

Baby cushion outline

Resnicks v. mfrs + retailers

s/l – design defect

c/e test: ordinary consumer would not expect pillow marketed for babies to kill baby evidence – recall, 17 deaths, supposed to help baby sit up , used in intended or fsble manner?

Which test to use? need experts? Trade-offs? Perhaps re materials used

r/u test: risk= 17 deaths out of 950K – high or low?

Utility – other materials could be used? Substitutes, etc. overall utility of pillow, ability of buyer to avoid problem etc. use experts.

3<sup>rd</sup> Rstment – RAD

Warning defect:

- a) Doesn't adequately warn of consequences of leaving kid alone
- b) Should not be on detachable tag which will likely be covered and/or removed
- c) Causation re warning? Heeding presumption

Causation:

- 1) Was defect MLTN a substantial factor in causing death vs SIDS caused death – Ps will try to use presumptions re time, no other causes
- 2) Which mftr responsible? Market share? Could get 87% of market before ct. -> substantial share
  - a. Did all cos. Make same way? If not, fungibility issue. Large price range? Other issues: signature injury, manageable timeframe

Scope: misuse by lying baby down not sitting up? Foreseeable misuse such that D still responsible?

Grandma: intervening acts

Defenses: c/f for parents, not impressing on Grandma importance of warning, etc.

Or c/a against Grandma? RPP?

## Intentional torts

Battery: intentional harmful or offensive contact – doesn't have to hurt

Exs. Beating up, cutting hair

Assault: apprehension of imminent harmful or offensive contact – protects mental tranquility. More than words, must be imminent

D must have apparent ability to carry out threat

IIED: extreme and outrageous conduct, intended to cause and does cause severe ED

Battery:

1) Intent: = purpose or desire

What do you have to intend?

Don't have to intend the actual injury that happened – Villa

Possible intents: intend just contact – no (Muniz)

Intend contact and rsble person would find harmful/offensive

Intend harmful/offensive contact – this is maj view; note application to elderly/demented, children – looking at what P finds harmful/offensive unless rsble person wouldn't

Intend harm – no (Villa)

2) Intent- knowledge – D must know to a substantial certainty that harm will result

Transferred intent – intent to commit intentional tort towards 1 person and harm another, even if no intent will transfer

Will also transfer among diff torts – assault, battery, false imprisonment, trespass to land, trespass to chattels NOT IIED

Offensive – either what a rsble person would find offensive or what this person would find offensive if D knows it

Particles of smoke etc can = contact

IIED

Intentional or reckless conduct – here shown by pattern of antipathy

Extreme and outrageous actions per community standards

P is in vulnerable state (here just raped and beat up)

Vulnerability can be due to context (ie racial epithets)

D is in a position of authority w/ respect to P – abuse of authority

No legitimate reason for actions

ED so severe that no rsble person could be expected to endure