

### PROBLEM 3 TORTS – GLASS PATIO DOOR .

RvA.

Duty: General duty of care.

Breach: What is standard of care? RPP. P must show that D acted unreasonably in light of a foreseeable risk. P will argue risk was foreseeable given number of people, serving of alcohol. P must prove foresight of risk, using experts on risk/accident level, consumer product safety reports, warnings given by seller or manufacturer, newspaper reports of other similar accidents. Possible breach theories:

:

- a) allowing door to be closed when people are present who are unfamiliar w/ the existence of the door. Problems? Does the D know (or should she?) that door is being closed, in a party situation w/ lots of people she should be more aware and take precautions, vs. she has no control over who is closing/opening door. Will merge w/ failure to use decals/tempered glass.
- b) failure to warn upon closing. Problem? Effective? Only temporarily. What if Rose doesn't hear? Does she have to keep saying it? How burdensome is that? How effective in a party-type setting? This may be the weakest possible precaution.
- c) failure to use decals or sign– in general or just for party. Can P come up with anything re what other “house party” givers do for precautions and then argue custom? What would be the burden of using decals to make sure no one bumps into? Low cost, effective, maybe argue impedes utility because of aesthetic loss/feeling of spaciousness. What will D argue? No knowledge of riskiness, too burdensome to take on/off.
- d) serving of alcohol at party: we're told P was on her second drink in an hour. She could perhaps argue that better control was needed over alcohol provision, although note this cuts both ways since D will argue comparative fault for drinking too much.
- d) failure to use tempered glass? Would be more costly, maybe not effective for bruises and teeth damage, vs. would have avoided cuts. P will argue that it was the custom to replace glass doors with tempered glass, and that this was done for safety reasons, and that a rsble homeowner would have known about benefits of tempered glass in 1985. If so, deviation is evidence of breach but not conclusive . Is ordinance admissible? Probably not – like Trimarco where ordinance comes in later.

Causation: pretty straightforward, but note possible problem re tempered glass. Would she have bumped into it and hurt herself anyway? Maybe not to the same extent.

Scope of risk? Seems clear. Damages? Ditto.

Defenses: contrib./comparative fault based on Rose's drinking. D has to show Rose failed to notice door because she was impaired. How much would it take to impair someone her size? P will argue Azalea was serving drinks, so just shows risk more

foreseeable, A. should have realized people drinking will be more likely to make mistakes.

Rose v. EHP:

Is A. an employee acting within the scope of her employment? If she's an employee, EHP is vicariously liable for A's negligence under the doctrine of respondeat superior. If not, and she's an independent contractor, you need to find independent grounds to hold EHP liable. Test is control or right of control by employer. Pro: manual details, check list, staff member attends (Q: is this the first party?), checks made out to EHP. Con: no deductions, she uses own house, provides refreshments, decides when to hold party and what to serve. Assume for now she's an independent contractor, so vicarious liability won't work. You could still try to sue EHP on a direct liability theory.

Duty: there would be an issue around EHP's duty to control A's actions. You might argue that having a sales rep come check out the house establishes the requisite degree of control, or that the manual does (more debatable). A court could well find EHP's relationship does not give them any control over the specific type of harm here.

If the court finds a duty, theories of breach separate from vicarious liability would include not including safety issues adequately in inspection, not instructing adequately in manual.

c) If the statute is in force at the time of the accident, the question becomes whether the court can apply the statute as the standard of care. P will argue that she meets the relevancy tests: a statute requiring tempered glass is probably there to increase safety if the glass breaks, and she is in the class of people (general public? Those exposed to patio doors?) that the statute was intended to protect. If so, and statute was not complied with, that constitutes negligence per se unless excused. Here, there could conceivably be an argument that there was no occasion for compliance if the statute had just been passed, but otherwise no excuses seem easily applicable.