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1. What claims may Carol reasonably raise against Dan?

Strict Liability

An owner of an animal may be strictly liable for harm caused by the animal if 1) the owner reasonably knew of its dangerous propensities or 2) the animal is a wild or exotic animal that cannot be domesticated. The plaintiff must further establish causation and harm as a result of the animal's actions.

In the instant case, D was a dog breeder who was selling 8 week old puppies. Dogs are not considered wild animals because they are animals that humans have been able to successfully domesticate and keep as pets. However, case law sets forth a standard of strict liability to dogs that have a known propensity for violence, or aggression. Owners who own a dog that has bitten another human or give the owner reason to believe that the dog may bite, will be strictly liable.

Here, the puppies are 8 weeks old, and as puppies D will argue that due to the puppies' infancy and lack of prior dangerous behavior due to their infancy, he will not be reasonably able to ascertain the risk of any of the puppies to bite. C, however, will argue that as a dog breeder, D had experience with dogs and should be able to ascertain any abnormally aggressive dogs, and furthermore, because this particular puppy was larger than others, Dan should have been more careful with this particular puppy when allowing others to examine them.

A court is unlikely to find that C can hold D strictly liable because the larger puppy had not previously shown a dangerous propensity towards humans, and that D could not have been reasonably aware of its propensity. The court will excuse D from strict liability for the dog bite, however, as it pertains to this particular puppy, the law observes just once for this particular puppy. Moving forward, D will be strictly liable for the dangerous acts of the larger puppy. In conclusion, C cannot reasonably assert a claim of strict liability for the dog bite.

Defense: Assumption of the risk

Assuming arguendo, and a court does find for strict liability. D may assert the defense for assumption of the risk. A tortfeasor may raise this defense in strict liability where 1)

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the plaintiff reasonably understood the risk and 2) P assumed the risk by engaging in the activity.

Here, D will argue that a reasonable person would understand that puppies may bite them and by examining the puppy C assumed the risk of the bite. A court is unlikely to find that any contact with puppies forces a P to assume the risk of a bite, because the P is not well situated to know the individual characteristics of the individual puppy.

### Strict Products Liability

A plaintiff may hold a manufacturer or retailer strictly liable for dangerously defective products. While D is a dogbreeder who sells puppies, puppies are not products because D does not have any control over the production of the puppies. Puppies are the results of genetics and other factors out of D's control. Therefore, C cannot reasonably raise a strict products liability claim for the dog bite.

### Negligence

A plaintiff may establish a case of negligence where 1) the D owed a duty of care 2) the D breached that duty 3) the breach of the duty caused an injury and 4) P suffered a harm.

C may try to raise two different claims of negligence: 1) negligence as pertaining to the dog bite and 2) negligence in applying the heavy-duty solvent.

### Negligence -Dog Bite

Generally, a duty of care is owed to all foreseeable people, within the zone of danger as defined. Landowners owe a specific standard of care to all entering their land. While a duty is not owed to unknown trespassers, landowners owe a duty to invitee's to warn, make safe and inspect for any known dangers on the land. An invitee is a person on the landowners land for the purpose of business dealings. Because D is a dogbreeder and B and C came to his house to look at puppies D is selling, C and B are invitees as they are there to conduct business, ie buying puppies from a dog breeder.

Here, C will argue that D owed her a duty to warn her of the danger of the puppies biting. However, D will argue that because the puppies are still young coupled with the fact that they were not showing aggressive behavior, the danger was not known to him

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as discussed above. As such, a court is likely to not find that D owed C a duty to warn of the puppies ability of bite.

### Negligence- Application of of Heavy Solvent

See Rule above. Furthermore, while no one owe's a duty to rescue another, once one is engaged in the rescue, they may held liable for their negligence.

### Duty

See Rule above. Where a special standard of care does not apply, the D owe's P a duty to act as reasonably prudent person.

In attending to D's bite, it was foreseeable that D would owe here a duty of care as he was actively attempting to help her. In assessing D's actions, a reasonably prudent person would be careful in applying first aid to a person and would make sure to examine the first aid products used to make sure they are not expired or if the product is the correct product to use.

### Breach

A breach occurs when a D fails to act in accordance with the duty of care.

Here, a simple examination of the label would have sufficed as it would have revealed that the bottle was solvent and not antiseptic, however, D failed to do so. As such, D breached his duty to C.

### Causation

The injury must be the actual and proximate cause of the injury.

### Actual Cause

The test for actual cause is whether but for D's conduct, the injury would not have occurred. Here, if Dan had not applied the solvent instead of antiseptic, C would not have been caused pain.

### Proximate Cause

An injury is proximately caused where the harm produced was the foreseeable consequence of D's actions. Here, it is a foreseeable risk that applying the wrong substance instead of antiseptic would harm another.

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As such, D's actions were the actual and proximate cause of C's pain.

Harm

A palintiff has to establish that they suffered a harm because of D's breach of his duty.

Here, C will be able to establish that she suffered pain, and as such, she will be able to establish harm.

In conclusion, a court is likely to find that D is liable for negligently applying solvent instead of antiseptic.

2. What claims may Bob reasonably raise?

Strict Liability

See Rule Above.

Because Chimpanzee's are wild animals, D will be strictly liable to B, as chimpanzee's are not an animal that can be domesticated and are considered exotic. Here, the cimpanzee gave B a deep gash on his head, as such, D will be strictly liable for the injury.

Causation

A plaintiff must show that the injury he suffered as a result of the wild animal was the actual and proximate cause of keeping a wild animal.

See Rule above.

Here, the injury would not have occurred but for D keeping the chimp. and because the animal scratched B it was the type of harm that is foreseeable from keeping a wild animal. As such, P will be able to show causation..

Harm

See rule above

Here, B suffered a deep gash, therefore, he will be able to show harm.

Defense: Contributory Negligence

Where a P also contributed to his injury, D will not be liable for the harm.,

D may argue that he tried to warn B to not go into the room, however, because this is a strict liability case of keeping a wild animal, D will not be successful because in the case of wild animal's, D will be liable no matter what precautions or warnings he uses if the animal causes harm.

In conclusion, D will be strictly liable to B for the gash on his head.

Question #2 Final Word Count = 1364

**END OF EXAM**