nearby town recently expanded and there is a new suburban housing development adjacent to Dorcas and Dagwood's Doberman Ranch.

At a recent town hall meeting, residents of the new housing development complained about the incessant smells and noise from the Doberman puppies. Some residents—particularly those with young children—expressed concern about what might happen if the partially trained Dobermans get loose. In response, Dorcas and Dagwood pointed out that their Doberman Ranch was here long before the housing development. They also provided a recent certificate of inspection showing that their Ranch is in compliance with all applicable zoning ordinances.

Nevertheless, the residents decide to explore their legal options. They come to you for advice. This is a minority jurisdiction and does not follow the "one bite" rule. How would you advise the residents on the following points:

1. Can the residents bring a claim for public and/or private nuisance?
2. What remedies should they seek?
3. Are there any defenses?
4. What would be the likely outcome if one of the puppies got loose and bit a child?

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QUESTION 3

Pacey is a top student at his law school. He is one of the three student editors appointed to oversee the law review. In the summer of his second year, Pacey applied for a prestigious internship at a prominent local law firm. Pacey's classmate Darwin also applied.

One evening, Pacey and Darwin were studying in the library. Pacey stepped outside to make a phone call, leaving his laptop open. Darwin couldn't resist the temptation to scroll through Pacey's emails to see if the prominent law firm had contacted him to set up an interview for the internship. To his shock, Darwin discovered several explicit messages between Pacey and the wife of the law school dean.

The next day, Darwin called the prominent law firm and asked to speak to the partner in charge of the internship program. He told the partner that Pacey was having an affair with the dean's wife. Darwin also told the partner about a rumor that the law review editors plagiarized a recent article. The rumor had already been disproved, but Darwin repeated it anyways in the hope that it would discourage the partner from hiring Pacey.

Pacey was turned down for the internship. His affair with the dean's wife became public knowledge and he was forced to resign from the law review leadership. As a result, Pacey has been having trouble sleeping and sought treatment from the school counselor. Pacey learned about Darwin's call to the partner and decided to file a lawsuit.

What claims can Pacey assert against Darwin? Can Darwin raise any defenses?
Discuss.

QUESTION 1 OUTLINE

- **Strict Products Liability**

- *Proper Plaintiff*: Padma is the purchaser and user of the boots.
- *Proper Defendant*: Dirk's is a retailer and is responsible for putting the boots into the stream of commerce. Note that Padma's lack of privity with Brilliant Boots is not a bar to recovery against the manufacturer as well, however students are only expected to analyze Dirk's liability.
- *Defect*: It is unclear whether the boots are poorly designed or whether the particular pair sold to Padma was defective. Dinah warned Padma not to get the boots wet, but it's unclear whether the same warning was on the box. Students are expected to identify and discuss at least one theory of defect.
- *Breach*: Depending on the theory(ies) of defect, students may discuss failures in manufacturing (RIL), the design defect tests, or adequacy of the warning and whether Dinah qualifies as a learned intermediary.
- *Causation*: the malfunction of the boots is the direct cause of Padma's injuries. Per *In re Polemis*, it is therefore the proximate cause. Student should also discuss whether the boots were defective when they left defendants' control.
- *Damages*: general, special (medical bills, cost of rescue, loss of camping trip), punitive (no facts to suggest knowledge of the electrical issue).

- **Breach of Implied Warranties**

- *Implied Warranty of Merchantability*: is a hiking boot that catches fire when wet fit for the ordinary purpose for which it is sold?
- *Fitness for Particular Purchase*: Dinah knew that Padma was buying the boots for a long hike. She knew that the boots were uncomfortable.

- **Misrepresentation**

- *False Statement*: Dinah recommended Brilliant Boots as fit for a long hike even though she knew experienced hikers thought they were too uncomfortable. Is this a false statement of fact? Opinion? Did Dinah have a duty to disclose the poor view of the boots by experienced hikers?
- *Scienter*: Dinah only recommended the boots to meet her sales quota. She did not actually think they were the right boots for Padma.
- *Reliance*: Dinah intended for Padma to rely on her statement so that she would buy the boots. Padma bought them on Dinah's recommendation, indicating reliance. There aren't enough facts to know whether Dinah told Padma she was an experienced hiker, but the fact that she was selling the shoes puts her in a position of superior knowledge about the products.

- *Causation*: But for Dinah's recommendation, it is unlikely that Padma would have bought Brilliant Boots.
- *Damages*: general, special (medical bills, plus pure economic loss of the boots because Padma is in privity), punitive (was Dinah's conduct extreme and oppressive?)
- **Vicarious Liability (Extra Credit Issue)**
 - Dirk's is liable on a strict products liability theory because they are a retailer who sold a defective product.
 - Dinah was acting within the scope of her employment when she learned of Padma's particular purpose and warranted that the boots would serve.
 - Even though misrepresentation is an intentional tort, Dirk's Shoe Palace may still be vicariously liable because Dinah was acting within the scope of her employment, for the benefit of her employer, and under a directive to meet a sales quota imposed by her employer.

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- **Defenses**

- *[Foreseeable] Misuse*: Padma was warned not to submerge the boots in water. However, it is foreseeable that hiking boots will get a least a little wet.
- *Assumption of Risk*: Padma knew the tech components inside the boots could malfunction if they got wet yet she crossed the stream anyways. She will point out that risk she was warned about was tech components failing, not the entire boot catching on fire.
- *Comparative Fault*: Padma knew the boots were uncomfortable, yet kept walking. She also knew they needed to stay dry, yet waded into the stream.

QUESTION 2 OUTLINE

- **Public Nuisance**

- *Unreasonable interference*: The Ranch causes odor, noise, and safety impacts that affect everyone, not just the residents. However the fact that the ranch is in compliance with local zoning is evidence that the conduct is reasonable.
- *With a right common to the public*: The noise, odor, and safety risk arguably implicate public health, safety, peace, and comfort.
- *Proper Plaintiff (Standing)*: Whether the residents have suffered a unique harm, different in nature and not just degree, is a key question here.

- **Private Nuisance**

- *Substantial interference*: It appears that the Ranch is offensive to most of the residents, suggesting that a normally sensitive member of the community would be bothered.
- *Unreasonable interference*: Dorcas and Dagwood are operating the Ranch intentionally, though it is unclear whether they are intentionally causing odors or noise. The question then becomes whether the financial burden of compensating the residents render continuation unfeasible. If the conduct is unintentional, does the gravity of the harm to the residents outweigh Dorcas and Dagwood's right to continue their business? The Ranch was there first and they are in compliance with zoning, however the context of the surrounding area is changing such that the interference with the residents is significant and pervasive. On the other hand, there is social value in training K9 dogs for police and military use.
- *With use and enjoyment of land*: The Ranch is affecting the ability of the residents to enjoy their homes free of noise and odor.
- *Proper Plaintiffs*: Regardless of whether they rent or own, the residents have a present interest in land that is being interfered with.

- **Remedies**

- *Damages*: for loss of value/use of the residents' property. Consider whether the cost of compensating the residents would render the continued operation of the dog ranch infeasible.
- *Injunction*: the residents may request an order that the Doberman Ranch cease operations. However, they will need to show that monetary damages are not sufficient, e.g., because of the ongoing nature of the harm, and that the balance of hardships tips in their favor.

- **Defenses**

- *Compliance with Zoning*: the fact that the Ranch was recently issued a certificate of compliance with zoning regulations is persuasive but not determinative.
- *Coming to the nuisance*: the fact that the Doberman Ranch has been here for 20 years and the residents are newly arrived will not bar their recovery, but it is a factor in determining whether the Court should grant the remedies they seek.

- **Strict Liability for Dog Bites (Minority Rule)**

- *Strict liability for wild animals*: even though Dobermans are known to be an aggressive breed, there is no strict liability for harboring domesticated animals unless Dorcas and Dagwood have prior knowledge that one of the individual dogs is particularly dangerous, e.g., based on prior aggression.
- *Minority Dog Bite Exception*: However, in minority jurisdictions like this one, owners of dogs will be strictly liable for injuries caused by dog bites, even if there is no prior knowledge.

QUESTION 3 OUTLINE

- **Defamation**

- *False, defamatory statement:* Darwin's statement over the phone regarding the law review is likely slander per se because it accused Pacey of acts of moral turpitude (plagiarism). Even though he didn't name Pacey as the plagiarist, it's likely the partner knew from reviewing Pacey's resume/internship application that Pacey was one of three editors (opportunity to discuss colloquium, external facts, and defamation of small defined group). Pacey may also argue that the statement that he was having an affair with the Dean's wife is slanderous per se because it accuses him of unchastity/sexual misconduct.
- *Intent:* Darwin knew the rumor about plagiarism had been disproved but he repeated it anyways. This establishes malice and would allow the claim to proceed even if plagiarism in a law review is considered a matter of public concern.
- *Published to a third party:* Darwin made the statement to the partner.
- *Causing:* the sequence of events constitutes circumstantial evidence that supports a logical inference there is a nexus between Pacey losing the internship (and the editorship) and Darwin's call to the partner.
- *Reputation Damages:* if the statement(s) is(are) slander per se, general damages will be presumed. Otherwise, Pacey will need to show that he lost the internship and/or editorship as a result.

- *Invasion of Privacy:* Darwin scrolled through Pacey's emails when Pacey stepped away from his laptop. Pacey has a reasonable expectation of privacy in his email messages. Any reasonable person would find Darwin's conduct highly offensive. Darwin has no legal right to read Pacey's email so there is no need to balance.

- *Public Disclosure of Private Facts:* Darwin disclosed the information about Pacey's affair with the dean's husband to the partner. This is not wide enough publication to support public disclosure of private facts. There are not enough facts to know whether Darwin was also behind the affair becoming public knowledge. While this disclosure would be offensive to a reasonable person, Darwin may argue that it is a matter of legitimate public concern within the law school community.

- *False Light:* raise and dismiss for extra credit. Not a wide enough publication and it is unclear how the statements placed Pacey in a false light.

- *Intentional Infliction of Emotional Distress:* Darwin acted intentionally for the purpose of causing Pacey damage. His conduct was outrageous and has caused Pacey significant emotional distress (trouble sleeping, seeking counseling). Darwin will point out that the conduct was not directed at Pacey. He may also claim qualified privilege.

- **Defenses**

- *Truth:* Pacey was having an affair with the dean's wife.
- *Qualified Privilege:* Darwin can argue that he had a duty to communicate information about a fellow law student's plagiarism to someone with an interest in hearing it (the

partner who was considering Pacey for an internship). However, the fact that Darwin had a self-interested motive and knew the rumor had been disproven will destroy any immunity claim.

- *First Amendment:* Darwin may also argue that plagiarism and moral conduct of a law review editor is a matter of public concern. Nevertheless, his reckless disregard for the truth/knowledge of the rumor's falsity constitutes malice. It is unlikely that Pacey's affair with the dean's husband is a matter of public concern.

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great work!
even though you
ran out of time,
you still got
a lot of
the work!

1)

STRICT PRODUCTS LIABILITY

A defendant is strictly liable for any unreasonable risks of harm, regardless of fault, if the plaintiff suffers harm by a defective product.

PROPER PARTIES

A proper plaintiff is any end user or consumer who uses the defective product, including any reasonably foreseeable plaintiffs. A proper defendant is any entity in the chain of commerce, including any retailers or manufacturers.

Here, the proper plaintiff is any person who uses the "Brilliant Boots". Padma would likely be a proper plaintiff because she used the boots and suffered injuries as a result of them being defective.

Here, the proper defendant must be a commercial supplier. A commercial supplier is one who places a product in the stream of commerce with little to no alteration to the original product. It can be reasonably inferred by the name Dirk's Shoe Palace that they are likely a footwear retailer. As such, they began selling hiking boots with high tech features and there is no evidence to suggest that there were any alterations made to the boots by Dirk's Shoe Palace prior to them being sold. Therefore, it is likely that Dirk's Shoe Palace will be considered proper defendant.

Therefore, Padma is a proper plaintiff and Dirk's Shoe Palace is a proper defendant.

DEFECTIVE PRODUCT

A product is any tangible, moveable item. Here, the product is a pair of hiking boots. There are three ways to determine if a product is defective: (1) manufacturing defect; (2) design defect; and (3) warning defect.

Manufacturing Defect

A product that is more dangerous or different from the others during the manufacturing process is said to have a manufacturing defect. Here, there is not enough evidence to support whether or not a manufacturing defect exists. Based on the facts, it appears that generally all "Brilliant Boots" are uncomfortable and should not be submerged in water alike. Therefore, a manufacturing defect likely does not exist.

Design Defect

A product has a design defect if the design itself could have been altered to be less dangerous based on cost and utility. Here, the hiking boot's design could have been reasonably altered to make the boots waterproof, for example. Given that most hiking boots are worn outdoors, it is reasonable to assume that it is not uncommon for hikers to come across some form of water (e.g., a puddle, stream, river) that they will have to step on or across. It can be argued that changing the design of the boots will likely be more expensive because of the many high tech features included in the boot's existing design; however, the court will likely find that the shoe's many tech features are what make it unsafe and it might be less dangerous and cost-efficient to get rid of these features altogether to prevent any potential future harm.

Therefore, it is likely that a design defect exists.

Warning Defect

A warning defect exists if there is a failure to warn consumers of any potential dangers that are nonobvious or are likely to not be discovered by the consumer. Here, Dinah warned Padma not to submerge the boots in water or the tech features might stop working. This is arguably a nonobvious danger that Dinah would not have been privy to without first getting the boots wet herself. However, Dinah did not warn Padma of how uncomfortable the boots actually were. As an experienced hiker, Dinah has a higher level of knowledge (sophisticated user) with regard to which boots to use, but instead of warning Padma of this, Dinah decided to withhold that information in order to help her meet her weekly sales quota. As an experienced hiker and as an experienced shoe salesperson, Dinah arguably should have warned Padma of the shoe's uncomfortableness and of the dangers that come with submerging the boots in water. Other than telling Padma that the tech features might stop working, Dinah did not mention any other dangers that may result from contact with water or from hiking for long periods of time in them.

Therefore, it is likely that a warning defect exists.

CAUSATION

In order for the defendant to be strictly liable, the harm must be reasonably foreseeable. Here, given that most hiking boots are worn outdoors, it is reasonable to assume that it is not uncommon for hikers to come across some form of water (e.g., a puddle, stream, river) that they will have to step on or across. Depending on whether Padma submerged her boots in water or just simply splashed them, the fact that she got the boots wet make it reasonably foreseeable that the tech features might stop working or that a wire would short out because technology and electrical components do not work when mixed with water.

Therefore, it is likely that the defendant is the cause of Padma's injuries.

DAMAGES

In order to recover damages, the plaintiff must have suffered actual personal or property damage from the defective product. General damages are noneconomic damages awarded for pain and emotional suffering. Special damages are awarded for quantifiable economic losses that result from the injury. Here, it is likely Padma will be able to recover both general and special damages for her injuries. General damages will likely be awarded for any pain and suffering Padma may have suffered as a result of her injuries and missing out on time with her friends. Special damages will likely be awarded for any potential medical expenses, hospital stay(s), loss of wages, etc.

Therefore, Padma will likely recover special and general damages.

DEFENSES

COMPARATIVE FAULT

Comparative fault divides liability between the plaintiff and defendant proportional to their relative degrees of fault. If it can be determined that Padma was at fault to some degree in causing her own injuries, then her recovery will be reduced in proportion to her degree of fault. It is unlikely that defendant will prevail under this defense.

ASSUMPTION OF RISK

If the plaintiff voluntarily and knowingly assumes and appreciated the risk and continued despite the risk, then recovery may be barred. Here, it is not likely that Padma assumed the risk because she was not fully aware of the risk associated with getting the boots wet. However, the defendant may be able to argue that Padma assumed the risk when she saw the stream, decided whether or not to cross it knowing that her tech features may stop working, and proceed anyways.

Therefore, it is unlikely that defendant will prevail with this defense.

MISUSE OF PRODUCT

If it can be proven that the product was not used in the way in which it was intended, this may serve as a defense.

BREACH OF WARRANTY

To prevail, the plaintiff must show: (1) there is either an express or implied warranty; (2) plaintiff justifiably relied on warranty; (3) causation; and (4) damages.

WARRANTY

A warranty can be either express (by words) or implied (by conduct).

Here, it is likely the warranty was implied.

IMPLIED WARRANTY OF MERCHANTABILITY

There is an implied warranty of merchantability implied in every sale of goods that they are fit for their ordinary purpose. Here,

IMPLIED FITNESS FOR A PARTICULAR PURPOSE

There is an implied fitness for a particular purpose if the plaintiff is requesting a particular product and justifiably relies on the warranty that is made with regard to the particular purpose of the product. Here, Padma specifically requested boots comfortable enough to hike in all day. Although it is not known whether or not P knows D is an experienced hiker, P still justifiably relied upon D's recommendation as a trusted salesperson when she told her to go with the "Brilliant Boots," despite P's specific request for comfortable hiking boots.

CAUSATION

Actual causation is measured by the "but for" test. But for the defendant's conduct, the plaintiff would not have suffered harm as a result. But for Dinah recommending the "Brilliant Boots," Padma might have purchased a different pair of hiking boots, and would not have been injured as a result.

Therefore, D is likely the actual cause of P's injuries.

Proximate causation is limited to that which is reasonably foreseeable. See above.

Therefore, it is likely D is both the actual and proximate cause of P's injuries.

MISREPRESENTATION

INTENTIONAL MISREPRESENTATION

DAMAGES

See above.

DEFENSES

CONTRIBUTORY NEGLIGENCE

Contributory negligence is an absolute bar to recovery.

COMPARATIVE NEGLIGENCE

Comparative negligence divides liability between the defendant and the plaintiff depending on their relative degrees of fault.

ASSUMPTION OF RISK

Assumption of risk is when the person voluntarily and knowingly assumes the risk when they have appreciated the danger and proceed in spite of it.

NEGLIGENT MISREPRESENTATION

To prevail, P must prove: (1) there was a duty with a standard of care; (2) the level of standard of care required; (3) breach; (4) causation, actual and proximate; and (5) damages.

DAMAGES

See above.

DEFENSES

See above.

END OF EXAM

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great work.
no notes :)

2)

Residents V Dagwood

Residents of town (T) wish to bring a claim of nuisance against Dagwood. They inquire upon remedies and they also wonder what defenses Dagwood would bring and what would happen if one of the puppies got loose.

Public Nuisance

A public nuisance is an unreasonable and offensive interference with a right common to the public. It must be brought on by a public official or someone who has experienced harm different than that experienced by everyone else.

Unreasonable/ Offensive interference

T must first bring on a public official to make a public nuisance claim on their behalf or prove that someone has experienced a special kind of harm. If T can do either of those things T will argue that incessant smells and noise from the puppy farm interferes with their right to enjoy clean air, and a quiet atmosphere. If the entire town is flooded with a negative smell associated with puppies then a public official may have standing to bring a claim. Furthermore if the noise coming from the puppy farm is so offensive that the entire town suffers because of it then a public official may also bring a claim. The facts do not specify the radius of the smell or noise or how many residents of the new housing development complained about this. As a result It would be a matter of fact for the judge to determine whether this qualifies as a offensive interference with a public right.

Right common to the public

T will argue that clean air a quiet atmosphere are rights that are common to the public. They will argue that the sound and smell coming from the puppy mill constitutes a violation of that right because they have to hear it constantly and smell it constantly.

Public official interest

The facts do not indicate if a public official is available or willing to raise a claim of public nuisance. It is not unreasonable to infer a public official may be available to do so, but it is not explicitly present in the facts. As a result T will have the burden of proof in establishing a public official to represent them in a claim of public nuisance.

Special harm

Special harm must be wholly different than the kind of harm experienced by the majority of people

At face value there are no facts to indicate that anyone experienced harm different than being annoyed by the smell and noise of the puppies. As such a claim based on special harm may not be raised.

Conclusion for Public Nuisance

T may raise a claim of public nuisance via a public official, but it would be subject to scrutiny by a judge.

Private Nuisance

A private nuisance is an unreasonable and offensive interference with the private and quiet enjoyment of land. It must be brought on by someone with a possessory interest in the land.

Offensive interference

T will argue that the smell and noise coming from the puppy farm is an offensive and unreasonable interference with their right to enjoy to privately and quietly enjoy their land. They will argue that the smell and noise is so offensive that it had to be addressed at a town hall meeting.

Quiet and private enjoyment

T will argue that possessory members are forced to listen to the sounds coming from the puppy mill, and smell smells coming from the puppy mill. They will argue that because they are forced to do this against their will it constitutes a violation of their private use and enjoyment of land they own.

Possessory interest

T will argue because members own homes in the new housing development that members who own homes have possessory interest in the land at question and subsequently hold standing to raise a claim.

Conclusion for Private Nuisance

T has satisfied the elements of Private nuisance and may raise a claim

Remedies

Remedies available for public and private nuisance include, damages, injunction, and abatement.

Damages

Damages exist for public and private nuisance when it is unfeasible or agreeable to provide other remedies. If Public and Private nuisance claims were found to be valid, and Dagwood was in a position to provide damage remedies they may agree to pay residents of the entire town, or of the new housing development monetary damages for having to deal with the nuisance caused by the incessant puppy mill.

Injunction

the remedy of injunction exists to cease the nuisance caused by a defendant. It is a court order by a judge to stop operations of whatever the nuisance is. If claims by T were found to be valid, and T refused monetary damages the court may order an injunction of the puppy mill to cease operations entirely.

Abatement

Abatement is commonly known as "self help". It would likely not apply in this case because it would logically involve violence against the puppies or theft of the puppies. Abatement is a more common approach if a neighbor has invasive plants reaching over his fence and wishes to cut them because his other neighbor refuses to do so. Abatement likely does not apply in this scenario.

Conclusion for remedies

Monetary damages or injunction may be viable remedies for T if the finder of fact determines T has a valid claim of public/private nuisance. Abatement would likely not be available.

Defenses to Nuisance claims

Common defenses to nuisance claims involve coming to the nuisance, Comparative fault, assumption of risk, and violation of zoning laws.

Coming to the nuisance

Coming to the nuisance is an attempt to undermine the credibility of someone raising a claim of nuisance. It is done to show that the plaintiff was aware of the nuisance and chose to come to it anyway. D may argue that the members of the new housing development were aware of the puppy mill because it was there "long before the housing development" yet they chose to move there anyway. Coming to the nuisance is not by itself a complete defense to Nuisance but is helpful in determining the strength and validity of the claim.

Comparative fault

Comparative fault attempts to undermine Nuisance by saying that both parties are at fault and absolute liability does not fall on the defendant.

D may say that a puppy mill may be a nuisance to people who live too close to it, and T built their housing development too close to the puppy mill. D will claim that T knew it would be a nuisance if they built housing too close, and chose to do so anyway so T is also at fault.

Assumption of Risk

Assumption of risk attempts to exculpate defendant from liability by saying that a plaintiff was aware of the risk and chose to do so anyway. It is similar to coming to the nuisance, but differs on the issue of timing. D will argue that T has allowed D to have a puppy mill for years. D will argue that it has made a living off its puppy mill and as a result T has chosen to live with a puppy mill in existence. D will argue that not shutting down the puppy mill immediately, and instead allowing it to operate for years constitutes an assumption of risk.

Violation of Zoning laws

The facts indicate that D "provided a recent certificate of inspection showing their ranch is in compliance with all applicable zoning laws". They will use this to assert defenses mentioned above including comparative fault, coming to the nuisance, and assumption of risk. Much like the coming to the nuisance is not an absolute defense, compliance with zoning laws is also not an absolute defense as conduct by defendants may still be deemed offensive even in the absence of a violation of zoning laws.

Conclusion for Defenses

D may successfully assert all 4 common defenses to nuisance claims. Their validity and enforceability will be subject to scrutiny by a judge.

Strict liability for Domesticated animals.

A defendant will be held strictly liable for the damage caused by a domesticated animal if the owner is aware of the dangerous propensity of the animal. As a legal standard, things such as breed of the animal are materially irrelevant.

Breed of the animal

D raises domesticated Doberman Pincers. Doberman Pincers are known to be loyal and sometimes aggressive guard dogs. As a rule of law the breed is irrelevant and will not be subject to scrutiny.

Dangerous propensity

Dogs are known to be somewhat dangerous animals. They have sharp teeth and strong jaws. The problem for T raising a potential strict liability claim against the dogs is that the dogs are not adults, they are puppies. Are puppies dangerous? puppies may have sharper baby teeth than adult dogs, but severely lack the strength and social awareness to not only feel threatened enough to attack, but to do serious damage related to the attack. D, as the owner of the puppy mill, would likely have knowledge that all dogs can potentially be dangerous as they are experienced in raising them. The point of contention would likely be "is a puppy considered dangerous?". In all reasonability it is unlikely that a reasonable person would deem a puppy to be dangerous, but it is not impossible. Therefore puppies may hold dangerous propensities.

Jurisdictional semantics

The majority jurisdiction recognizes the "one bite rule". This is such that if a dog bites someone for their first time they get a "free pass" at the cost of the owner being put on explicit notice their dog has dangerous propensities. The minority jurisdiction does not recognize this rule.

Since this a minority jurisdiction, if a puppy got loose, was found to be dangerous, and bit a child, D would be held strictly liable for all damage caused by the puppy.

Conclusion for Strict animal liability

If D's puppies were found to be dangerous and a puppy got loose and bit a child D would be held strictly liable.

Conclusion

T may bring a claim of public and private nuisance against D. They may seek remedies of monetary damages, and injunction. D may assert defenses of coming to the nuisance, Comparative fault, assumption of risk. D's defenses would be subject to judicial scrutiny. if a puppy got loose and bit a child D may be held strictly liable with regard to interpretation of dangerous propensities of puppies.

END OF EXAM

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awesome
work!

3)

PACEY (P) V. DARWIN (D)

DEFAMATION

Defamation is a false defamatory statement, of or concerning the plaintiff, published to a third party, with intent (malice-negligence) to cause damage to the plaintiff's reputation. Defamation is either libel or slander.

LIBEL

Libel is a written and printed publication of the defamatory statement.

SLANDER / SLANDER PER SE

Slander is oral or verbal defamation. For slander, plaintiff must prove special damages. Slander per se is established for language that affects plaintiff's ability to conduct her business or profession, claims plaintiff has some loathsome disease, imputes criminal behavior, or imputes serious sexual misconduct on the plaintiff. Damages are presumed if slander per se is shown.

Here, the statements were made orally during a phone call. It should also be noted that the statements were regarding an affair P was having with the dean's wife, which could arguably impute serious sexual misconduct, and a rumor about a plagiarized article, which could affect the plaintiff's ability to conduct his business or profession. Considering P was applying for a prestigious internship, it is likely that these are both factors they would consider before deciding whether or not to extend the position to him, especially as a means to protect their reputation within the local community as a prominent law firm.

Therefore, the statements likely constitute slander per se.

DEFAMATORY STATEMENT

A defamatory statement is a false statement that holds the plaintiff to contempt or public ridicule. Here, there are two statements that must be examined.

The first statement was that P was having an affair with the dean's wife. Here, it is unlikely that this statement will constitute a defamatory statement because it is likely true. Given that D learned of the affair through various

explicit messages between P and the dean's wife, it is likely D will be able to cite to the text messages as proof that the statement was not in fact false and can therefore not be considered a defamatory statement.

The second statement was about a rumor that the law review editors had plagiarized a recent article. Here, this statement will likely constitute a defamatory statement because the facts indicate that the rumor was disproven; thus, making it a defamatory statement. D was also aware of the falsity of the statement, but decided to repeat it anyways. Note, repeaters may also be held liable for defamation.

Therefore, the first statement will likely not constitute a defamatory statement, but the second statement will.

OF OR CONCERNING THE PLAINTIFF

The statement must be understood to identify plaintiff. Here, the rumor was that the law review editors plagiarized a recent article. On its face, there is no indication that the rumor was about P specifically. There is no mention of P's name or any other identifiers, other than the reference to the "law review editors." However, given that there were only three editors and the facts support that one of the editors was an applicant at this specific law firm, it is likely that even though it is false, it could be traced back in a way to P rather easily.

Therefore, this statement does concern P.

PUBLISHED TO A THIRD PARTY

The statement must be published to another person. Here, D told the statements to the partner in charge of the internship program. Therefore, this element is satisfied.

INTENT

The statement can be published intentionally (with knowledge of falsity) or negligently (reckless disregard for whether the statement is false or not). Here, the statements were published with the intent to discourage the law firm from hiring P. D had knowledge that the rumor he repeated had been disproven, but proceeded to repeat it anyways.

Therefore, D intentionally published the statement.

CAUSATION

Plaintiff need not prove that defendant actually harmed the plaintiff's reputation, only that it would have been damaged had the statement been believed.

Here, the rumor is arguably not so far-fetched that it would not have been believed. Considering P was one of the three student editors, it is likely believable that P could have plagiarized an article.

Therefore, D is likely the cause.

DAMAGES

If slander is shown, special damages must be proven. Special damages are awarded for quantifiable economic losses that result from the injury. Therefore, in order to recover under slander, P must show evidence of some pecuniary loss (e.g., loss of income). If slander per se is shown, damages are presumed, which means P is not required to show additional proof in order to recover.

Therefore, P will likely recover special damages if proven for slander or presumed damages for slander per se.

DEFENSES

TRUTH

Truth is an affirmative defense. Here, D could potentially reference the text messages as evidence of proof of the affair between P and the dean's wife. However, truth cannot be asserted for the second statement because D knowingly repeated the statement even though it was false.

ABSOLUTE & QUALIFIED PRIVILEGE

Absolute and qualified privilege protect individuals in certain circumstances. Absolute privilege prevents certain circumstances from ever being actionable, regardless of the speaker's intent or motive. Qualified privilege may be revoked if person acted out of the scope of the privilege. There is no evidence to suggest D is protected under qualified or absolute privilege.

Therefore, D cannot assert absolute or qualified privilege as a defense.

INTRUSION UPON SECLUSION

An intrusion, physically or otherwise, upon the seclusion or solitude of another without privilege.

Here, D intruded upon the emails on P's computer. There is no evidence to suggest P had consented to D going through his private emails. It would be reasonable to assume that P might not have allowed D to go through his emails if he had known of the intrusion, given the explicit and private nature of the messages that were discovered. D also waited for P to leave the room before, which could serve to further prove that D did not have privilege to read P's emails.

Therefore, D likely intruded upon P's seclusion.

DAMAGES

See above.

DEFENSES

See above.

FALSE LIGHT

False light occurs when the plaintiff is portrayed in a way that would reasonably offend an ordinary person. Here, P is falsely portrayed as someone who plagiarizes. Plagiarism could arguably be construed as a form of deceit, trying to pass off the work of someone else as your own. It is likely that there is a negative connotation associated with both the term and accusation. Therefore, it is likely that a reasonable person would be offended by this type of portrayal.

Therefore, D portrayed P in a false light.

DAMAGES

See above.

DEFENSES

See above.

PUBLIC DISCLOSURE OF A PRIVATE FACT

Public disclosure of a private fact is when a person intentionally discloses a fact that is not a matter of legitimate public concern without consent. Here, D intentionally disclosed that P was having an affair with the dean's wife. This arguably does not constitute a matter of legitimate public concern because it does not involve the public's welfare and neither P nor the dean's wife, according to the facts, are public figures. The statement was arguably true given the nature and explicit content of the messages between the two.

Therefore, P could claim public disclosure of a private fact for the statement regarding the affair.

DAMAGES

See above.

DEFENSES

See above.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

IIED is the intentional or reckless act caused by extreme and outrageous behavior causing severe emotional distress.

END OF EXAM