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1. What claims may Carol reasonably raise against Dan, what arguments may Dan reasonably make, and what is the likely outcome?

#### Abnormally Dangerous Animals

At common law, someone who owns a dog or cat with propensity for danger will be strictly liable for the harm caused by that animal to a plaintiff.

Here, the facts state that Carol was examining puppies, the largest puppy, without warning, bit Carol - a nasty bite on her hand. Although this is a puppy, if the defendant, Dan, knew that this puppy had a propensity for danger, then Dan would be liable for the harm caused. The facts do not state Dan knew and it can be presumed that puppies ordinarily bite because they are teething and have very sharp baby teeth. The fact that Carol received such a severe bite on the hand may be enough to prove that the danger was there. Dan may be charged with knowing of the propensity of the pup because he was a dog breeder so it would be reasonable the he would know the propensity of the animals. Carol must prove Dan knew in order to succeed.

Contributory Negligence and Comparative Fault jurisdictions do not allow defenses under these two types of defense. However, assumption of the risk is allowed. Assumption of the risk requires that plaintiff assume the risk but not a risk outside the risk. Here, Dan will argue that Carol had consented to the risk of being bitten by a puppy because that is the normal risk associated with puppies. Carol will not be able to succeed in a strict liability claim if she assumed the risk which is pretty reasonable with all puppies.

Therefore, it is not reasonable that this claim be one that Carol can pursue unless she can prove the propensity was known by Dan and she risk was outside the scope of the risk she used in seeing the large puppy that bit her.

#### Negligence

A defendant has a duty to act as a reasonable person, here, Dan will be charged with a duty of that of a dog breeder to act as a reasonable dog breeder in this instance.

Breach of the duty of care occurs when a defendant who owes a duty to a plaintiff acts in a manner that is deemed unreasonable which causes personal injury or property damages and will require that the defendant pay for those damages.

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Here, Dan, as a dog breeder, must exhibit great care so that no parties that want to purchase puppies are injured. Carol was bit by the largest puppy, which could be foreseeable, but that is not what causes Dan to breach his duty to Carol. The puppy bit is a normal activity of puppies and as stated above, Carol assumed the risk. The breach here is with the treatment of the wound Carol received.

Carol was bleeding and Dan is said to have come to her aid.

#### Rescuer

A person who comes to the aid of another that results in liability due to the rescuers aid will not be liable under negligence. Dan is not a Good Samaritan who will escape any liability for breaching a duty of care because, the puppy that bit Carol was in Dan's ownership and control.

Dan had a duty to assist with the bit by applying antiseptic on the wound and bandages. Dan reached for a bottle of heavy-duty solvent, thinking it was the antiseptic and poured it onto Carol's hand into an open wound. Dan breached his duty of care to Carol by not looking at the bottle.

Therefore, Dan had a duty to aid Carol in a reasonable manner, he did not by using the solvent on her wound and by doing so, breach his duty to Carol.

#### Actual and proximate cause

The but for test in causation is but for Dan's mistake in choosing a bottle of solvent instead of antiseptic in treating the wound, Carol would not have been injured. Carol screamed and shouted in pain because of Dan's aide.

Proximate cause has two jurisdictions, the majority favor Cardoza, which states that only a foreseeable plaintiff in the zone of danger. Under a minority of jurisdictions, follow Andrews, that all plaintiffs are foreseeable. As long as there are no intervening causes that break the causal connection, then Dan will be said to meet the proximate causation because Carol is a foreseeable plaintiff in both jurisdictions and in the zone of danger because, Dan applied the wrong chemical by his own mistake so no intervening causes are found.

Therefore, the Actual and Proximate causal connections are found in Dan's actions.

#### Damages

Carol has an injury, the fact state she screamed in pain, and the couple left shaken.

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Unless Dan has a defense to negligence he will be liable for damages.

#### Defenses for DAN

##### Contributory negligence (CN) -

CN bars liability owed to a plaintiff if the plaintiff acted in any manner that caused the negligence. If Carol acted in a manner when observing the puppies that caused the largest one to be aggressive, then it would bar liability owed by Dan. Here, the facts do not state Carol did anything to cause the puppy to bite her. This goes with proximate causation to the bite but will not negate the causal connection of the solvent usage.

Here, Carol, did not choose to apply the solvent, Dan did, so Carol will not be charged with contributing to the negligence.

##### Comparative Fault

The jurisdictions that follow comparative fault will give percentage of fault to the parties. In following the same facts under CN, if Carol was reasonable in viewing the puppies, no percentage of fault will be found.

##### Assumption of the Risk

As state above under SL, Carol may have assumed the risk of the puppy bite, but not the risk of the solvent.

##### Mistake

In some instances, mistake may negate liability but the mistake must be reasonable. It is not reasonable for Dan to not check the label before administering the liquid. Dan will not have a defense of mistake.

Therefore, Dan has no reasonable defenses and will be liable for damages for the use of solvent instead of antiseptic on Carol's wound.

##### Remedies

In tort, the compensation for liability is to put the plaintiff back in the position the plaintiff would have been if not injured. Here, money damages, doctor bills or any medical treatment will be allowed. Courts will also allow damages for pain and suffering.

##### Punitive damages

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Under torts that have the intent of malice will allow a plaintiff to receive compensation if the court deems that a penalty is in order. Here, Dan was not acting in malice, he was trying to aid Carol.

2. What claims may Bob reasonably raise against Dan, what arguments may Dan reasonably make and what is the likely outcome?

Abnormally dangerous animals

Defined above.

All wild animals in the control of a defendant that injure based on the dangerous animals propensity will be a reasonable claim for Bob. This Chimp was dangerous, the facts state that it jumped and beat its chest wildly and made menacing hoots.

Here, the chimpanzee (Chimp) was in a room that Bob entered. Because the Chimp was owned by Dan, Dan is strictly liable for the injuries. Here, Chimp frightened Bob and jumped between the door and Bob so Bob could not escape. Bob barged past the Chimp and Chimp gave Bob a deep gash into his head as he passed.

Therefore, the frightening, the injury of the dangerous animal will entitle Bob to damages.

False imprisonment requires intent of the defendant. Dan told Bob not to go into the room, so being in the room with the Chimp that caused false imprisonment is not a tort at which Bob will be able to reasonably assert.

Negligence

Duty defined above

Duty of landowner

Duty of care, to warn of dangers, to keep licensees and invitees safe while on the property. Here, Dan did warn, but Dan also told Bob to go down the hall to the bathroom, therefore, it is reasonable that Bob was not kept safe as an invitee in viewing the puppies as he had permission to go down the hall and Dan had a duty to make sure the invitee was kept safe while in his house.

Therefore, Dan did breach his duty to keep Bob safe in his home.

Actual and Proximate cause

Both defined above. Here, but for Dan asking Bob to go to the bathroom near the end of

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the hall, Bob encountered the Chimp. Here, the proximate cause of choosing the wrong door, is Dan's only break in the chain as an intervening force. However, Bob did not live in the house, he had no idea which door was the bathroom door so the choosing of the wrong door was foreseeable and will not break the causal connection because Dan had a Chimp in the room without being caged which put all person's who open that door at risk. By giving Bob permission to go to the bathroom, he put Bob in the zone of danger alone.

Therefore, Dan can be said to have both the actual and proximate causal connections and will be liable for damages, unless he has a defense.

Damages

See above, Dan frightened and injury with a gash on his head.

CN/CP

Both defined above in answer 1.

Here, Dan may argue that it was unreasonable for Bob not to remember his warning not to open the door and go into the room at the end of the hall and therefore, Dan contributed or was a percentage of the fault by opening the wrong door. Bob can argue that the duty Dan breached by not labeling the door - do not enter or reminding him not to, or even stating more concretely where the bathroom door was, on the left or right, will negate this defense because it is not reasonable for Dan to expect Bob would know which door was the bathroom door.

Assumed the risk

Defined above,

Does not apply to these facts. Dan did not tell Bob, Chimp was behind the door. Bob had no idea, so he could not be said to assume the risk in opening the door to the room the Chimp was in.

Therefore, Dan will have no reasonable defense to escape liability for injuries caused to Bob.

Intentional infliction of emotional distress (IIED) requires intent. Dan did not intend so IIED will not be a reasonable claim Bob can pursue.

Negligent IED.

Bob was frightened, so if Bob has any physical or mental injuries from IED because of Dan's recklessness in not keeping the Chimp in a cage, only if Bob suffers a manifestation based on this claim will Bob prevail. Under negligence the duty, breach, causation and damages will all apply.

It is unknown if Bob could seek NIED because the facts do not state he had sleepless nights or PTSD from the frightening.

#### Remedies

Same remedies as above for Carol apply to Bob for compensation

#### Punitive

Same, punitive should not apply because Dan did not act with any malice, as proved by warning the couple not to enter the door at the end of the hallway.

Question #2 Final Word Count = 1873

**END OF EXAM**