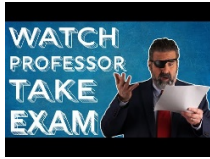


Essay Answer by Professor Baez from:



There are three lawsuits by Susan, each predicated on three different theories of negligence. The suits are against the University for negligent security, Jim for failing to rescue, and Psychiatrist ("Psych") for failing to warn of the attack. Negligence occurs when the following five elements are present: duty, breach of duty, actual cause, proximate cause, and damages. Susan will likely prevail against University, but have a harder time against Jim and Psych.

The first defendant is Jim and the issue is whether he owed any duty to Susan, a stranger. Strangers generally owe no duty of care in negligence cases to those that they happen to meet, unless they commit a negligent act. The law implicated by these facts is the rescue doctrine, which holds that there is no duty to rescue a stranger, but that when a stranger begins to rescue, they must do so reasonably.

The question that must be decided is whether Jim's actions were reasonable. Jim found Susan hurt and told her that he was going to get help for her. While he did go to the security office to get help for her, the office was closed. At that point he did nothing else. The issue for Susan is determining whether Jim should have done anything else. Under the traditional rule, a rescuer is not liable if they do not place the victim in a worse position than when they were found. Here Susan was arguably not made worse off by the rescue attempt, so John owed no duty to her for his failed rescue.

The second defendant, Psych, can be sued for negligence in failing to warn Susan of Ann's dangerous behavior. Generally, a psychiatrist owes no duty of care to members of the public for the conduct of their patients. However, courts have found that a duty is owed if a two part test is met: one, the patient is planning to do something that results in death or serious bodily harm; and, the psychiatrist reasonably believes that the patient is going to carry it out. A related rule is that the victim is readily identifiable by the patient. In this situation, Ann told Psych that she was going to make sure "that cheaters" were going to get what was coming to them. This statement is ambiguous, in that it does not demonstrate that Anne's going to do anything that will result in death or serious bodily harm, it does not identify Susan, and in any event, Psych did not believe Ann was going to act on her feelings. Psych should prevail against Ann.

The third defendant, University, will likely lose in a lawsuit for negligent security. The University owed Susan a duty to secure the dormitories, as that is what a reasonably prudent person would do. It appears the university was aware of security problems, given the access cards that were needed to enter the dorm. The locks to the rear entrance were broken, and the university failed to repair in a timely fashion. Because of this, university breached their duty to Ann.

The next elements involve causation: actual and proximate. Actual causation is measured by the but for test. Here, but for the university not securing the dorm, Susan would not have been injured by Ann. Proximate cause is measured by the foreseeability test. It is foreseeable that someone might enter a dorm when the building is not locked. However, since Ann is a student, it might have been foreseeable that she could have entered through another means. Finally, there must be damages. Susan suffered physical harm--this element is met.

The final question is whether Susan can recover for her emotional harm, based on PTSD. This is an issue related to causation, specifically proximate cause and whether the eggshell psyche rule applies. Though Susan was susceptible to a PTSD attack, it was not triggered until Ann attacked Susan. Under this rule, one takes a plaintiff as one finds them, and the unforeseeable extent of injury is ignored. Because there is a causal link to her current emotional harm, she will be able to recover for this harm.