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Patrick v. State Hospital.

### Negligence

In order to make a prima facie case for negligence, plaintiff, Patrick, in this case must prove 1) hospital owed him a duty of care, 2) breach of the duty owed to plaintiff by defendant (state hospital), and the breach was both actual cause and proximal cause 4) plaintiff's injury.

Did the state hospital owe Patrick a duty?

Under Justice Andrew's view point of view, plaintiff is owed duty to everyone whether in zone of danger, created by defendant's actions or outside the zone of danger, (the entire world). Alternately, Cordozo's majority of view, holds that the defendant's duty is only limited to someone who was placed in zone of danger.

Here, the state hospital hired a cook to provide on-site meal service to patients, staff, and visitors. Thus, Patrick will argue that the hospital owed him a duty of care under respondent superior (considering the cook as an employee of the state hospital) and that under Cordozo's majority, he was owed a duty because he was "a patient" in the hospital who ate the food which was contaminated by Frank.

Thus, the state hospital owed him a duty of care.

### Breach

Breach is when the defendant falls short of his duty to plaintiff. Here, the hospital hired a cook to provide meals to patients, the state hospital will argue that even though the patients are getting meals while at the hospital, the patient is not considered as a 3rd party beneficiary, thus, no duty was breached.

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However, the Patrick will argue that hospital owed him a duty of care and it was breached which Cook failed to comply with health code and thus negligence per se is established ( the facts also indicate this since " Cook was found negligent for failing to comply with the state health code.

Negligence per se

Moreover, Patrick will persuasively argue that he was a type of individual that the health code was to protect since the intent of the statute was to "preventing contamination or tampering" thus its likely that he was a protected class under the statute, from type harm including tampering with food ( Franks intentional act ), eventhough independent and unforeseeable intervening act.

Thus, Patrick will establish was Cook's failure and breach of duty of care under negligence per se or general duty of care , would ultimately result in his injury.

This element is met.

Actual cause

But for defendant's action, the injury would not have occurred.

Here, the Patrick will argue that had Cook and his staff remained in the kitchen at all time, per the requirement of the the state health code, Frank would not be able to come to kitchen to tamper with the food by adding peanut to the mashed potatoes because Cook or his staff would have prevented his tampering with the food. however, due to the fact that everyone went to restroom, Frank did what he did.

Actual cause is met.

Proximal cause

Proximal cause deals with foreseeability of the and intervening actions that happened before plaintiff's injuries. If defendant prove that the proximal cause was not met, because an act/incident/intervention broke the chain of causation, she would be relieved from negligence.

Generally, ordinary negligence does not break the chain of causation. However, unforeseeable independent intervening act will.

Here, the hospital will argue that Frank's act of coming to the kitchen without permission and adding peanuts to the food was an intentional act and thus intentional act of the 3rd party is always unforeseeable.

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Patrick will argue while this is true that intentional act of 3rd party may in fact break the chain of causation ( proximate cause ) however, if defendant had created a situation where it was likely for the intervention to occur, the chain of causation should not break as defendant was able to prevent it because he was put on notice about it. The facts tell us that Cook recieved threatening messages to carry fo a massive attack and cook and hospital created the situation of not address it or to further investigage this emails.

here, its likely that the court agree with hospital becasue a massive attack was not clear enough to put cook or hospital on notice that frank was to tamper with food and because this was an intentionl act of 3rd party( frank's adding peanuts), the chain of causation is broken.

This element is not met.

#### Damages

Plaintiff must show damages. this can be either property damages or physical damages such as illness or injueies. Here, this element is met becasue Patrick who had a serious allergy, ate it and suffered sever injuries.

this element is met.

Conclusion: since proximal casue is missing, the hospital would not be held liable for cook's neglignce.

2) Yes. Generally, one does not have any duty to act/ protect to another. However, if there is a contractual agreement between parties, or if they are related to each other ( parent and children ) the duty is imposed and failure to act, would result in liability.

Here, while this is trust that frank was in hospital as a patient it can be argued that hospital owed him a duty to protect his agains foreseeable action of another. However, the hospital in this case was never put not notice about the email/messages. Had they have been put on notice, the hospital owed him a duty to protect him as he was still a patinet in the hospital.

However, as discussed above, since the threatening message was not clear, it was not reasonable for hospital to protect all pateints in the hospiral.

3 ) Cooks most effective defense would be the intentional act of 3 rd person, frank in this case, because it was not a foreseeable act which would the chain of causation.

In additional to this, if this is a contributory jurisdiction ( minority ) if Patrick had contributed to his injuries in anyways, his recovery would be barred.

on the other hand, if this is a comparative jurisdiction ( majority ) Patricks damages would be diminished according to his fault and negligence.

However, no facts indicate the Frank had contributed to his injury in any shape or form, thus under both comparative and contributory jds he will win.

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**END OF EXAM**