

### MEE Question 1

A mother was shopping with her six-year-old son at Big Box store. The son was visually impaired, so his mother, concerned about crowding and jostling by other patrons, restrained him by placing her hand on his shoulder and instructed him to remain in her grasp. Despite his mother's efforts, the son broke free of her grasp and ran toward a nearby candy display. Because he was running and visually impaired, the son did not notice some cheesecake on the floor in the store's self-serve dining area; the cheesecake was flattened and dirty. The son slipped on the cheesecake and fell to the floor, suffering physical injury. Another customer unsuccessfully attempted to help the son to stand, worsening the son's injury by negligently twisting his arm.

Big Box had in place a policy instructing employees to take steps to promptly clean known hazards on the floor, but it did not assign an employee to monitor floor conditions. Big Box employees do not know when any employee had most recently inspected the floor or when the floor had last been cleaned. The self-serve dining area includes displays that contain takeout food, including cheesecake. These displays had last been stocked several days before the son slipped on the cheesecake. On the day the son slipped and fell, a store employee had walked by the self-serve dining area before the son slipped but had not noticed the cheesecake on the floor.

The mother has filed a negligence claim on her son's behalf against Big Box and the customer who attempted to help the son. Both Big Box and the customer claim that the son was negligent.

1. Under the applicable standard of care, are the facts sufficient for a jury to find that the son acted negligently? Explain.
2. Under the applicable standard of care, are the facts sufficient for a jury to find that Big Box acted negligently? Explain.
3. Can the customer be held liable for enhancing the son's injury? Explain.
4. Assuming that only Big Box and the customer were negligent and can be held liable, can the son recover the full amount of damages from Big Box only? Explain.

Do not address the effect of any "Good Samaritan" statute.

1)

#### 1. Applicable Standard of Care for Children

A child owes a duty to exercise the care that a reasonable child of similar age, intelligence, and experience would under similar circumstances. However, a child will be held to the same standard of care as an adult if the child is engaged in a high-risk activity.

Here, the son acted negligently by breaking free of his mother's grasp and running because he was visually impaired and a similarly situated person would consider it a high-risk activity to run without aids while visually impaired.

As such, the facts are sufficient for a jury to find that the son acted negligently.

#### 2. Applicable Standard of Care for Store Owner

A store owner owes a duty to invitee to reasonably inspect the store for hidden danger.

Here, Big Box had in place a policy instructing employees to take steps to promptly clean known hazards on the floor, but it did not assign an employee to monitor floor conditions. These facts indicate Big Box did not reasonably inspect the store for hidden danger because it failed to address "unknown" hazards on the floor (i.e. by monitoring floor conditions) which could be foreseeable by a store of the same kind.

Thus, the facts are sufficient for a jury to find that Big Box acted negligently.

#### 3. Customer's Liability

To hold a person liable for negligence, the following four elements must be established: duty, breach, causation and damage (actual harm).

Here, the customer did cause the son's injury by negligently twisting his arm, and breached the duty to conform to the reasonable person standard because the customer, as a rescuer, should have been more careful not to harm harm the son.

In conclusion, the customer should be held liable for enhancing the son's injury.

#### 4. Comparative Negligence

In a comparative fault jurisdiction, the plaintiff's own negligence limits recovery. Under comparative negligence, the plaintiff's recovery is limited by the percentage of his or her own fault.

Here, only Big Box and the customer were negligent, which means the son had no fault.

In conclusion, the son can recover the full amount under comparative negligence.

**END OF EXAM**

---