Solution and Answer Guide

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Chapter 05: Tort Law

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# Critical Thinking Questions in Features

Adapting the Law to the Online Environment

1. Why might the appellate court have decided that the evidence did not support Nadia Hussain’s intentional infliction of emotional distress claim?

Solution

Because some courts allow claims for intentional infliction of emotional distress only when the victim cannot recover damages for the defendant's conduct under another tort theory. Hussain’s suit against Patel was based on conduct that was actionable under other tort theories: invasion of privacy and public disclosure of private facts. Therefore, the Texas appellate held that the intentional infliction claim was not available. The court stated that intentional infliction of emotional distress is a “gap-filler tort, judicially created for the limited purpose of allowing recovery in those rare instances in which a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress.”

# Critical Thinking Questions in Cases

Case 5.1

1. Punitive damages may be awarded in a tort actionwhen a defendant’s actions show malice—that is, when a person’s conduct is characterized by hatred, ill will, or a spirit of revenge. Would an award of punitive damages be appropriate in this case? Explain.

Solution

Yes, an award of punitive damages would be appropriate in the Sky case.

The purpose of punitive damages is not to compensate a plaintiff, but to punish and deter a defendant’s conduct. As noted in the lead up to the question, however, an award of punitive damages is available only on a finding of malice.

For an award of punitive damages, malice is the state of mind under which a person’s conduct is characterized by hatred, ill will, or a spirit of revenge (or, in some cases, a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm). Because punitive damages are assessed for punishment and not compensation, a positive element of conscious wrongdoing is required.

In the *Sky* case, the court heard testimony and viewed other evidence that, from the court’s perspective, established that Van Der Westhuizen acted with malice. The nature of the defamatory statements in the e-mail and online reviews, the recipient to whom the e-mail was directed, and the fact that Sky and Van Der Westhuizen were competing breeders, support a finding of malice and thus an award of punitive damages.

1. Should Van Der Westhuizen make an effort to remove all of the false online statements and reviews of Sky that she posted? Why or why not?

Solution

Yes, Van Der Westhuizen should make an effort to remove all of the false online statements and reviews of Sky that she posted.

Damage to a person’s reputation cannot be adequately compensated for monetarily, nor can an award of compensatory damages put the person in the same position as before the defamation. Removing the defamatory statements is, however, a step in that direction and will help to prevent further harm. For those reasons, removal is an ethically necessary act.

Here, the issue is framed as an ethical question, but it is also a legal one. In both contexts, the removal of the posts can be needed to return the defamed party to the position before the defamatory statements. In the Sky case, the trial court issued a permanent injunction to require Van Der Westhuizen to remove any online posts, reviews, and other defamatory statements concerning Sky, including statements on social media and other websites, and to prevent any such later acts by the defendant. The court’s reasons were as stated above.

Case 5.2

1. The NIU Chapter invited nonmember sorority women to participate in the hazing event by filling the pledges’ cups with vodka and directing them to drink it. Did these women owe a duty of care to the pledges? Discuss.

Solution

Yes, the nonmember sorority women who participated in the hazing event owed a duty of care to the pledges.

As explained in the Illinois Supreme Court’s opinion in the Bogenberger case, a hazing injury is reasonably foreseeable and is likely to occur. The magnitude of the burden of guarding against the injury is small. Thus, it is reasonable to impose a duty of care on individuals who actively participate in a hazing event.

The nonmember sorority women were invited to participate in the NIU Chapter’s hazing event, and willingly agreed. They took part by filling the pledges’ cups with vodka and directing them to drink it. The women were more than guests encouraging the pledges to drink. They were an integral part of the event with as much influence over the pledges as the NIU Chapter and its officers.

Hazing is illegal, and those individuals who choose to participate in such acts should bear the consequences. Under the circumstances stated in the question, the nonmember women owed a duty to the pledges, including of course David Bogenberger.

1. Suppose that the pledges’ attendance at the hazing event had been optional, and the NIU Chapter had furnished alcohol, but not required its consumption. Would the result have been different? Explain.

Solution

Yes, if the facts stated in the question had been the facts in the actual case, there would have been a difference in the result.

In normal circumstances, there is no basis for liability in the sale or gift of alcoholic beverages (except under a dram shop law). The difference between the hazing event in the Bogenberger case and a “social host” situation is that in the former the consumption of alcohol was required to gain admission to the NIU Chapter. This led directly to the injury that served as the basis for the plaintiff’s complaint. This required consumption was in violation of the state hazing statute, the university’s rules, and the national Pi Kappa Alpha organization’s policy, furnishing a further ground for the imposition of liability here.

Case 5.3

1. Would the result in this case have been different if Taylor’s minor son, rather than Taylor herself, had been struck by the ball? Should courts apply the doctrine of assumption of risk to children? Discuss.

Solution

There is no legal bar to applying assumption of risk to children. Children are expected to use the degree of caution required of a child of like age and intelligence under similar circumstances. The courts have therefore applied the doctrine of assumption of the risk in numerous cases, such as when a child was injured while playing on a trampoline, swinging from a rope swing, or diving into a swimming pool. The key is whether the child knew of the danger, was able to appreciate the risks associated with it, and voluntarily chose to run the risk. Normally, it is up to a jury (or a judge in a bench trial) to decide if the facts indicate that the child voluntarily undertook the risk.

# Chapter Review

Practice and Review

Elaine Sweeney went to Ragged Mountain Ski Resort in New Hampshire with a friend. Elaine went snow tubing down a run designed exclusively for snow tubers. No Ragged Mountain employees were present in the snow-tube area to instruct Elaine on the proper use of a snow tube. On her fourth run down the trail, Elaine crossed over the center line between snow-tube lanes, collided with another snow tuber, and was injured. Elaine filed a negligence action against Ragged Mountain seeking compensation for the injuries that she sustained. Two years earlier, the New Hampshire state legislature had enacted a statute that prohibited a person who participates in the sport of skiing from suing a ski-area operator for injuries caused by the risks inherent in skiing. Using the information presented in the chapter, answer the following questions.

1. What defense will Ragged Mountain probably assert?

Solution

The strongest defense will be assumption of the risk, which is common in sports. That defense is strengthened by the state statute that formalizes the defense.

1. The central question in this case is whether the state statute establishing that skiers assume the risks inherent in the sport applies to Elaine’s suit. What would your decision be on this issue? Why?

Solution

Yes, because the statute strengthened the traditional common law rule. The legislature can change or limit common law rules, such as those for liability. Here the legislature strengthened the rule of assumption of the risk, which makes it very difficult for a plaintiff to overcome.

1. Suppose that the court concludes that the statute applies only to skiing and not to snow tubing. Will Elaine’s lawsuit be successful? Explain.

Solution

No, because of assumption of the risk. The defense of assumption of the risk would still likely be a successful defense for the ski resort. That rule generally applies to participants in sporting events unless the host creates unreasonably dangerous conditions and does not warn clients.

1. Now suppose that the jury concludes that Elaine was partly at fault for the accident. Under what theory might her damages be reduced in proportion to how much her actions contributed to the accident and her resulting injuries?

Solution

Comparative negligence allows the jury to compute the contributions of both parties to the situation. This results in the reduction or elimination of the plaintiff’s recovery, depending on the state rule and the percent of negligence contributed.

Practice and Review: Debate This

1. Each time a state legislature enacts a law that applies the assumption of risk doctrine to a particular sport, participants in that sport suffer.

Solution

The argument is that the less liability imposed on a sports-activity operator, the less that operator will take care to maintain the sports terrain and equipment.  In other words, using the example of a ski area, a law that exempts the ski area from liability for skiing accidents will result in the ski area owner investing less in maintaining the trail system as well in the signage indicating hidden hazards.  Additionally, ski area owner will pay for fewer ski patrollers who force fast skiers to slow down in congested areas or areas reserved for beginners.

In contrast, there may be an upside to applying the assumption of risk doctrine to sports that are obviously not always safe.  The benefit to all of those who participate is that tickets for such sports as Alpine skiing will be cheaper.  There is competition among ski resorts.  Therefore, if the ski resort owner pays less in liability insurance because of the state law under study in this debate topic, at least part of the savings will be passed on to ticket buyers.  Also, when participants know that they can’t sue for accidents, some may ski less recklessly.

Issue Spotters

1. Jana leaves her truck’s mo­tor running while she enters a Kwik-Pik Store. The truck’s transmission engages, and the vehicle crashes into a gas pump, starting a fire that spreads to a warehouse on the next block. The warehouse col­lapses, causing its billboard to fall and injure Lou, a bystander. Can Lou recover from Jana? Why or why not?

Solution

Probably. To recover on the basis of negligence, the injured party as a plaintiff must show that the truck’s owner owed the plaintiff a duty of care, that the owner breached that duty, that the plaintiff was injured, and that the breach caused the injury. In this problem, the owner’s actions breached the duty of reasonable care. The billboard falling on the plaintiff was the direct cause of the injury, not the plaintiff’s own negligence. Thus, liability turns on whether the plaintiff can connect the breach of duty to the injury. This involves the test of proximate cause—the question of foreseeability. The consequences to the injured party must have been a foreseeable result of the owner’s carelessness.

1. A water pipe bursts, flooding a Metal Fabrication Company utility room and tripping the circuit breakers on a panel in the room. Metal Fabrication contacts Nouri, a licensed electrician with five years’ experience, to check the damage and turn the breakers back on. Without testing for short circuits, which Nouri knows that he should do, he tries to switch on a breaker. He is electrocuted and his wife sues Metal Fabrication for damages, alleging negligence. What might the firm successfully claim in defense?

Solution

The company might defend against this electrician’s claim by asserting that the electrician should have known of the risk and, therefore, the company had no duty to warn. According to the problem, the danger is common knowledge in the electrician’s field and should have been apparent to this electrician, given his years of training and experience. In other words, the company most likely had no need to warn the electrician of the risk.

The firm could also raise comparative negligence. Both parties’ negligence, if any, could be weighed and the liability distributed proportionately. The defendant could also assert assumption of risk, claiming that the electrician voluntarily entered into a dangerous situation, knowing the risk involved.

Business Scenarios and Case Problems

1. **Defamation.** Richard is an employee of the Dun Construction Corp. While delivering materials to a construction site, he carelessly backs Dun’s truck into a passenger vehicle driven by Green. This is Richard’s second accident in six months. When the company owner, Dun, learns of this latest accident, a heated discussion ensues, and Dun fires Richard. Dun is so angry that he immediately writes a letter to the union of which Richard is a member and to all other construction companies in the community. In it, Dun states that Richard is the “worst driver in the city” and that “anyone who hires him is asking for legal liability.” Richard files a suit against Dun, alleging libel on the basis of the statements made in the letters. Discuss. (See *Intentional Torts against Persons*.)

Solution

The legal issue is whether Dun has libeled Richard’s character. For Richard to recover in a legal action, he must prove the following elements: (a) that the de­fendant’s writing con­tained a false statement, not privileged, presented as fact (called a false statement of fact), or a statement of opinion that was overpub­li­cized, or even a true statement of fact that was overpublicized; (b) that the writ­ing was made known to others besides the plaintiff (called publication); and (c) that damage occurred, if damages are sought by plaintiff. In this case, the writ­ing of the letter and its distribution could not be consid­ered privileged. One could argue that privilege may be extended to Dun if a union con­tract required that specific notice and reasons for firing union members be given to un­ion offi­cials. Such privilege, however, would not extend to the other construction busi­nesses.

Dun could also argue that the statements were true. Truth is a defense against a defamation suit. Richard would then argue that the statements were presented as facts, not merely opin­ion, and were false, or that even if they were true, they were over­publicized. Proof of pub­lication is already established.

Finally, if Richard cannot se­cure comparable work be­cause of the letters, he might be able to recover lost wages. (Note here that if compen­satory damages are proved, Richard will probably also be awarded punitive damages.)

1. **Liability to Business Invitees.** Kim went to Ling’s Market to pick up a few items for dinner. It was a stormy day, and the wind had blown water through the market’s door each time it opened. As Kim entered through the door, she slipped and fell in the rainwater that had accumulated on the floor. The manager knew of the weather conditions but had not posted any sign to warn customers of the water hazard. Kim injured her back as a result of the fall and sued Ling’s for damages. Can Ling’s be held liable for negligence? Discuss. (See *Negligence*.)

Solution

Yes. An occupier of the premises has a duty to use ordinary care to keep its premises in a reasonably safe condition and to warn customers of any foresee­able hazards. What constitutes a foreseeable hazard depends on whether a rea­sonably prudent person would conclude that harm could likely result from the conditions. Here, the manager knew of the storm conditions, knew that wa­ter accumulated rapidly on the floor, and knew or should have known that the wa­ter created a hazard. A court could find that the manager’s failure to re­move the water constituted negligence, and the manager could be held liable for Kim’s injuries.

1. **Spotlight on Intentional Torts—Defamation.** Sharon Yeagle was an assistant to the vice president of student affairs at Virginia Polytechnic Institute and State University (Virginia Tech). As part of her duties, Yeagle helped students participate in the Governor’s Fellows Program. The *Collegiate Times*, Virginia Tech’s student newspaper, published an article about the university’s success in placing students in the program. The article’s text surrounded a block quotation attributed to Yeagle with the phrase “Director of Butt Licking” under her name. Yeagle sued the *Collegiate Times* for defamation. She argued that the phrase implied the commission of sodomy and was therefore actionable. What is *Collegiate Times’s* defense to this claim? [*Yeagle v. Collegiate Times*, 497 S.E.2d 136 (Va. 1998)] (See *Intentional Torts against Persons*.)

Solution

The newspaper’s defense was that the statement was not actionable defamation because it did not convey any factual information about Sharon Yeagle. The court noted that the phrase was disgusting and in extremely bad taste, but agreed with the newspaper. The phrase was no more than “rhetorical hyperbole” and could not be understood as stating an actual fact about Yeagle. Considering the article as a whole, which generally presented a positive view of Yeagle’s efforts, the phrase did not denigrate her job title, her morals, or her conduct in the workplace.

1. **Business Case Problem with Sample Answer— Negligence.** At the Weatherford Hotel in Flagstaff, Arizona, in Room 59, a balcony extends across thirty inches of the room’s only window, leaving a twelveinch gap with a three-story drop to the concrete below. A sign prohibits smoking in the room but invites guests to “step out onto the balcony” to smoke. Toni Lucario was a guest in Room 59 when she climbed out of the window and fell to her death. Patrick McMurtry, her estate’s personal representative, filed a suit against the Weatherford. Did the hotel breach a duty of care to Lucario? What might the Weatherford assert in its defense? Explain. [McMurtry v. Weatherford Hotel, Inc., 293 P.3d 520 (Ariz. App. 2013)] (See Negligence**.) —For a sample answer to Problem 5–4, go to Appendix E.**

Solution

Negligence requires proof that (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the defendant's breach caused the plaintiff’s injury; and (4) the plaintiff suffered a legally recognizable injury. With respect to the duty of care, a business owner has a duty to use reasonable care to protect business invitees. This duty includes an obligation to discover and correct or warn of unreasonably dangerous conditions that the owner of the premises should reasonably foresee might endanger an invitee. Some risks are so obvious that an owner need not warn of them. But even if a risk is obvious, a business owner may not be excused from the duty to protect its customers from foreseeable harm.

Because Lucario was the Weatherford’s business invitee, the hotel owed her a duty of reasonable care to make its premises safe for her use. The balcony ran nearly the entire width of the window in Lucario’s room. She could have reasonably believed that the window was a means of access to the balcony. The window/balcony configuration was dangerous, however, because the window opened wide enough for an adult to climb out, but the twelve-inch gap between one side of the window and the balcony was unprotected, and this unprotected gap opened to a drop of more than three stories to a concrete surface below.

Should the hotel have anticipated the potential harm to a guest opening the window in Room 59 and attempting to access the balcony? The hotel encouraged guests to “step out onto the balcony” to smoke. The dangerous condition of the window/balcony configuration could have been remedied at a minimal cost. These circumstances could be perceived as creating an “unreasonably dangerous” condition. And it could be concluded that the hotel created or knew of the condition and failed to take reasonable steps to warn of it or correct it. Of course, the Weatherford might argue that the window/balcony configuration was so obvious that the hotel was not liable for Lucario’s fall.

In the actual case on which this problem is based, the court concluded that the Weatherford did not breach its duty of care to Lucario. On McMurtry’s appeal, a state intermediate appellate court held that this conclusion was in error, vacated the lower court’s judgment in favor of the hotel on this issue, and remanded the case.

1. **Negligence.** Ronald Rawls and Zabian Bailey were in an auto accident in Bridgeport, Connecticut. Bailey rear-ended Rawls at a stoplight. Evidence showed it was more likely than not that Bailey failed to apply his brakes in time to avoid the collision, failed to turn his vehicle to avoid the collision, failed to keep his vehicle under control, and was inattentive to his surroundings. Rawls filed a suit in a Connecticut state court against his insurance company, Progressive Northern Insurance Co., to obtain benefits under an underinsured motorist clause, alleging that Bailey had been negligent. Could Rawls collect? Discuss. [*Rawls v. Progressive Northern Insurance Co.*, 310 Conn. 768, 83 A.3d 576 (2014)] (See *Negligence*.)

Solution

Yes, Rawls could obtain benefits from Progressive Northern Insurance Co. under an underinsured motorist clause, on the ground that Bailey had been negligent. To succeed in a negligence action, the plaintiff must prove that (1) the defendant owed a duty of care to the injured party (plaintiff), (2) the defendant breached that duty, (3) the breach was the cause of harm to the plaintiff, and (4) the harm to the plaintiff was a legally recognizable injury. The duty must be such that a reasonable person engaging in the same activity would anticipate a risk of the negative consequences and guard against it.

In this problem, Zabian Bailey rear-ended Rawls at a stoplight. According to the facts, the evidence showed it was more likely than not that Bailey failed to apply his brakes in time to avoid the collision, failed to turn his vehicle to avoid the collision, failed to keep his vehicle under control, and was inattentive to his surroundings. Bailey’s duty to Rawls included any and all of thee precautions—braking in time, turning the vehicle, keeping the vehicle under control, and remaining attentive to the surroundings. Clearly, Bailey breached this duty, and the breach caused whatever harm Rawls suffered—damage to his vehicle and injury to himself. Depending on whether Bailey was grossly negligent, punitive damages might be appropriate.

In the actual case on which this problem is based, a jury found in Rawls’s favor, and the court entered a judgment against Progressive. On the insurer’s appeal, a state intermediate appellate court reversed, but on further appeal the state supreme court reversed again, holding that the evidence supported the jury’s findings in Rawls’s favor.

1. **Negligence.** Charles Robison, an employee of West Star Transportation, Inc., was ordered to cover an unevenly loaded flatbed trailer with a 150-pound tarpaulin. The load included uncrated equipment and pallet crates of different heights, about thirteen feet off the ground at its highest point. While standing on the load, manipulating the tarpaulin without safety equipment or assistance, Robison fell headfirst and sustained a traumatic head injury. He filed a suit against West Star to recover for his injury. Was West Star “negligent in failing to provide a reasonably safe place to work,” as Robison claimed? Explain. [*West Star Transportation, Inc. v. Robison*, 457 S.W.3d 178 (Tex.App.— Amarillo 2015)] (See *Negligence*.)

Solution

Yes, West Star was negligent in failing to provide a reasonably safe place to work. Central to the tort of negligence is the concept of duty of care. Tort law measures duty by the reasonable person standard—how a reasonable person would have acted in the same circumstances. But the degree of care to be exercised varies, depending on the person’s profession, the person’s relationship with the injured party, and other factors—in other words, it is what a reasonable person in the position of the defendant in a negligence case would have done in the particular circumstances.

In this problem, West Star Transportation, Inc., ordered its employee Charles Robison to cover an unevenly loaded flatbed trailer with a heavy tarpaulin. The load was ungainly, uneven, and about thirteen feet above the ground at its highest point. Manipulating the tarpaulin without safety equipment or assistance, Charles fell from the load and sustained a head injury. West Star owed a duty to its employee to exercise reasonable care, but West Star did not do what a shipper of ordinary prudence would have done under the same or similar circumstances. West Star should have refused to handle a load requiring unreasonably dangerous tarping or the company should have taken appropriate safety precautions.

In the actual case on which this problem is based, a jury found that West Star's negligence proximately caused the incident. On West Star’s appeal, a state intermediate appellate court affirmed.

1. **Negligence.** DSC Industrial Supply and Road Rider Supply are located in North Kitsap Business Park in Seattle, Washington. Both firms are owned by Paul and Suzanne Marshall. The Marshalls had outstanding commercial loans from Frontier Bank. The bank dispatched one of its employees, Suzette Gould, to North Kitsap to “spread Christmas cheer” to the Marshalls as an expression of appreciation for their business. Approaching the entry to Road Rider, Gould tripped over a concrete “wheel stop” and fell, suffering a broken arm and a dislocated elbow. The stop was not clearly visible, it had not been painted a contrasting color, and it was not marked with a sign. Gould had not been aware of the stop before she tripped over it. Is North Kitsap liable to Gould for negligence? Explain. [*Gould v. North Kitsap Business Park Management, LLC*, 192 Wash. App. 1021 (2016)] (See *Negligence*.)

Solution

Yes, North Kitsap is liable to Gould in the circumstances of this problem for negligence. To succeed in an action for negligence, a plaintiff must prove that the defendant owed a duty of care to the plaintiff, the defendant breached the duty, the breach caused an injury to the plaintiff, and the plaintiff thereby suffered a legally recognizable injury.

In this problem, Frontier Bank sent one of its employees, Suzette Gould, to North Kitsap Business Park in Seattle, Washington, to “spread Christmas cheer” to a couple of the bank’s customers, Paul and Suzanne Marshall, as an expression of appreciation for their business. The Marshalls owned DSC Industrial Supply and Road Rider Supply, which were located in North Kitsap. Approaching the entry to Road Rider, Gould tripped over a concrete “wheel stop” and fell, suffering a broken arm and a [dislocated elbow](http://www.westlaw.com/Link/Document/FullText?entityType=injury&entityId=Iab964aec475411db9765f9243f53508a&originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&vr=3.0&rs=cblt1.0).

Applying the principles of negligence theory to these facts, North Kitsap owed Gould a duty as a business invitee of the Marshalls (and thus of North Kitsap) to protect her from dangerous conditions on the premises. Gould was not aware of the wheel stop, which was a dangerous condition because it was not clearly visible, and not painted a contrasting color or marked with a sign. North Kitsap breached its duty by not making the stop safer. This breach was the proximate cause of Gould’s injuries.

In the actual case on which this problem is based, Gould filed a suit in a Washington state court against North Kitsap, alleging negligence. The court issued a judgment in her favor. A state intermediate appellate court affirmed the judgment, on the reasoning stated here.

1. **Defamation.** Jonathan Martin, an offensive lineman with the Miami Dolphins, abruptly quit the team and checked himself into a hospital seeking psychological treatment. Later, he explained that he left because of persistent taunting from other Dolphins players. The National Football League hired attorney Theodore Wells to investigate Martin’s allegations of bullying. After receiving Wells’s report, the Dolphins fired their offensive line coach, James Turner. Turner was a prominent person on the Dolphins team, and during his career he chose to thrust himself further into the public arena. He was the subject of articles discussing his coaching philosophy, and the focus of one season of HBO’s “Hard Knocks,” showcasing his coaching style. Turner filed a suit in a federal district court against Wells, alleging defamation. He charged that Wells had failed to properly analyze certain information. Is Turner likely to succeed on his claim? Explain. [*Turner v. Wells*, 879 F.3d 1254 (11th Cir. 2018)] (*See Intentional Torts against Persons*.)

Solution

No, Turner is not likely to succeed on his claim for defamation. Persons in the public eye are public figures. Generally, false statements that appear in the media, or otherwise, about public figures do not constitute defamation unless the statements are made with actual malice. In other words, to succeed on a claim for defamation, a public figure has to prove malice. To be made with malice, a false statement must be made with knowledge of its falsity or a reckless disregard for its truth.

In this problem, Turner qualifies as a public figure. He was a prominent person—the offensive line coach—on the Miami Dolphins. During his career, he chose to thrust himself further into the public arena. For instance, he was the subject of articles discussing his coaching philosophy, and the focus of one season of HBO’s “Hard Knocks,” showcasing his coaching style. Thus, to prove his claim against Wells, Turner would have to prove malice. Wells investigated allegations of bullying among the Dolphins. After receiving Wells’ report, the team fired Turner. He claimed defamation, charging that Wells, in his report, failed to properly analyze certain information. But this is not proof of malice. In fact, this is not even an allegation of malice.

In the actual case on which this problem is based, the court dismissed Turner’s suit. The U.S. Court of Appeals for the Eleventh Circuit affirmed. “Turner is a public figure who has failed to adequately plead that the Defendants acted with malice in drafting and publishing the Report.”

1. **A Question of Ethics—The IDDR Approach and Wrongful Interference.** Julie Whitchurch was an employee of Vizant Technologies, LLC. After she was fired, she created a website falsely accusing Vizant of fraud and mismanagement to discourage others from doing business with the company. Vizant filed a suit in a federal district court against her, alleging wrongful interference with a business relationship. The court concluded that Whitchurch’s online criticism of Vizant adversely affected its employees and operations, forced it to accept reduced compensation to obtain business, and deterred outside investment. The court ordered Whitchurch to stop her online efforts to discourage others from doing business with Vizant. [*Vizant Technologies, LLC v. Whitchurch*, 675 Fed. Appx. 201 (3d Cir. 2017)] (See *Intentional Torts against Persons*.)
2. How does the motivation for Whitchurch’s conduct differ from that in other cases involving wrongful interference? What does this suggest about the ethics in this situation? Discuss.
3. Another group will argue that the statute does not violate litigants’ right of access to the courts. Using the IDDR approach, analyze and evaluate Vizant’s decision to file a suit against Whitchurch.

Solution

**1.** Wrongful interference with another’s business rights can be divided into two categories—wrongful interference with a contractual relationship and wrongful interference with a business relationship. The typical case of wrongful interference involves a scheme to attract another’s employee or customer to work for or do business with the party who commits the tort. In either circumstance, the motivation is normally to gain or increase a share of a market.

In this problem, Julie Whitchurch worked for Vizant Technologies. After she was terminated, she created a website falsely accusing Vizant of fraud and mismanagement. Her purpose was to discourage others from doing business with her ex-employer. Vizant sued Whitchurch, alleging wrongful interference with a business relationship. The court concluded that Whitchurch’s disparagement of Vizant adversely affected its employees and operations, forced it to accept lower compensation to attract business, and deterred outside investment in the company. The results of Whitchurch’s action may be similar to the results in other cases of wrongful interference. But her motivation was not to gain or increase a share of a market. Her motive appears to have been revenge.

This suggests that Whitchurch suffered from a greater lack of ethics than the typical defendant accused of wrongful interference. From a utilitarian perspective, an attempt to gain or increase a market share can have arguably positive results. A desire to exact revenge, however, is almost wholly gratuitous, especially in the circumstances of this case.

In the actual case on which this problem is based, the court issued a judgment in Vizant’s favor and enjoined Whitchurch from discouraging others to do business with Vizant. The U.S. Court of Appeals for the Third Circuit affirmed the judgment and injunction.

**2.** Vizant’s decision to file a suit was probably motivated by a desire to end the impact of Whitchurch’s criticism of the company. The decision will most likely prove to be a success.

Whitchurch created a website to falsely accuse Vizant of fraud and mismanagement. She intended to discourage others from doing business with the company. The disparagement had its intended effect, adversely affecting the firm’s employees and operations. Vizant was forced to lower its prices to obtain business. Outside investors were deterred from investing in the firm.

The IDDR approach has four steps—*Inquiry, Discussion, Decision*, and Review. The purpose of the first step, *Inquiry*, is to identify the issue, the stakeholders, and applicable ethical theories. In this problem, the impact of Whitchurch’s accusations likely prompted Vizant to consider actions to curtail them. The company might have chosen to do nothing, or it might have attempted to negotiate with Whitchurch. A third option would be to file a suit against her. Aside from the principal parties, the stakeholders include the company’s owners, directors, officers, employees, and customers, as well as other members of the firm’s community. These are the persons who suffer when business is bad. Ethics standards may derive from religious or philosophical principles, the principle-of-rights theory, the categorical imperative, or utilitarianism.

The second step, *Discussion*, involves analyzing possible actions to address the issue. Factors include the strengths and weaknesses of those actions, considering their consequences and their effects on stakeholders. Choosing to do nothing could effectively rob Whitchurch’s accusations of credibility. Negotiations might lead to a retraction of, and an end to, her comments. Either course would save the cost and publicity of litigation. If these actions were tried and failed, a suit could become the only viable option to stop the criticism. Utilitarianism would seem to be the ethical theory to apply here—a suit would be the proper action if it would produce the greatest good for the most people. Considering the number of stakeholders, there is little doubt that a successful suit against Whitchurch would have the optimal result.

The third step is to make a *Decision* and state the reasons. Clearly, in this case, Vizant decided to proceed with its suit. The reasons include those stated above. After the filing of the complaint and before the trial, there would have been time for the parties to negotiate a quicker, less expensive end to the matter. Of course, this did not happen—Whitchurch continued, even after a loss at trial, up to or perhaps through an appeal.

The final step, *Review*, determines the success or failure of the action to resolve the issue, and satisfy the stakeholders. In the actual case on which this problem is based, the court issued a judgment in Vizant’s favor and enjoined Whitchurch from discouraging others to do business with Vizant. The U.S. Court of Appeals for the Third Circuit affirmed the judgment and the injunction. This indicates the success of Vizant’s action to at least temporarily resolve the issue and, assuming a decline in negative effects coincident with the imposition of the injunction, satisfy the stakeholders.

Critical Thinking and Writing Assignments

1. **Time-Limited Group Assignment—Negligence.** Donald and Gloria Bowden hosted a cookout at their home in South Carolina, inviting mostly business acquaintances. Justin Parks, who was nineteen years old, attended the party. Alcoholic beverages were available to all of the guests, even those who, like Parks, were between the ages of eighteen and twenty-one. Parks consumed alcohol at the party and left with other guests. One of these guests detained Parks at the guest’s home to give Parks time to “sober up.” Parks then drove himself from this guest’s home and was killed in a one-car accident. At the time of death, he had a blood alcohol content of 0.291 percent, which exceeded the state’s limit for driving a motor vehicle. Linda Marcum, Parks’s mother, filed a suit in a South Carolina state court against the Bowdens and others, alleging negligence. (See *Negligence*.)
2. The first group will present arguments in favor of holding the social hosts (Donald and Gloria Bowden) liable in this situation.
3. The second group will formulate arguments against holding the social hosts liable.
4. The states vary widely in assessing liability and imposing sanctions in the circumstances described in this problem. The third group will analyze the possible reasons why some courts treat social hosts who serve alcohol differently than parents who serve alcohol to their underage children.
5. The fourth group will decide whether the guest who detained Parks at his home to give Parks time to sober up could be held liable for negligence. What defense might this guest raise?

Solution

**1.** If there were a statute in South Carolina that could be applied to this set of facts, as there are in some states, it would present a nearly unassailable argument in favor of imposing liability.

In the absence of such a specific law, an alcoholic beverage control statute might provide a basis for imposing liability, under limited circumstances, on commercial hosts (the owners of bars, for example). For policy reasons, those circumstances might be limited to the service of alcoholic beverages to an intoxicated adult to whom recovery might be denied. Commercial entities might also be statutorily liable for knowingly selling alcoholic beverages to minors, who may be allowed to recover. It could be argued that liability might extend, under at least the latter statutes, to social hosts. But these statutes would likely not support imposing a common-law negligence duty on a social host with recovery by an underage individual who consumed the alcoholic beverages. Why? Because this would impose a higher standard on the social host than that to which the commercial provider was subject.

Or public policy might warrant treating underage individuals as lacking full adult capacity to make informed decisions concerning the ingestion of alcoholic beverages and holding liable adult social hosts who knowingly and intentionally serve, or cause to be served, alcoholic beverages to persons they know or should know to be between the ages of eighteen and twenty.

**2.** In any situation, it might be argued that underage drinkers who are not minors should be considered the same as other adults, with no liability imposed on their social hosts for torts committed by intoxicated guests.

**3.** The contrast in liability and punishments among the states is a consequence of conflicting public attitudes about underage drinking. Parents who would not approve of their underage children consuming alcoholic beverages outside their homes, for example, might condone such drinking in their homes. In that situation, the rationalization might be to keep teenagers off the road and out of other kinds of trouble. Some might view this attitude and its supporting “reasoning” as what is sometimes referred to as “situation ethics.” The legal environment might unintentionally lend support to these parents by rarely holding them responsible for allowing teenagers to consume alcohol in their homes. This is in part because it is difficult to prove in such circumstances which adults provided the alcohol or condoned its use. In some states, it is legal for minors to consume alcohol in their parents’ presence and in other limited circumstances—in conjunction with a religious ceremony, for example. Even parents who might allow their children to drink in their presence might object strongly to other adults making that choice for them.

**4.** The guest who detained Parks at his home to give Parks time to sober up could be held liable for negligence on the basis that he assumed a duty to Parks by taking this action and breached the duty by letting him drive home. The breach might be construed as the proximate cause of the accident that resulted in Parks’ death, with his parents suffering emotional injuries for their loss.

The defenses to the charge in this scenario that the guest might assert include that he owed no duty, that if he did it was not breached, that if there was a breach of duty, it was not the direct or proximate cause of Parks’ accident, and that even if those elements of negligence might be proved, his parents suffered no compensable injury. All of these defenses would be predicated on the fact of Parks’ underage over-consumption of alcohol at the Bowdens’ party, for which the guest was not responsible.

Alternately, the guest might claim that by temporarily detaining Parks to sober up, the guest was acting as a Good Samaritan, and under such a statute one who voluntarily aids another is protected from being held liable for negligence. Or the guest might argue that a state dram shop act designates those who might be liable for injuries caused by intoxicated persons as the sellers or servers who contributed to it—the guest was neither a seller nor a server of alcohol to Parks. The guest might also argue that Parks assumed the risk of his own death by drinking to excess and then driving, or that under either a contributory or comparative negligence theory the guest was entitled to avoid liability for the greater negligence of the hosts or Park himself.