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Which of these defendants might reasonably be found liable for damages arising from Priya's car accident and why?

Priya v. ABC

General Partnership

In order to have a general partnership, the partnership must file the articles of incorporation with the secretary of the state and must take reasonable steps in order to form that partnership.

Here, Amy, Bob, and Carl are partners in the ABC law firm and it is presumed that they have accurately filed the necessary documents to form a partnership. Furthermore, in order to keep a successful partnership there are certain requirements that must be satisfied such as holding meetings, keeping records of the business, and keeping partners informed of any changes within the partnership. These requirements are presumed to have been successfully satisfied as ABC law firm is successfully running.

Thus, ABC law firm is successful general partnership.

Vicarious Liability

Under the theory of vicarious liability an employer is held liable for any torts, intentional or negligent, committed within the scope of employment.

Here, ABC law firm retained a policy that all firm attorneys must carry their work-provided phones with them at all times and that they must immediately respond to client emails and if they are not able to respond they must at the least give personal acknowledgement of receipt. Amy was well aware of this policy and understood the importance of prompt repose to clients, acting upon the reasoning of the policy Amy was stopped in the middle of heavy traffic one day and received an urgent email from her work-provided cell phone to which she attempted to answer, because of her negligence she caused a car accident with Priya. Priya will argue under the theory of vicarious liability and state that because Amy was acting within the scope of her employment ABC law firm should be held liable, ABC law firm will argue that Amy was not acting within the scope of employment because it was after work when she headed to attend a baseball game which does not amount to a mere frolic or detour because it was after work hours. However, Priya will counter argue that because of the policy that ABC law firm employees were to abide was the actual and proximate cause of her injury ABC law firm should be liable because requiring your employees to respond emails immediately was the but for cause of Priya's injury and it was reasonably foreseeable that a policy like this would require employees to drop whatever they are doing regardless if they are in traffic or at home after works they must check their email and send a response.

Thus, ABC law Firm will be held personally liable for damages arising out of Priya's car accident under a theory of vicarious liability.

Priya v. Amy

Negligence

In order to have a prima facie case for negligence a plaintiff must establish duty, breach, causation, damages, and defenses.

Duty

Under the majority view a defendant owes a duty of care to those within the foreseeable zone of danger but under the minority view a duty of care is owed to everyone within the zone of danger.

Here, Priya will argue that Amy owed a duty of care to everyone that was sitting in traffic the day that the accident occurred because many drivers surrounding Amy were within the foreseeable zone of danger. Amy might try to counter-argue by stating that Priya was not within the foreseeable zone of danger because possibly arrived into the lane at a different time, however the facts do not state this.

Thus, Amy breached her duty to those within the foreseeable zone of danger.

Standard of Care

A defendant has a duty to act as a reasonable prudent person under the circumstances.

Here, Amy had a duty as not only an employee of ABC law firm but also a driver to be aware to not respond to emails during while driving especially when there is heavy traffic.

Thus, Amy had a duty to act a reasonable prudent person in traffic.

Breach

A defendant breaches their duty if they do not take reasonable care and act as a reasonably prudent person under the circumstances.

Here, Amy was aware of ABC law firm's policy but also understood that she was in heavy traffic that could pause or begin moving at any moment. Amy might try to argue that she was taking reasonable steps to be aware of her surroundings and only checked her phone when traffic was briefly stopped, however Priya will counter-argue that Amy should not have checked her phone ayt all under the circumstances of traffic beginning to move again.

Thus, Amy breached her duty.

Causation

A defendant must be the actual cause and proximate cause of the plaintiff's injury. Actual cause is established if but for the defendant's negligence the injury would not have occurred and proximate cause is established if it was reasonably foreseeable that the injury would occur due to the defendants negligence. An intervening cause can cut off liability if it is not foreseeable and becomes a superseding cause.

Here, as the facts clearly state Amy's negligence of checking her phone while in heavy traffic was the actual and proximate cause of the injuries that Priya suffered. But for Amy checking her phone in heavy traffic would not have lead to Priya sustaining serious injuries and it was reasonable foreseeable that checking your phone while in traffic can lead to a serious car accident.

Thus, Priya can establish that there is causation.

Damages

The damages that the plaintiff suffers must be actual physical harm and not just economic loss.

Here, Priya suffered serious injuries due to Amy's negligence.

Thus, Priya can establish damages.

Defenses

Under a negligence theory, a defendant may assert a defense of assumption of the risk, contributory negligence, or pure comparative negligence.

Here, Amy might raise the defense that Priya voluntarily and knowingly assumed of the risk of heading into traffic and not being alert that there is a driver on their phone that is not paying attention to the road but the facts do not state if Priya was hit from behind or from the front so there is no telling if Priya did assume the risk.

Thus, Amy cannot raise any defenses to her negligence.

Conclusion

For these reasons, Priya may recover damages from Amy under a theory of negligence.

Priya v. Bob and Carl

General Partnership Agreement

Under a general partnership agreement, employees can be held liable under a contracts theory, a negligence theory, or when creditors are attempting to recover damages. For partners to be held personally liable under a negligence theory the general partners must have benefited from the tort that occurred and it must have been within the scope of employment.

Here, Bob and Carl will argue that as general partners at ABC law firm they should be held liable for Amy's negligence because the law firm is already held liable through a theory of vicarious liability and furthermore Amy's negligence did not benefit the law firm. However, Priya will attempt to counter-argue this defense by stating that because Amy acted under the company policy that was implemented by ABC law firm, who Bob and Carl are partners of, Amy was acting for the benefit of the company by promptly responding to an urgent email by an ABC client. Bob and Carl might try to further argue that Amy should have been aware that although this policy was implemented for the benefit of the firm, each employee had the discretion to act under due diligence as a reasonable person and be aware of the circumstances

of when checking your phone was appropriate and when it was not. This argument will likely fail because as partners Carl and Bob benefited from this policy.

Thus, Bob and Carl will be held liable for the damages that Priya suffered because they benefited from the company policy.

Priya v. Sam

Sharing Firms with Other Lawyers

Lawyers are permitted to share firms and office spaces with other lawyers but they must take reasonable steps to keep their business separate from others and must not commingle funds, clients, or have direct conflicts of interests.

Here, Sam leases an office within the suite of offices that is used by ABC and Sam is an attorney who is well known for is highly publicized trials. Sam even works closely with ABC but is not a party within the partnership agreement but his presence does raise the profile and prestige of ABC firm. Priya will argue that because Sam shares an office space and contributes to the overall prestige of ABC law firm he should be held liable. Furthermore, Priya will argue that although Sam is not designated as a partner within the partnership agreement the ABC receptionist greets all of ABC and Sam's clients together, Sam even uses the firm name and telephone number on his letterhead, and finally he receives 10 percent of profits in recognition of his value to ABC law firm. However, Sam will counter argue that although he adds to overall benefit of ABC law firm he keeps his office and clients separate because he bills his clients directly for his services and does not commingle his funds or services with ABC law firm. Furthermore, Sam is not a part of the ABC partnership and does not stand with the policy of promptly responding to clients which was the actual and proximate cause of Priya's injury.

Thus, Sam will not be held liable for Priya's injuries.

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