

Question 1: Torts

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 saw Paul pocket the candy, but had not seen Paul toss down the money. 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 short-term 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 state 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.

Response Provided By Cal Bar Tutorial Review (Paul Pfau):

I. Paul v. Clerk

A. False Imprisonment

False imprisonment is an act or omission on the part of the defendant intended to cause the confinement or restraint of the plaintiff to a bounded area without consent or other legal privilege.

1. Heading Out of Store

Clerk's act in causing Paul "to stop" did not at that point constitute false imprisonment because Paul's freedom of movement was not limited in all directions given the fact he had already "headed out" of the store. While Clerk's statement to Paul that "I've got your license number, and I'm going to call the cops" could be construed as a sufficient method of confinement or restraint because it was not a future threat and possibly a valid use of legal authority, it is not at all clear that Paul either knew of the confinement or was harmed from it. Further, as noted, Paul could have reasonably escaped given that he was headed out of the store when Clerk made his demand. Clerk could also claim the defense that Paul impliedly consented to his demand when he stopped. Or, that he was privileged to arrest Paul given the fact that Paul's offense took place in front of Clerk and for a misdemeanor petty theft offense of the two 75¢ candy bars. This privilege would prove unsuccessful, however, given that the petty theft offense is not a breach of the peace.

2. Windowless Room

Clerk's subsequent act in causing Paul to follow him into the back room – when he then "closed the only door to the windowless back room" to await Mark the store manager is a stronger case for false imprisonment. Even though Clerk did not lock the door, Paul's awareness of his confinement given the fact there was no reasonable means of escape is reasonably clear. It is also apparent Paul was physically harmed by the confinement in view of the carbon monoxide poisoning he sustained due to the truck fumes from the adjoining room. Again, Clerk could contend Paul impliedly consented to be confined when he followed him into the room – or that he was privileged to arrest Paul because of his reasonable belief that a petty offense had occurred. Paul would argue, however, that Clerk's apparent failure to observe the \$1.50 on the counter – evidencing his payment for the two candy bars – was not reasonable.

In addition, as noted above, that Clerk's perception of the event could only lead him to believe that a petty theft had occurred – and not a breach of the peace.

II. Paul v. Mark

A. Negligence

In order to prove that Mark was negligent Paul must prove that he was a foreseeable plaintiff owed a duty or special duty that was breached and which both actually and proximately caused him damages with no available defenses.

Although under either the Cardozo or Andrews view Paul was a foreseeable plaintiff when he entered the Delta gas store to purchase the candy and as result was within the zone of danger. Mark might contend, however, that it was unforeseeable that Paul would be in the windowless back room as a customer of the store. Further, that it was unforeseeable that the carbon monoxide fumes would “leak” into the storage room. Paul would argue that as the store manager Mark should have reasonably known that the unsupervised Clerk could have used the back room to confine the wood-be petty thief.

Although all persons are owed a general duty of care, here the special duty owed by Mark representing the Delta Gas store owner is at issue. Traditionally, the status of the plaintiff as a trespasser, licensee, or invitee will govern the standard of care to discover known or reasonably discoverable dangerous conditions. Modernly, only the reasonable person standard is used in assessing whether a dangerous condition should have been discovered.

Traditionally, Paul would assert he was an invitee because he entered the store for a purpose for which the land is held open to the public – namely, to purchase the candy bars. As such, Mark – as the employee of the store owners – owed a duty to make reasonable inspections to discover non-obvious dangerous conditions and, thereafter, make them safe. Paul would argue that Mark's failure to inspect his vehicle – which he had left running for 25 minutes – was a breach of this duty because he failed to exercise reasonable care when he left the garage and forgot to shut off the engine. Modernly, Paul would similarly contend that a reasonable person would have discovered the dangerous condition crated by the leaking carbon monoxide and that Paul's failure to do so was a breach of his duty.

Paul might also assert that Mark was negligent per se – given the state statute requiring unattended vehicles to stop the engine and lock the ignition. Paul does not seem to be in the class of plaintiffs the statute is designed to protect, however, nor does the statute seem designed to protect against the type of injury he sustained. Rather, it seems designed to protect those potential plaintiffs susceptible to a runaway motor vehicle on a highway.

Paul will contend that Mark's breach was the actual cause of his headaches because but for Mark's failure to turn off the vehicle's engine he would not have been injured. Further, Paul will argue that Mark's failure to do so was the direct proximate cause of his continued headaches following his unconsciousness. Even if Mark can attribute his forgetfulness to turn off the engine due to his medication, Paul would contend that it was a foreseeable result and would not supercede Mark's responsibility.

Paul would assert that he is entitled to compensatory damages for all injuries suffered as a result of Mark's negligence.

It is unlikely that Mark's negligence is defensible – although he might contend that Paul was contributorily negligent in failing to exercise due care to avoid the toxic fumes after “he heard the engine running and felt ill” before passing out. Paul might also contend that he was in helpless peril as a result of the toxic fumes and that – at any rate – he did not possess the last clear chance to avoid the negligent situation due to his unconsciousness.

III. Delta Gas' Liability due to Clerk and Mark's acts

A. Clerk

The doctrine of respondent superior establishes that an employer will be vicariously liable for tortious acts committed by an employee if such acts occur within the scope of employment. It is usually held that intentional torts committed by an employee are not within the scope of employment.

Here, although Clerk was employed as a store clerk by Delta, his act in falsely imprisoning Paul would not fall within the scope of his employment due to the fact it is an intentional tort. As such, Delta Gas would not be vicariously liable. If Clerk's act was construed as negligence, however, then Delta Gas would likely be found to be vicariously liable for his conduct.

B. Mark

Given the fact Mark had left the store to “run an errand” when he inadvertently left the car running resulting in the toxic fumes, Delta Gas might argue that he was not doing so within the scope of his employment as the store manager. Delta would further contend that they are not vicariously liable due to the fact Mark left his “personal truck” running – and not a Delta Gas vehicle. Despite the fact the car was parked in Delta Gas' garage, Paul may have difficulty in contending Delta Gas to be vicariously liable unless he could assert Mark was privileged to park there as a Delta employee so that Delta should be vicariously liable for any negligence resulting from that location.

<http://www.cbtronline.com/>