Abel & Baker & the Scaffold

ANSWER TORTS ESSAY TWO

I. Abel v. Diana. Abel should bring a cause of action for negligence against Diana.

A. Negligence. The negligence theory of liability requires a discussion of its five essential elements: Duty, Breach of duty, Actual and Proximate cause, Damages and Defenses.

1. Duty. One who commits an affirmative act owes a duty of care to any foreseeable plaintiff. Here, Diana was acting affirmatively when she drove her vehicle and owed a duty of care to all other drivers, pedestrians or bystanders (e.g., Able and Baker) who might reasonably suffer injury as a result of her actions.

2. Breach of duty. Absent special facts not present here, a defendant owes a foreseeable plaintiff a duty to act reasonably under the circumstances. Diana backed her car up with the knowledge that it was unsafe to do so without assistance. (In fact, if she had knowledge to a substantial certainty that there were workers on the scaffold, Able would be successful in asserting a battery claim because Diana’s action would be considered a harmful and offensive touching of Able). When her request for assistance was denied (Sam laughed), she angrily proceeded to back up without assistance. Diana has clearly acted unreasonably under the circumstances and, therefore, has breached the duty of general care.

3. Actual cause. The defendant’s conduct must have been the cause in fact of the plaintiff’s injury. Here, the facts are clear that “but for” Diana’s act of backing her car into the scaffold support, Abel’s injury would not have occurred. While Abel’s conduct (not wearing a hard hat) may have contributed to the extent of his injuries, Diana’s conduct was the actual cause.

4. Proximate cause. Analysis of “proximate cause” is required to determine whether the defendant’s breach of duty which was the actual cause of plaintiff’s injury can also serve to establish defendant’s legal responsibility for the injury. There were no intervening forces which might break the chain of causation and relieve Diana of liability. In addition, the type of injury suffered by Abel (fractured skull) is a foreseeable type of injury that would result of Diana’s actions. Unforeseeability of injury is not a defense if only the extent of injury is unforeseeable as it was here. Thus, Diana is the proximate cause of Abel’s injury.

5. Damages. Abel has suffered personal injury resulting from Diana’s breach of duty and may recover damages.

B. Defenses. Diana will assert that Abel’s negligence (failure to wear a hard hat as required by employee) contributed to his injury, thus barring (in a contributory negligence jurisdiction) or reducing (in a comparative negligence jurisdiction) Abel’s recovery. However, because Diana knew that her conduct was unsafe and proceeded out of anger, a court may find her conduct was reckless and refuse to apply the contributory or comparative negligence defense.
II. Abel v. Sam.

Abel may also try to establish a negligence cause of action against Sam. When Diana asked for help, "Sam just laughed" and Diana proceeded without assistance and knocked down the scaffold. The problem is that, absence special circumstances, an individual has no duty to take affirmative steps to help or protect others. Sam was a stranger to Diana and Abel who happened to be passing by. There was no special relationship, promise or undertaking to act, and Abel did not place Diana or Sam in peril. Thus, there are no special circumstances present establishing that Sam may be held liable for failing to act.

III. Baker v. Ed.

Baker’s cause of action will also be for negligence.

A. Duty and breach of duty. Ed may have breached the duty of general care required of automobile drivers and owed to other drivers (foreseeable plaintiffs) like Baker. The facts state that Ed rear-ended Baker’s car while Baker was stopped at an intersection. Unless Baker or some other witness can testify that Ed was going too fast or following too closely, it is unclear whether Ed acted unreasonably under the circumstances (i.e. breached the duty of general care).

1. Res ipsa loquitur. Under these facts, the doctrine of res ipsa loquitur should apply to establish that Ed breached the duty of general care. The three requirements for this doctrine are:

   a. The event which caused plaintiff’s injury ordinarily would not occur in the absence of someone’s negligence. Automobile accidents, especially rear-end collisions, do not generally occur unless someone was negligent.

   b. That "someone’s negligence," more likely than not, was the defendant’s negligence. Once again, Baker was stopped at an intersection. Ed should leave enough room between his car and the vehicle ahead to safely stop. Rear-end collisions are generally caused by the negligence of the driver of the car behind.

   c. Plaintiff was not responsible for the event that caused his injury. There are no facts to demonstrate that Baker was responsible for the collision. He had stopped at an intersection and was hit from behind.

2. Effect of res ipsa loquitur. Having established the elements of res ipsa loquitur, a plaintiff will have provided sufficient evidence, if believed by a jury, to support a finding of breach of duty. Thus, Baker should be able to establish that Ed has breached the general duty of care.

B. Actual and proximate cause. Actual cause is established because "but for" Ed’s collision with Baker’s car, the paralysis would not have occurred. However, Ed will assert the fact that the collision with Baker’s car was only slight and that Diana’s negligent act was the proximate cause of Baker’s paralysis. This is no defense to a finding of proximate cause when only the extent of injury is unforeseeable. According to the thin skull doctrine, the defendant "takes the plaintiff as he finds him." Ed's breach of duty could have foreseeably caused some neck injury to Baker, the fact that a serious neck injury (paralysis) was unforeseeable does not preclude a finding of proximate cause.

C. Damages. Baker has been paralyzed because of Ed’s conduct. He may recover
damages for pain and suffering, medical expenses, lost wages, etc. as a result.

D. Defenses.

1. Contributory/comparative negligence. Ed’s recovery may be barred (contributory negligence) or reduced (comparative negligence) to account for any negligent conduct on his part contributing to his injury. Here, Ed will assert that Baker’s failure to seek prompt medical attention (which could have diagnosed and treated the fractured vertebra) after the fall from the scaffold constituted negligence. However, Baker was able to walk and experienced only slight pain. Thus, he probably was not negligent under these circumstances.

2. Avoidable consequences. The plaintiff has a duty to mitigate damages. Ed will assert that Baker’s failure to seek medical attention after the fall would have "avoided the consequences" of Ed’s collision. This argument is unsound because the rule of avoidable consequences only pertains to plaintiff’s duty to act after the defendant’s negligent act. Here, Baker has not failed to take reasonable steps to avoid further injury after Ed’s negligence.