

Facts:

Crystal started working as a real estate agent two years ago. Prior to that, Crystal worked as a cocktail waitress in a local casino. Crystal was proud of her accomplishments and wanted to show her friends that she had finally made it. To celebrate her accomplishments, she decided to throw herself and her co-workers a party at Club Trendy. Club Trendy was located inside the Mega-Mix Casino. Upon entering Club Trendy, Crystal was shocked to learn that her party dress was virtually identical to the dresses worn by the cocktail waitresses at Club Trendy. Adding further insult to injury, Crystal bore a striking physical resemblance to Suzette, the cocktail waitress assigned to her party's table.

Similar to the other night clubs in town, Club Trendy hired an independent security firm to provide security. Specifically, Club Trendy hired Toughguys, Inc. Toughguys, Inc. shared an office with Mega-Mix's in-house security team. Mega-Mix's in-house security team was supervised by Michael "Mad Dog" Mcgee.

Recently Club Trendy's management had become aware that Suzette was not reporting all her customer's tips to Club Trendy, but was instead skillfully stuffing the tips into the seams of her uniform. This was in violation of a Club Trendy policy, which required all waitresses to accurately report tips to Club Trendy. Club Trendy's management had made the decision to fire Suzette upon her next infraction and informed Toughguys, Inc. that their security officers were to detain Suzette upon observing any thieving behavior.

As is usual on a Friday night, Club Trendy was extremely crowded. At around 11:00 p.m., two recently hired Toughguys, Inc.'s employees, Biff and Leonard observed Crystal place a large amount of cash on the table (presumably to pay for the drinks). Crystal stuffed the "change" into her party dress. Believing Crystal to be Suzette, Biff and Leonard made the decision to escort Crystal immediately from the club to the security office.

Biff and Leonard approached Crystal shouting, "Hey Suzette, Hey Suzette, Stop!" They then roughly grabbed her arms, forcing her towards the door. Crystal began to resist, but was easily overpowered by Biff. Biff had been hired by Toughguys, Inc. despite having numerous prior assaults and battery convictions.

Biff and Leonard dragged Crystal through Club Trendy en route to the security office. As they dragged her, Biff and Leonard shouted, "You're such a thief! We've been watching you for days, just waiting for you to screw up. You're nothing, but a no good thief!" Biff and Leonard's taunts were clearly heard by Crystal's co-workers.

When they finally reached the security office, Biff roughly placed Crystal in handcuffs. The handcuffs were too tight and cut her wrists. Crystal spent 60 minutes in the security office protesting her innocence. Biff and Leonard kept

stating, "You know, Suzette, all guilty people think they are innocent. You thief!" Crystal kept stating, "I'm not Suzette, I'm Crystal, why don't you just look at my identification!" Biff and Leonard ordered a female security guard to conduct a strip search of Crystal. No money was found hidden on Crystal's person.

In the meantime, Michael "Mad Dog" Mcgee who had responded to the commotion was informed by one of Crystal's co-workers that Crystal had been taken away by two security officers who had called her a thief. The co-worker informed Mad Dog that he was concerned for her safety. Mad Dog then went to the security office to investigate and discovered Crystal in tears. Mad Dog ordered her immediate release.

Humiliated and in quite an amount of pain, Crystal went back to Club Trendy to explain what had happened to members of her party, but they had all already gone home.

Crystal's injuries required surgery and she underwent physical therapy for 2 months. In addition to the physical therapy, Crystal had to see a psychiatrist to cope with the events. She has had difficulty sleeping and does not want to go to work because all her co-workers whisper about her. After much consideration, Crystal has decided she wants to file a lawsuit.

Questions:

Identify all potential civil causes of action available to Crystal. Make sure to identify all the parties who may be liable to Crystal.

Example Answer:

Vicarious Liability

An employer will be vicariously liable for the torts of an employee committed in the course of employment. The facts do not indicate whether Mega-Mix Casino owns and operates Club Trendy or whether Club Trendy is separately owned and operated. It appears that Toughguy, Inc. is an independent contractor of Club Trendy. In general, the actions of an independent contractor cannot be enforced against the party who hired the contractor unless the independent contractor is engaged in an inherently dangerous activity. Crystal must prove that providing security at a nightclub involves inherently dangerous activities in that physical force is foreseeable. If she is successful in her argument, Club Trendy may be held liable for the actions of Toughguys, Inc. and possibly Mega-Mix Casino if a legally recognized relationship can be established between the casino and club.

Typically, intentional torts are not considered to be within the scope of employment, unless force is authorized in the employment. Here, the nature of

providing security at a night club involves the use of security personnel who are authorized to use force as necessary. Biff and Leonard were on the job as security officers and acting on behalf of Toughguys, Inc. when they committed the alleged torts. Therefore, Club Trendy and Mega-Mix Casino will be vicariously liable for the tortious conduct of Toughguys, Inc.

Crystal may also pursue direct claims against Toughguys, Inc. for the tortious conduct of Biff and Leonard as well as potential actions against Biff and Leonard individually.

False Imprisonment

False imprisonment is an act, intended to significantly confine the victim to a bounded area, that, directly or indirectly, results in such confinement. Biff and Leonard acted with the intent when they handcuffed Crystal and confined her to the security office for 60 minutes. Crystal was not free to leave because she was handcuffed and guarded by both Biff and Leonard. Crystal was aware of her confinement and suffered physical injuries as a result of the confinement.

Toughguys, Inc. will likely argue that they had a privilege to detain Crystal based upon a reasonable belief that she had violated a Club Trendy policy of reporting tips. An arrest by a private citizen is permitted, however the degree of force used to make the arrest must be reasonably necessary. Here, Biff and Leonard made a mistake regarding the identity of Crystal, believing her to be an employee suspected of violating employment policies. Though the mistake may have been reasonable because Crystal physically resembled Suzette and they were wearing similar clothes, the actions of Biff and Leonard exceeded the seriousness of the offense. Suzette was suspected of violating an employment policy to report tips. Biff and Leonard were verbally abusive to Crystal and unreasonably refused Crystal the opportunity to prove her identity. Biff and Leonard committed false imprisonment.

Intentional Infliction of Emotional Distress

Infliction of emotional distress (IIED) is extreme and outrageous conduct that, intentionally or recklessly, causes severe emotional distress.

Biff and Leonard approached Crystal with hostility yelling at her to stop and roughly grabbed her without identifying who they were and what their intent was in grabbing her. Additionally, Biff and Leonard taunted Crystal and called her a “thief” in front of her co-workers and other patrons of Club Trendy. Coupled with the “strip search,” the actions are extreme and outrageous and were at a minimum performed with reckless disregard of the risk of harm to Crystal. Crystal clearly suffered humiliation, physical injuries, and emotional injuries which required lengthy therapy. Biff and Leonard will be liable for IIED.

Biff and Leonard are likely to assert a similar defense of privilege as discussed previously. However, for the same reasons, that defense will not be successful. Finally, Club Trendy will likely be found liable for IIED as well because the actions of Biff and Leonard were foreseeable in occurring in the regular course of performing security duties. Additionally, Club Trendy asked Toughguys, Inc. to detain Suzette because of the failure to report her tips.

Defamation

At common law, defamation is a falsely defamatory statement by the defendant that is “of and concerning the plaintiff,” is published to a third person, and results in damages to the plaintiff. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

Biff and Leonard called Crystal a thief, which is a false statement. The statement was loudly published in front of Crystal’s co-workers and other Club Trendy clientele. The statement was made as Crystal was being dragged to the security office, therefore it is about her. Damages are presumed when the defamation constitutes slander per se. Slander per se includes statements which adversely reflect on one’s conduct in business or imply one is guilty of moral turpitude. Biff and Leonard called Crystal a thief in front of her co-workers and therefore the statements constitute slander per se. Because Crystal is considered a “private person” and the matter is a private concern, there are no constitutional issues applicable.

Negligent Hiring and Supervision

Crystal may assert a direct negligence action against Club Trendy for hiring Toughguys, Inc. and against Toughguys, Inc. for negligently hiring and supervising Biff and Leonard. The essence of negligence is that the Defendant has imposed an “unreasonable” risk of harm on the Plaintiff, and the Plaintiff has been injured as a result. A prima facie case of negligence requires: (1) duty, (2) breach of that duty, (3) causation, and (4) damages.

A duty of reasonable care is owed only to persons within the foreseeable zone of danger created by Defendant’s negligence. The defendant must take reasonable care in acting, in order to prevent foreseeable harm to others. What is reasonable will depend on the risk of harm involved and the practicability of preventing it. Club Trendy owes a duty of reasonable care to its patrons. Toughguys, Inc. owes a duty of reasonable care to the patrons of Club Trendy. The duty was breached when Club Trendy hired a security firm that used ex-felons as security guards. Club Trendy should have more carefully researched Toughguys, Inc. and their staff. Toughguys, Inc. should not have hired an ex-felon or more carefully supervised and restricted their guards.

But for the lack of careful screening, investigating and supervising the guards by Club Trendy and Toughguys, Inc., Crystal would not have been injured. The tortious actions of the guards were foreseeable and will not act as intervening acts that will supercede the liability of both companies. As Crystal suffered physical damages as a result, Club Trendy and Toughguys, Inc. are liable for negligence.