

Oil Spill Tragedy problem

Pasco v. Shell

Duty: no issue – duty to act as rpp in driving so as not to injure others. Driver is acting within scope of employment, therefore Shell is vicariously liable.

Breach: drove too fast and took too sharp a curve; an rpp would do neither, given knowledge that transporting a dangerous and flammable substance requiring caution. Could argue professional truck drivers have superior skills in driving, which driver failed to use. Could also argue lack of adequate training of drivers – note this is a different, and independent, alleged breach that does not depend on Shell's vicarious liability for driver's actions.

Causation: Did driver's (Shell's) breach result in P's injury. It set in motion the chain of events that resulted in his injury, and would at least get to a jury on a theory that it was either a "but for" cause or substantial factor in causing the harm. The fact that other causes combined with Shell's to create the harm doesn't mean Shell isn't a cause of the harm. Perhaps they could argue that the spilled gas, itself, was not enough to set in motion the chain of events, but that seems more like a scope of liability argument. If the driver hadn't taken the corner too fast, none of this would have happened. That's all you need.

Scope of liability: Here's where most of the problem in this case comes from. Take it in two stages: the bumper hitting P, and the subsequent fall from crutches.

P will argue that it is completely foreseeable that following a gasoline spill an explosion would result and someone nearby would get hurt. The exact details of how it happened do not need to be foreseeable, so long as the general type of harm is foreseeable. Here the risk of fire/explosion is exactly why one shouldn't drive too fast with a loaded gasoline truck. Shell will try to frame the issue so as to make it unforeseeable that following a trucking accident in which some oil spilled, a third party would deliberately decide to light a match and drop it within the vicinity of the spill, causing the oil to ignite and setting off an explosion which would knock the bumper off the truck, which would fly through the air and strike an onlooker, causing injury. This is the "framing" issue. They might also argue that the type of harm one would expect from spilled oil is slipping or gunking up something, not an explosion (a weak argument). The parties might also argue about whether P is a foreseeable victim – Shell will argue that people generally run away from accidents, not stick around near them, while P will argue that onlookers at an accident are completely foreseeable, and that "danger invites rescue."

Moreover, Shell will argue that Brant's behavior in dropping the match was deliberate and criminal and, therefore, an independent intervening cause breaking the chain of liability. They would point to the fact that Brant is a former employee who was recently fired and may have wanted to get back at his employer. They might analogize to the

Mclaughlin (firefighter with heating brick) case, and argue that, as there, liability should be shifted to Brant; they should be entitled to rely on bystanders not lighting things up around spilled oil, and it's highly extraordinary/egregious that someone did so. P will counter that evidence points to Brant lighting the match inadvertently, as he lit a cigarette, and that the risk of something igniting a highly flammable material is entirely foreseeable, and within the scope of the risk of driving too fast while carrying a load of such flammable material. If not Brant's match, any number of other things could have ignited the gasoline. Brant's act was merely a dependent intervening act, and as such doesn't break the chain of liability.

As to the subsequent fall from the crutches, P will argue that he would not have been doing the exercises his doctor ordered, and would not be on crutches in the first place, had it not been for Shell's negligence, and that therefore S is responsible for his further injuries. Even if the doctor's instructions were negligent, he might cite the rule on medical malpractice complications, which generally holds the original tortfeasor liable in circumstances of this type, even without foreseeability. He would argue that the defendant is liable for all the consequences, no matter how extensive. Shell will argue that too much time has passed, that the injury is too remote to fairly hold them liable for further damages, and that moreover the resulting damages are apportionable, so they should only be liable, if at all, for the initial injuries. Nothing about Shell's conduct increased the risk of P having an accident on crutches. P will reply that slipping on crutches is entirely foreseeable, as is the fact that he would have to exercise, and that it is therefore fair to hold Shell for the entire extent of his injuries.

Defenses: there is arguably a comparative fault/assumption of risk defense, in that P chose to remain at the scene of the overturned truck ("bystanders accumulated"). This would be a case in which assumption of risk in voluntarily choosing to confront a known risk of fire or explosion would merge with the unreasonableness of making that choice. On the other hand, perhaps P came to see if he could rescue the driver, in which case it's not unreasonable, and he's not a professional rescuer, so limitations on liability in professional rescuer cases would not apply.

Damages: medical, lost wages, pain and suffering from being hit by bumper. Damages for arm and further leg injuries if not apportionable.