

Facts:

Melvin was driving from Las Vegas, Nevada to Los Angeles, California when he happens upon Howard, a disheveled and dirty man laying off a remote Nevada road, 150 miles north of Las Vegas, near the Cottontail Ranch, a legal brothel. The man was in dire need of help. Melvin, in a hurry, speeds away, muttering to himself, "he's probably going to die, but I lost a fortune in Las Vegas, oh well."

Thirty minutes later, Peter, the owner of the Cottontail Ranch is leaving his brothel and also happens upon Howard. Peter remembers that Howard ran up a large tab at the Cottontail Ranch, which Howard did not pay. Peter decides to move Howard to the middle of the street, in hopes that someone will run him over.

Another thirty minutes pass and Howard wakes up and moves to the side of the road just as a passing semi roars by. If Howard did not wake up, he would surely have been injured.

Questions:

1. If Howard sues Melvin, will he recover?
2. If Howard sues Peter, will he recover?

Sample Answer:

1. No. 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: duty, breach of that duty, causation, and damages. To prevail, the Plaintiff must prove these elements by a preponderance of the evidence.

Generally, there is no legal duty to affirmatively act for the benefit of others. This rule is subject to exceptions (e.g., contract, relationship between parties, assumption of duty, creation of perilous situation, statute ("CRAPS")). None of the exceptions apply to Howard. Nothing in the facts shows that Melvin was under a legal duty to affirmatively act to help Howard. Therefore, by not acting, Melvin did not breach any duty to Howard.

2. No. Howard will not recover from Peter because even if Peter was negligent in placing Howard to the middle of the street, this act did not cause injury to Howard. The fact pattern indicates that Howard woke up just in time to avoid being hit by the semi. Consequently, the issue of causation, both actual causation and legal causation is missing. All elements of a prima facie case must be established prior to a finding of negligence.