EXAMINATION BOOK

Name 283845

Subject

Instructor

Section Class

Date Book No. 14

① IN ~~the~~ Order for PP to successfully claim Negligence by DD, he must establish, ~~on~~ prove by a preponderance of the evidence, the following. ① That DD owed him a duty, that of reasonable care measured by the Reasonable prudent person under the ~~cir~~ circumstances (RPPC) ② That DD breached that duty by failing to act as a RPPC would, and therefore DD was Negligent which is conduct that creates an UNreasonable risk, which is conduct that a RPPC would foresee as dangerous/harmful/risky and would avoid such conduct/Risk by exercising ~~the~~ reasonable care. ③ Next PP must prove ~~that~~ actual Harm, a legally recognizable harm happened to him as a result and ④ That DD Negligence was the cause in fact of this harm (ie "but-for DD Negligence the event would not of occured to P) and finally ⑤ PP must prove that the act was the proximate/legal cause of his damages.

PP must prove each element, otherwise DD will not be held liable under Negligence cause of action. The first element which PP must raise and

prove is that DD owed him a duty. DD owes PP the duty of reasonable care under the circumstances as stated in 14 Wid 952. This means that they must exercise what a Reasonable prudent Company under the circumstances. This involves many factors such as prior knowledge, Burden, experience, and reasonable standard. They had a duty to make sure that ① the premises was safe ② Not to serve PP alcohol when it was visibly noticable that he was intoxicated ③ Make sure that PP would be able to take a cab Home. because?

Because DD is a public place it must make its facilities safe to the general public. By serving free alcohol, the probability and foreseeability that harm would occur is great and must be minimized. By serving free alcohol, DD takes on the duty of protecting its customers by ensuring their saftey. (2) basis?? PP can claim that DD breached its duty of care toward him by serving alcohol and not providing a safe premise. claim one: Negligence per se: the casino violated a statute which set the standard of care of a landowner. claim two: under the BPL analysis A

Burden of furnishing a safe place was less than the gravity and probability of harm.
The Casino must exercise reasonable care which calls for RPPC. It did not do so and breached they duty Negligently thereby ~~created~~ creating an unreasonable risk which they could of avoided. It is foreseeable that serving free alcohol would cause dangerous risks to patrons. Not only was it foreseeable, but in fact DD had prior knowledge, which increases probability (L), that 9 other patrons were involved in similar situations as PP. Additionally, it breached they duty by failing to provide adequate lighting (which was not much of an expense or burden) and to warn the ~~patrons~~ drivers of possible drunken patrons because they claim it would detract from the casino's attractiveness. DD has the duty to warn and ensure the safety of its patrons, it must discover dangers and avoid creating unreasonable risks.

DD was negligent in creating an ~~[illegible]~~ unreasonable risk by negligently serving limitless alcohol, providing unsafe premises, and failing to warn others of possible harm/risks. The Casino had prior knowledge of the probability which it could easily avoid or mitigate. ① it can serve alcohol

~~[illegible]~~ with a drink limit or when one is visibly intoxicated they can stop serving them. Also, they should provide a taxi for those who leave and can't drive home, (strong) or provide an escort to the parking lot if that person is not drunk (weak). Additionally, when they were told that PP was drunk and to make sure that he get a free cab, they were put on notice of PP's condition but none the less they ~~[illegible]~~ did not avoid ~~[illegible]~~ the risk.

A sign that would warn of possible drinks would not cost much and was not much of a burden considering the severity of Harm (L) and probability (P).

PP strongest argument that DD breached its duty is the fact that they failed to use reasonable care in serving limit less alcohol w/o taking the proper means to avoid the unreasonable risks that were created by serving alcohol which can lead to many dangers.

PP must then prove actual Harm. Here there are 2 claims. ① for his personal injuries (which is the strongest argument) and ② ~~[illegible]~~ money lost gambling (which is weak and not covered in damages in a personal injury cases: ie lost wages, medical exp

You weren't asked to
cover cause in fact

pain and suffering, reasonable expenses incurred). Therefore, PP should proceed with the legally recognizable harm, that of personal injuries. Here it can be shown that by breaching its duty through negligence, PP injuries were caused by DD negligent conduct. The money lost issue isnt strong, because People come to casino's and know the risk involved as far as winning and almost always losing their money. Holding a casino liable for patrons who lose money is counter productive and would close down every casino. Also PP must prove that "but-for" DD

~~Next PP must prove that DD proximally causes his injuries.~~

Negligence, he would not of been injured/hurt. This is the cause in fact element. when one can answer the following in the negative then DD would be the cause in fact, "but-for" DD malfeasance in serving alcohol to its patrons without acting as a reasonable prudent company would, would PP been injured, Here the answer is No. DD created the foreseeable unreasonable risk to PP. Even if PP was hit by a third party, it can only be that DD is the substantial factor

causing the injury.

Next PP must prove that DD proximally caused his injuries. This is a policy, case by case analysis of determining when is a defendant not liable for all reasonable foreseeable consequences preceding his negligent conduct. It is an analysis of foreseeability and does not preclude liability b/c the harm or manner was not foreseeable, or if the plaintiff is not foreseeable and even if there is an intervening cause. Proximate cause is the ordinarily + natural sequence undisturbed by an intervening cause, that led to P injury, because of Δ negligent cond

DD negligent act may not be "direct" but was a foreseeable consequence of DD's negligent act. It may not of been the type or manner of harm which Δ could of foreseen but its a mere variant of possible consequence of serving alcohol to patrons, w/o exercising reasonable care.

The type of harm might be injury to a patron as a consequence of being intoxicated, so the manner in which PP is reasonably foreseeable, being that it happened before also. The person who hit PP might be seen as an intervening cause and

DD would claim it was a superseding cause because it was not foreseeable that PP would be run over, and it was not an ordinary event but substantially new and unknown factor. But "the waters must become placid" idea that the △ is liable for the "bundle of risks" he creates is applicable here, just because PP left the casino did not end the reasonably foreseeable consequence of DD's conduct/Negligence. Had there been warning signals/signs, more lighting and security, maybe then DD would be held to have minimized all possible risks and that the person who hit PP was superseding cause thereby eliminating DD's liability.

Affirmative defenses that are available to DD: [Contributory (but not here b/c of a statute)] ① comparable Negligence where P failure to exercise reasonable care toward himself thereby being a factor that led to injury, and ② Assumption of Risk. ON the first defense available to DD, they may claim that by drinking PP is comparably Negligent for his injuries. He was told numerous times to

Stop drinking by FF and failed to act as a reasonably prudent person under the circumstances. Intoxicated people are held to the RPPC standard and not a intoxicated PPC standard. Therefore PP's was Negligent in creating an unreasonable risk to himself by drinking until he was intoxicated. He must bear some responsibility for drinking to the level he had. He had a duty, he breached it, and it meets the Negligence elements. It may be held that Both DD and PP both were comparably Negligent and depending if its a "pure" system: where % is calculated on the basis of each sides Negligence (ex DD = 20% PP = 80%) or if its a "modified" system where if PP is 49% or 50% Negligent he may be barred from recevering damages.

PP might argue that PP implicitly assumed the Risk. This means that through PP's conduct he knowingly, appreciated the risk and voluntarily assumed it. This is a bar to a Negligence claim. PP was a gambling addict, and kept on Gambling and consuming alcohol, he also came w/ FF as his designated driver but nonetheless he refused to leave knowing the danger and by his action

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② assuming the risk of Beth losing his money and risk of an injury because of being intoxicated. additionally he may be comparatively liable b/c he did not leave w/ PF who was his designated driver (ie. He knew the risk that he would be drunk).

II

① DD may not avoid liability because she was the proximate-cause of P1 + P2 injuries. Proximate-cause, is the natural and ordinal sequence of events following Δ Negligence, without an intervening cause, that causes injury. Δ is held liable for the reasonably foreseeable consequence of their Negligence. This means that if P1+P2 were a few blocks away and hit by police car responding to the accident, DD would not be held liable because its not within the zone of harm/risk. Here P1+P2 were in the zone of risk created by DD. They were foreseeable plaintiffs and the harm was they type that is reasonably foreseeable if one changes the light at an intersection. P1+P2 must still exercise RPPC when approaching the light, if the lights were not functioning, they should of slowed down as they saw that 1) lights were not working or ② blinking. If DD can show they failed to act under RPPC standard then she might not be held liable. Also the people who designed the pole + box should be held to the RPPC standard.

(Similar to light pole defect c

(2) TLUC is the cause in fact b/c they obtained "control" of the Risk created by DD. Cause in fact, in the but for Analysis will not ~~the~~ work here. because? A substantial factor Analysis might come handy. It states that when 2 or more actors act together and one act is the substantial factor, then that act is the cause in fact. Both TLUC + DD might be seen as "but for" these acts would the blackout occured? no. So its important to note that taking control of the risk created by DD, TLUC is now the cause in fact. The risk created by DD is over when TLUC assumed and knows of the possible risks. ONCE A third party knows of the risk (like the case in which a mother discovers that her son has a dangerous instrument (caps) but does nothing and the son sells or hurts someone else, she assumes control of the Risk). and Assumes Responsibility by knowledge then they become the cause in fact.

→

③ Proximate Cause - a defendant is held liable for all reasonably foreseeable consequence of his Negligent conduct. (The event must not be foreseeable as to the harm, manner, and intervening cause, which will mean a supervening cause occured.) Proximate Cause is measured by the reasonably foreseeable harm that will result no matter what the manner is as long as it is a more variant. An "egg-shell" rule applies which states that a Δ must take P as he comes, and is liable for any harm related to his Negligent conduct even if it was not foreseeable. The "zone of harm" determines which Plaintiffs Δ owes a duty to and when his Negligent conduct may be too far removed in the sequence of events. If Risk A is created and Risk B occurs, Δ is not liable. But if * (b

a) DD can argue that the "bundle of risk" and that the events following her accident are too far removed for her to be held liable. it it it was not reasonably foreseeable that she would cause injuries to people b/c of a blackout. the Harm and plaintiffs are not the foreseeable consequence of her conduct.

defendant creates ~~[illegible]~~ foreseeable Harm A and the typical manner is B, but manner C occurs, defendant is liable because he created the risk of harm, so therefore those who are injured by the risk created can hold Δ liable. If Δ creates a risk of fire and P is burned because a ~~[illegible]~~ of the fire, Δ is the proximate cause, However if the risk of fire is there but an act of Nature (lightning) occurs it will usually be held to be superceding.

b) TLUC can argue that they are not the proximate cause of Roberts injuries b/c they may have cause in fact the black out but that injuries resulting from that would be too numerous to hold them liable. the conduct by Robert may be said to be a ~~superse~~ superseding cause b/c it was not foreseeable that a barrister would cause some one to fall. TLUC could not reasonably foresee such acts, only that people would use RPC while the blackout was going on. They can say Robert failed to act as RPC because he used a candle which may lead to a fire and also say that the landlords failure to repair the common Area was a superseding cause which led to Roberts injuries. (stronger Argument). Had the common area been in a safe condition, Roberts injuries would not of transpired.

(c) The Landlord may argue that he is not the proximate cause of Robert's injuries by stating that TLUC or the people who decorated the banquet are the proximate cause of Robert's injury. It was not foreseeable that someone would fall down the stairs because of a black out caused by TLUC and that the decorations would cause someone to lose grip. It may be said that the manner of harm is so unusual, unexpected, and unforseeable that the landlord was not the proximate cause. How could he forsee that someone will be in the basement and Robert trying to check up on his father would be hurt.

(4) Robert's status is that of an invitee. His father is an invitee because he is on the Landlord premises expressly with his permission and for his economic benefit. it is said that that status is given to the guests as well.

(4b) the landlord owes Robert the duty of reasonable care to discover and warn of dangers. He must make sure that the common area is safe and in repair and warn of hidden as well as open and obvious ~~dangers~~ conditions which forseeably could cause harm.

(4c) Res Ipsa Loquitur - the thing speaks for itself, is used in cases where no direct evidence of Negligence is given, to say that the fact that the event occured means that Negligence was the ~~cause~~ reason. it is an inference that w/o Negligence the event would not of occured. P must show (1) that Δ had control of the instrument that caused the event (2) P ~~was not at fault~~ or (3) third actor were not Negligent (3) events like this do not ordinarily happen w/o Negligence (ex: plane crash = do not ~~happen ordi~~ ordinarily happen w/o Negligence) and (4) no direct evidence of Δ Negligence. otherwise you can use Res Ipsa Loquitur

Roberts best argument would be that the landlord had "control" over

The common area and therefore had the duty to make sure it was safe. It was Not so therefore the landlord is liable for Negligently leaving the bannister in disrepair. (ex. elevator operator must make sure that its safe for both ee + public).

Had the Landlord kept the place safe, Robert would not of fallen down the stairs.

(4d) Negligence per se is used when Δ violates a statute which protects the class of plaintiff, and also the harm involved. It is used to show Negligence occured b/c of the violation of the statute. Here it seems That the class involved is "tenants." Robert is not a tenant therefore NOT in the class that the statute seeks to protect. The landlord is liable for "the safety and security of their tenants", that means Roberts father is in the class the statute seeks to protect.

The landlord must provide the tenants with 'habitable apartments which

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→ "include basic amenities such as heat, light, and water." ~~[illegible]~~

The problem here is that it can be said that the landlord had an excuse which is allowed to counter the Negligence per se claim. These are the excuses allowed (△ must still act as RPPC). ① violation was reasonable because of the actors incapacity ② He neither knew or should of know of the occassion for compliance ③ an emergency not of his making ④ compliance with the statute would cause a greater risk of harm to actor or others ⑤ after reasonable care and diligence he is unable to comply.

The blackout was an emergency not of his making and he ~~[illegible]~~ presumably provided Heat, water, and light up until the blackout. He may be Negligent for not making sure that the backup generator turned on automatically. Also the word "Habitable" is broad and may or may not set a standard for common areas, such as the bannisters.

MULTIPLE CHOICE ANSWERS FOR TORTS II EXAM FALL 2000

1) d

2) b or d

3) d

4) b

5) c