

Torts

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After paying for his gasoline at Delta Gas, Paul decided to buy two 75-cent candy bars. The Delta Gas store clerk, Clerk, was talking on the telephone, so Paul tossed \$1.50 on the counter, pocketed the candy, and headed out. Clerk yelled, “Come back here, thief!” Paul said, “I paid. Look on the counter.” Clerk replied, “I’ve got your license number, and I’m going to call the cops.” Paul stopped. He did not want trouble with the police. Clerk told Paul to follow him into the back room to wait for Mark, the store manager, and Paul complied. Clerk closed, but did not lock, the only door to the windowless back room.

Clerk paged Mark, who arrived approximately 25 minutes later and found Paul unconscious in the back room as a result of carbon monoxide poisoning. Mark had been running the engine of his personal truck in the garage adjacent to the back room. When he left to run an errand, he closed the garage, forgot to shut off the engine, and highly toxic carbon monoxide from the exhaust of the running truck had leaked into the seldom used back room. Mark attributed his forgetfulness to his medication, which is known to impair memory.

Paul survived but continues to suffer headaches as a result of the carbon monoxide poisoning. He recalls that, while in the back room, he heard a running engine and felt ill before passing out.

A statute provides, “No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, setting the brake thereon and , when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.”

1. Can Paul maintain tort claims against (a) Clerk for false imprisonment and (b) mark for negligence? Discuss.
2. Is Delta Gas liable for the acts of (a) Clerk and (b) Mark? Discuss.

Torts – Outline of Issues
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Torts – Model Answer
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I. Paul v. Clerk - False Imprisonment

Paul was a customer of Clerk's at Delta Gas. For Paul to prevail in a claim for false imprisonment, he will have to prove clerk intentionally and wrongfully confined him to a bounded area.

A. Intentional Confinement

Clerk accused Paul of stealing two 75-cent candy bars. Clerk chose to detain Paul until Mark, the gas station manager, could return from the errand he was running. Paul protested that he was not a thief, but complied with Clerk's instructions. Clerk did not use force or the threat of force to detain Paul. Instead, he threatened to call the police and have them use Paul's license plate number to catch and arrest Paul. It is clear that Clerk intentionally confined Paul and that Paul did not feel free to leave.

B. Bounded Area

Clerk took Paul to a windowless back room and closed the only door to the room behind him. This room is a bounded area. The fact that Clerk did not lock the door does not change this fact, nor does it give rise to a possibility that Paul consented to his detention. In fact, it would not have mattered if the door was off the hinges entirely. So long as the plaintiff can prove he was confined to an area with identifiable boundaries, this element is satisfied. Paul can prove he was confined to a bounded area.

C. Defense: Shopkeeper's Privilege

A retail merchant has the right to detain suspected thieves without facing civil liability. The problem for the defense in this case is that Paul was not a thief, nor did Clerk reasonably suspect Paul to be a thief. Paul left \$1.50 on the counter, thereby paying for his purchase. Clerk did not even look at the counter and instead threatened to call police.

Various jurisdictions limit the length of time a detention is protected by the shopkeeper's privilege. In this case, Paul's confinement lasted approximately 25 minutes. Although this length of time is likely not unreasonable by itself, the facts of this case do not appear to support a shopkeeper's privilege defense. Paul was not a thief. Clerk did not reasonably believe Paul to be a thief. Had Clerk had the courtesy or the simple common sense to check the counter, he would have seen that Paul had paid for his purchase.

D. Conclusion

Paul can maintain an action against Clerk for false imprisonment. Paul will recover compensatory and punitive damages.

II. Paul v. Mark - Negligence

Mark was the manager at Delta Gas on the day of Paul's injury. For Paul to prevail, he will have to prove that Mark breached a duty owed to Paul that caused his injuries.

A. Duty

Paul was a business invitee at Delta Gas. He was on the property as a customer, to confer a benefit on Delta Gas. As such, he was owed a duty that included warnings about unsafe conditions on the property, plus inspections of the premises for dangerous conditions.

The mere fact that Clerk arbitrarily decided to accuse Paul of being a thief does not change Paul into a licensee or a trespasser. Mark owed a duty of reasonable care to Paul as a business invitee, including a duty to warn and to inspect.

B. Breach: Negligence *Per Se*

Mark was away running an errand when Clerk detained Paul. Mark accidentally left the engine of his personal truck running when he closed the door to the garage adjacent to the back room Paul was confined in. A state statute provides that it is illegal to leave a running car unattended.

It is common knowledge that it is dangerous to leave running cars unattended, because they can roll away or cause other harm. Mark is likely to argue that the statute was only designed to prevent cars from rolling away. It is true that the applicable statute has language about setting the parking brake and crimping the tires to the curb if the car is parked on a grade. At the same time, poisonous fumes are another serious danger presented by running cars that are left unattended.

Although it might be a close call, the better result is for Mark to be found *per se* negligent for leaving his personal truck unattended with the engine running. Even if he is not found to be in violation of the statute, his conduct certainly constitutes a breach of the duty owed Paul as a business invitee.

C. Causation

But for Mark's carelessness, Paul would not have been injured. This establishes actual causation.

Proximate cause is a little more complicated. In this case, the wrongful conduct of Clerk occurred after Mark's negligent act. Accordingly, Mark will argue that this intervening act should be deemed a superseding cause and thereby break the chain of causation and thereby relieve Mark of liability for his negligence. This too might be considered something of a close call, but again the plaintiff has the better argument.

It is unlikely that Clerk's act of confining Paul will break the chain of causation, because it was foreseeable to Mark that somebody might be injured by the highly toxic carbon monoxide fumes if he left his truck running, unattended, in a closed garage. If Mark had little experience with vehicles, he might have a somewhat more persuasive argument. Mark works with vehicles every day at his job. The fact that he should be even more aware of the dangers of carbon monoxide poisoning than the average person makes it seem unreasonable to allow him to escape liability for his carelessness.

D. Damages

Paul suffered carbon monoxide poisoning. He was found unconscious in the back room. Paul survived, but he continues to suffer headaches as a result of his injuries. Paul's damages include the cost of his medical care, pain and suffering associated with his injuries, and lost wages according to proof.

E. Defenses

Mark attributes his forgetfulness to his medication, which is known to impair memory. Voluntary drug use - even of legal prescription medication - is not a defense to negligence.

Paul recalls hearing a running engine and feeling ill before he passed out. Although Paul could have opened the unlocked door and avoided his injuries, he did not assume a known risk. Paul was overcome by the dangerous poison gas before he was fully aware of what was going on. In no way did Paul contribute to his own injuries.

F. Conclusion

Paul can maintain a tort claim against Mark for negligence. Mark will be liable for compensatory damages. Punitive damages are unavailable under a negligence theory.

III. Paul v. Delta Gas

A. Vicarious Liability

Employers are sued under a vicarious liability theory for the tortious acts of their employees. The general rule is that the employer is liable for torts committed by their employees during their normal job duties.

In this case, both Clerk and Mark apparently were on the job for Delta Gas at the time Paul suffered his injuries. The facts strongly suggest that Delta Gas will be vicariously liable to Paul for the injuries he suffered at the hands of Clerk and Mark.

B. Liability for Clerk's Acts

Clerk detained Paul while Clerk was on the job for Delta Gas. Interacting with retail customers is part of Clerk's ordinary job duties. Although Clerk's behavior seems arbitrary and unreasonable, Clerk's explanation is that he acted to protect Delta Gas from an alleged thief. Because Clerk's tortious acts occurred during the normal course and scope of his employment, Delta Gas will be vicariously liable.

C. Liability for Mark's Acts

Mark was the manager of the Delta Gas station at the time Paul was unlawfully detained by Clerk. The fact that he was running an errand at the time and was not present does not help the defense. It is true

that Mark left running the engine on his own personal truck, as opposed to that of a car service customer, but the engine was running in the garage of the Delta Gas station at the time Paul was detained and injured.

As discussed above, Paul was a business invitee of Delta Gas at the time of his injuries. Delta Gas had a duty to inspect and to warn. Mark was the manager. It was he who should have inspected the property and taken steps to make sure customers were not hurt. Instead, Mark failed. His liability is clear, and so is the liability of Mark's employer, Delta Gas.

D. Defenses

Delta Gas does not have any persuasive defenses to vicarious liability. Paul was injured at Delta's business by Delta's employees, who acted during the course and scope of their activities on the job.

E. Conclusion

Delta is liable for the acts of Clerk and Mark.