Question MEE 1 – July 2021 – Selected Answer 1

1. Yes, under the applicable standard of care, the facts are sufficient for a jury to find that the son acted negligently.

Negligence actions require for the defendant to prove four elements: (1) Duty, (2) Breach, (3) Causation, and (4) Damages. Everyone owes a duty to act as a reasonably prudent person in the circumstances to all foreseeable plaintiffs. A reasonably prudent person standard does not incorporate any mental impairments of the tortfeasor but may incorporate physical characteristics if they relate to the injury. A child has its own reasonably prudent standard of care, which is to act as a reasonable child with the same level of knowledge and experience of the child in those circumstances. So knowledge and experience of a tortfeasor child is incorporated into that child's duty of care under the circumstances of the negligent event. Breach requires the tortfeasor to breach their duty. Causation requires "but for causation", which means but for the defendants act or omission, the injury would not have occurred. Causation also requires proximate cause, which means that the injury must be foreseeable from the negligent conduct. Damages requires that the defendant suffer some type of damages.

Here, the facts indicate that the son acted negligently because the son was visually impaired and ran from his mother's grasp to a nearby candy display. The son was running while he was visually impaired in a store and slipped on some cheesecake that was on the floor of the store's self-serve dining area. The son breached his duty of care because he did not act as a reasonably prudent child of his age, skill, and knowledge that was visual impaired under the circumstances since he ran to the candy display when he was visually impaired. Thus, the son breached a duty because a reasonable child of his age with a vision impairment would not likely run to a candy display because they would likely know of the dangers of running in a store could result in injuries. The mom was concerned about crowding and jostling by other patrons and restrained the child so he would likely be aware of the danger his vision impairment caused him in the crowded store. However, a jury could find that a child of the son's age and knowledge, with vision impairments might not appreciate the risk of that could occur from running to a candy display in a store because of the child's excitement over the candy display. Causation is satisfied because but for the son breaking away from his mother's grasp and running towards the candy display, he would not have been injured and proximate cause is satisfied because it is foreseeable that a visually impaired child could suffer physical injuries when running in a store to a candy display because of the vision impairment. Damages are satisfied because the son suffered physical injuries.

Thus, a jury could find the facts are sufficient to find that the son acted negligently.

2. Yes, under the applicable standard of care a jury could find that Big Box acted negligently.

A land owner owes a heightened duty of care to invitees, which are people that visit the landowner's land for business reasons. A landowner also owes this heightened duty of care to children that are with invitees. The heightened duty of care that a landowner owes to invitees is to warn and make reasonable inspections of any dangerous artificial or natural defect on the premises and to warn customers of this defect and repair it within a reasonable time. Other elements of negilgence are listed above.

Here, the mother and son are invitees of Big Box because they are shopping at the store. The facts indicate that the cheesecake was flattened and dirty, which means that it had been on the floor for a long time. Big Box had a policy instructing employees to take steps to promptly clean known hazards on the floor, but did not assign an employee to monitor floor conditions. This indicates that Big Box was negligent because they did not live up to their standard of care to make reasonable inspections of the premises because no employee was assinged to monitor flooor conditions. Big Box does not known when any emplyee had most recently inspected the floor or when the floor had been cleaned last, further indicating Big Box was negligent in not making reasonable inspections to protect customers. Becuase cheesecake was sold at the self dinner service it is likely that Big Box would know that customers are likely to not clean up after themselves and that Big Box should have had someone watching the areas for food dropped by customers. Additonally, an employee had walked by the selfserve dinning area before the son slipped but did not notice the cheescake on the floor, but should have because it was flattned and dirty. Big Box should have known about the cheesecake on the floor and made reasonable efforts to clean it up but the did not make reasonable efforts because no employee was assigned to monitor floor conditions and no the self service dinning is obvious that food will be dropped and not picked up. Causation and damages are satisfied in similar fashion to discussed above.

Thus, Big Box acted negligently because they did not meet their standard of care.

3. Yes, customer can be held liable for enhancing son's injury.

Danger invites rescue and injuries from resucers are foreseeable. A person owes all foreseeable plaintiffs a duty of reasonable care and certain physical interactions that are common are not negligent. There is not duty to help other people but once a

rescuer starts to help an injured person they must act reasonably in their rescue attmept or they will be laible for any additioanl injuries.

Here, the customer attempted to help the son stand, which worsened the son's injury by negligently twisting the son's arm. It is likely that the customer will be liable for the additional injuries to son because customer did not exercise reasonable care in helping son becuase he negligently twisted son's arm, which injured son. If customer had acted with reasonable care and not negligently he would not be laible for the additonal injuries.

Thus, customer can be held laible.

4. Yes, son can recover the full amount of damages form Big Box and customer.

The general rule is that tortfeasors are jointly and severably liable for their torts. Negligent resuce is foreseeable so an original tortfeasor can be laible for the damges they caused and for additional damages from a rescuer. A rescuer can be forced to cover the plaintiff's damages both caused by him and the orignial tortfeasor and seek contribution from the original tortfeasor.

Here, both Big Box and Customer were negligent and so son can recover damages from either Big Box or customer. HOwever, both big box and customer can sue for contribution and recover the damages that they were not responsible for.

Thus, son can recover from both.

Question MEE 1 – July 2021 – Selected Answer 2

1. Facts sufficient for jury to find son acted negligently?

Yes, there are facts sufficient for the jury to find that the son acted negligently. At issue is whether the son breached the standard of care of a child of similar age, education, and experience who is visually impaired.

Whether a person has acted negligently depends on whether he has breached a duty. There is no minimum age for liability in tort. In determining negligence, children are not held to the adult "reasonably prudent person" duty of care, but are instead held to the standard of a child of similar age, education, and experience. In most cases involving the duty of care, particular physical characteristics of the defendant are not considered; however, when a physical characteristic is relevant to whether the duty of

care was breached, the physical characteristic will be taken into account. Thus, the applicable standard of care for determining the child's negligence here is whether the son acted with the care that a visually impaired child of similar age, education, and experience would exercise in similar circumstances.

Here, the son ignored his mother's instructions to remain in her grasp and broke free from her control. A visually impaired six-year-old child would likely obey the instructions of his mother because he depends on his mother for assistance navigating the world; however, six-year-old children are often disobedient. The issue of whether this constituted a breach of duty is up to the trier of fact to decide; however, these facts would support a finding of negligence by the son.

Thus, the jury could find that the son acted negligently.

2. Facts sufficient for jury to find Big Box acted negligently?

Yes, there are facts sufficient to find that Big Box acted negligently. At issue is whether Big Box breached its duty to invitees.

This is a premises liability issue. Invitees are invited to enter the premises for a commercial or business purpose. Owners of business premises owe a duty of care to their invitees to warn or make safe known, concealed, natural and artificial dangerous conditions, and the owner has a duty to conduct reasonable inspections of the premises to discover such conditions. What constitutes reasonable inspection will vary based on the type of business and other factors, but generally, a routine policy of inspection at a specific time intervals will be sufficient.

Here, the child and his mother are invitees because they have entered Big Box in order to shop; Big Box opens its premises to the public inviting them to do business. The cheesecake on the floor is a dangerous condition, and because it was on the floor it was unlikely to be seen (an employee failed to notice it) so it arguably was concealed. The facts do not show that Big Box or any of its employees knew about the cheesecake, but the facts also do not show that Big Box conducted reasonable inspections to discover such conditions. While it had a policy instructing employees to promptly clean any hazards, it had no routine policy for inspection and cleaning of the floors at set time intervals. Therefore, Big Box breached its duty to invitees.

Thus, the facts support a jury finding of Big Box's negligence.

3. Customer be held liable for enhancing son's injury?

Yes, the customer could be held liable. At issue is whether the customer breached his duty of care as a rescuer.

Generally, one has no duty to rescue a stranger absent specific circumstances, none of which apply to the customer. Once one undertakes a rescue, however, he will be held to a standard of care of a reasonably prudent person acting in similar circumstances. Here, the customer had no duty to rescue, but once he undertook to assist the child, he was held to a duty of care. If a jury finds that the customer did not act as a reasonably prudent person assisting a fallen child, the customer could be held to have breached his duty. If so, the customer will be liable for the portion of the injury that he caused.

Thus, the customer could be held liable for enhancing the son's injury.

4. Can son recover full amount of damages from Big Box only?

Yes, the son can recover a full amount of damages from Big Box. At issue is whether Big Box's negligence proximately caused the injury attributable to the customer.

When one negligently injures another, he is liable for all injuries that were both actually caused and proximately caused by his negligence. Here, there is actual causation, because "but for" the Big Box's negligence, the customer would not have twisted the child's arm. Also, there is proximate causation, because foreseeable intervening events do not cut off proximate cause. The negligence of rescuers who respond to the peril created by one's negligence is always a foreseeable intervening event. Here, it was foreseeable that a customer would assist someone who has fallen and that they may assist negligently. Therefore, Big Box was both the actual and proximate cause of all the child's injuries.

Therefore, the son may recover the full amount of damages from Big Box only.

Question MEE 1 – July 2021 – Selected Answer 3

I. Whether the jury may find the son acted negligently

A prima facie claim for negligence requires the plaintiff establish four elements: duty, breach, causation, and damages. The general duty of care standard is to act as a reasonable person under the circumstances. For young children, the standard of care will take into consideration how a reasonable child of the same age, maturity, and

intelligence would act under the circumstances. For those who are visually or otherwise physically impaired, the standard of care is how a reasonable person with a similar impairment would act under the circumstances. Under the majority Cardozo view, there is a duty of care to all foreseeable plaintiffs. Under the minority Andrews view, there is a duty of care to all persons. Breach occurs where a person fails to meet the applicable standard of care. Causation requires that the defendant's conduct is both the actual, or but for causation, as well as the legal or proximate causation. Damages requires a showing of personal injury or property damage.

Here, the duty of care will be that of a reasonable six-year-old child of similar maturity and intelligence that has the same visual impairment. Whether the son met this standard of care is a question of fact for the jury that will consider whether as a six-year-old, the son acted reasonably in breaking free of his mother's grasp and running to a candy display in a crowded store. Additionally, under both the majority view and the minority view, the son owed a duty of care to himself as he is a foreseeable victim of his own negligence by running through a crowded store, as well as the other patrons of the store. Thus, the element of duty is satisfied.

A reasonable six-year-old who suffers from a visual impairment would likely not run through a crowded store when his parent or guardian was attempting to restrain and guide him, knowing that he or she is unable to see if there are persons or objects in front of them to avoid while running in a crowded and constrained space, thus the element of breach is satisfied.

Additionally, the element of but-for causation is satisfied because but-for the son running through the store, he would not have slipped on the cheesecake. Proximate causation is also present here as the son is the legal and direct cause of his injury and there is no superseding cause to break the chain of causation between the foreseeable result of slipping from running through a crowded store.

Finally, the element of damages is satisfied because the son suffered a physical injury.

Thus, a jury could conclude that the son acted negligently in facilitating his own injury.

II. Whether the jury may find that Big Box acted negligently

See section I for the general elements of a negligence claim. As to a business that is open to the public, the duty of care standard to customers is the heightened business invitee standard of care. The business invitee standard of care requires that businesses inspect their premises for unsafe conditions and make the premises reasonably safe

for invitees and warn of non-obvious dangerous conditions. Where a customer slips on an artificial unsafe condition, the court will inquire into how long the condition was present for and whether the store was negligent in either warning or resolving the condition.

Additionally, businesses are vicariously liable for the actions of their employees when employees act within the scope of employment. It does not matter what efforts the employer took to train employees or monitor their performance, as long as the employee was "on the job," the employer is strictly liable for the employee's negligence.

Here, Big Box had a heightened duty of care to the son and its customers to inspect the premises for unsafe conditions and make the premises reasonably safe for invitees. The cheesecake on the floor of the store's self-serve dining area is an unsafe condition as it is foreseeable that the cheesecake could cause someone to slip and fall. The facts state that Big Box had a policy instructing employees to take steps to promptly clean known hazards on the floor, but it did not assign an employee to monitor floor conditions. This resulted in the employees not knowing when any other employee has recently inspected or cleaned the floor.

In this situation, it appears that Big Box has been directly negligent by failing to meet the heightened standard of care towards its invitees by having an unclear system to ensure the floor is cleaned. The display of cheesecake had been out for several days, and the cheesecake was flattened and dirty when the son slipped on it, which indicates that it had been there for a certain period of time such that other customers had also stepped on it. An employee states that he walked by the self-serve dining area earlier before the son slipped and did not notice the cheesecake, but due to a lack of record keeping or systematic monitoring of the self-serve area, there is no indication of how long it had been since the area had been cleaned. Thus, Big Box has breached its heightened duty of care to business invitees to inspect for unsafe conditions by failing to effectively monitor the self-serve area such that the cheesecake was on the floor.

The but-for causation and proximate cause tests are also met. But for Big Box failing to inspect its floor, the cheesecake would not have been present for the son to slip on, and the cheesecake on the floor was the direct and foreseeable result of the failure to inspect for unsafe conditions on the store's floor.

The damages element is also satisfied as the son suffered physical injury from the slip.

Thus, a jury may conclude Big Box acted negligently.

III. Whether the custom can be held liable for enhancing the son's injury

Section section I for general elements of a negligence claim. There is no affirmative duty of care to assist persons who are injured or in peril. However, where a bystander voluntarily engages in a rescue attempt to help someone, the bystander assumes a duty to act as a reasonable rescuer.

Here, the customer originally had no duty of care towards the son. However, when she decided to assist the son to help him stand, she assumed a duty to act as a reasonable rescuer.

Next, the customer breached her duty to act as a reasonable rescuer because her attempt to help him stand worsened the son's injury by negligently twisting his arm. However she decided to help him stand was sufficiently careless or harmful that it caused greater injury to the son by twisting his harm, such that a jury could conclude she acted unreasonably, and the element of breach may be satisfied.

Next, the but-for causation and proximate cause tests are satisfied. But for the customer pulling the son's arms to help him stand, he would not have twisted his arm, and his arm being twisted is the direct and foreseeable result of the customer failing to act reasonably in coming to the son's aid.

Finally, the element of damages is satisfied because the son suffered increased physical injury to his arm due to the customer's conduct.

Thus, a jury may find that the customer is liable for enhancing the son's injury.

IV. Whether the son may recover the full amount of damages from Big Box only

The majority of jurisdictions adhere to the doctrine of joint and several liability, which states that where more than one defendant tortfeasors are responsible for a single and indivisible injury, the plaintiff may recover from any defendant for the whole injury. Additionally, where one's negligence places someone in danger of physical harm, that person is liable for enhanced harm that occurs as a result of a negligent rescuer because "danger invites rescue."

However, the majority of jurisdictions also adhere to a comparative negligence theory of damages. In comparative negligence jurisdictions, where a plaintiff has acted

negligently in contributing to his or her own harm, her recovery will be diminished by the percentage of damages the jury attributes to the plaintiff's own negligence.

Here, assuming this is a jurisdiction that follows the majority trend, it will depend on what percentage of fault the jury attributes to the son for his own injury by the son negligently running through the store. If the jury finds that he was not negligent, then yes, the son will be able to recover the full amount of damages from Big Box because danger invites rescue, and the customer's conduct was thus also attributed to Big Box's negligence in failing to inspect the floor. However, if the jury finds the son was comparatively negligent, then his recovery will be limited by the percentage the jury finds he is liable for his own injury. The remainder he may recover from Big Box, who may then seek to recover contribution from the customer if the jury also apportions fault to the customer for the enhanced injury.