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1. Is state Hospital Liable for cook's negligence?

The issue here is whether the hospital may be vicariously liable for the acts of a potential independent contractor

A breach of negligence occurs where there is a duty of care, the duty is breached, harm occurred and causation is present. The scenario states that negligence is established as the cook was already found negligent. The question becomes whether the hospital is vicariously liable for this negligence. Based on the consent of respondent superior and employer may be found vicariously liable for acts committed by an employee in the course of performing their duties and for the benefit of their employment. However an issue arises where the negligent party is not an employee but rather an independent contractor, who is distinguished from an employee based on the fact that they have been hired to do a task by a separate employee for a certain amount of time and are separate from employees that work and take direction from the employer. Vicarious liability based on respondent superior will occur where the employer not only controls WHAT the independent contractor does but also HOW they execute tasks assigned to them by the employer. However responsibility may still be assigned where there is negligent hiring or where it would be foreseeable.

In the scenario above, Hospital has contracted cook to provide a service for providing on site meals to the hospital. It is clear that this is a separate establishment to the hospital as it is stated that this is a catering business owned and operated separately to hospital, by Kimberly Cook, as such it is evident that cook is an independent contractor and not an employee. Furthermore, the facts do not indicate that hospital though dictates how cook will complete the contract assigned to them. Rather hospital has only instructed cook to provide meals and does not provide any strict directions on how this should be done. Furthermore, the facts do not indicate that cook has a history or reputation of being negligent or a particularly bad service provider.

As such, it is unlikely that hospital will be liable for cook's negligence.

2. Does State Hospital owe Patrick a duty to protect him from Frank

The issue here is whether hospital has a duty for malfeasance.

As stated above the duty for negligence occurs where there is a duty, the duty is breached,

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harm occurs, causation is present and no defenses apply. A duty occurs where one creates the danger and harm occurs to foreseeable plaintiffs in the geographic zone of danger created. However there is generally no duty for a failure to act (i.e. malfeasance). The exception to this rule occurs where there is a special relationship present.

#### Duty to control third-party (frank)

A duty may arise to control a third party where there is special relationship between the third party who harms another and a party who has some authority over the other party.

In this scenario it is stated that frank was once a patient of the hospital, but now is a former patient. Ordinarily this may present a loose duty to control if hospital/davis was aware that the threat and letter came from frank, however this would be a loose duty as there is no authority over frank any longer nor is frank in their care. Additionally the letter was anonymous, further relinquishing any ability to control frank as davis/hospital was not even aware that this letter came from a former patient and would have no way of easily tracking the owner down. As such it is unlikely a duty for failure to act would occur in this way.

#### Duty to protect Patrick

A duty to protect a third party arises where there is a special relationship present, i.e. where a person is in your care this sometimes may arise in a parent child relationship.

In this scenario patrick is a patient of hospital as such a special relationship exists here. As stated above there is no duty to control frank, however the hospital was under a duty to protect patrick from foreseeable harm. Here the hospital through davis was aware that an attack would occur. It is arguable that the hospital through davis did not take adequate measures to ensure the safety of its patients as davis did not inform anyone of this harm. This lapse in judgement may be ground for patrick to assert a duty to protect him. Hospital however may argue that davis took action to protect all patients from this potential harm by moving security to the hospital entrance. Whether this action is adequate is questionable however.

As such based on both theory, the hospital would not be liable for a failure to act based on the duty to control a third party, however patrick may potentially assert a breach of duty of care/protection to patrick, this argument may be rebutted however and may not be a winning one.

### 3. What Defenses may Davis assert against claim she was negligent for her decision to reassign the security guard?

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Superseding factor/lack of legal causation

The occurrence of an independent super-seeding factor that was not foreseeable (i.e the negligence or recklessness of another), provides a defense to a tort.

Here Davis may argue that she moved the security to the entrance because cook and her staff were present and under a duty by the state statute i.e a legal duty, to always watch the food, before, during and after meal service, as such she felt that she could reassign the security to the front of the hospital rather than the kitchen. The already established negligence of cook for failure to watch the food therefore may present an independent superseding factor, as it amounts to negligence and recklessness, one that davis did not foresee and would not be required to foresee. This act by cook would arguably amount to an independent superseding factor which would be a defense to her potential overall negligence and her decision to move the security from the kitchen to the entrance.

It was not foreseeable

A defense occurs where harm is not foreseeable.

Davis may argue that the harm that occurred was not foreseeable. She did not foresee an attack on the scale threatened (i.e a massive attack) to come in the form of an allergic reaction and tampering with the food in the kitchen, and rather acted potentially adequately by securing entrances which would be more of a foreseeable threat than an attack on the food served. This argument however could be rebutted by stating she should have notified the police and she would have had adequate security via numbers and would not have needed to move the security.

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**END OF EXAM**