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KIN 854
Dr. Rick Atkinson

MODULE 5 - Final Case Project

Question #1 A.

In the case of the Smith Family vs. State University – Middle East wherein the young Smith Jr. (plaintiff), I believe the school to be liable if you look closely at the case through the lens of the four tenets of negligence. The basic background of the case is that a boy breaks his arm because a baseball strikes it after ripping through a tattered area of the backstop of the SU-ME (defendant) stadium.

Obviously, there is damage or injury – the child both broke his arm and received a concussion while on the school's premises at the baseball stadium. Upon establishing the obvious physical damage, we can look through the other three tenets. With regard to the school's baseball stadium owing a standard of care, the simple explanation is that the school is playing host to the Smith family and thus need to provide reasonable protection. The more complex standard of care is the overall industry standard and precedent set by baseball, specifically, that was owed Smith Jr. In Major League Baseball, for example, stadiums are afforded (by ruling of the court) limited-duty in that they need only protect fans in areas of the ballpark in which injuries are "most likely to occur." In baseball, therefore, it is deemed unreasonable to require complete protection from injury in every section of the stadium (this is based, in part on the assumption of risk defense as it relates to sport). That is, most people know and understand the inherent risks of the activity and thus give voluntary consent to attend games) but should definitely provide protection in the place in the ballpark where injuries would be most eminent. SU-ME's ballpark did not provide the expected industry-standard care in protecting spectators in the area of the ballpark where court precedent states every stadium owes the utmost standard of care (there were "ragged looking spots" in the protective netting).

In terms of breach of duty, both the failure of the school to take care of the netting and the inaction of the employee of SU-ME apply. In the scenario, the description of the "ragged looking spots" through which the ball that struck Smith, Jr. tore on its path toward injuring the young boy prove a failure to act in a reasonable manner for the safety of others. That is, the school did not bother to replace the netting and/or enforce these areas. The inaction of the employee of SU-ME definitely puts the young boy at unreasonable risk of harm both for the clear injury that the ball causes (broken arm). The subsequent injury that happens due to child being out of his seat (concussion) in that he/she did not act to relocate the child to the seat in the stadium for which he was entitled via payment. Vicarious liability (where the employer is responsible for acts of his or her employees) applies here to link blame to the employer who hired the employee thus both protecting him/her and adding responsibility to the larger entity.

The employee's inaction also concerns causation (specifically "cause in fact") - the usher's decision not to act to corral the child into his seat put the child in the spot that the ball struck. Had the child been in his seat, that particular ball would not have hit him. If he had been in his seat, perhaps a ball tearing through a ragged spot would not have hit him as both he and his older sibling and parents would have been in direct sight of the flying object with thus more time

and ability to react to its trajectory. Similarly, had the ragged spots in the netting been fixed, all would be well and no one hurt.

In the end, the Smith's, I believe, have a good case for negligence.

Question #1 B.

In terms of defenses for the case brought against them by the Smith family, I think that SU-ME could apply several different tactics starting with the Assumption of Risk defense. To state the defense comprehensively, the Smiths were attending a baseball game and common sense would dictate that they understand the inherent risk and give voluntary consent to it by attending, that they have knowledge, understanding, and appreciation of the game. In addition, since they purchased the tickets, they had access to express language about the risks involved in attendance (the notes on the case state that the Smith family kept the ticket stubs that had the Policies, Procedures, and Waiver of Liability on them). As for the outcome of this defense, I think it would not hold much water. The defendant is a minor and, thus, the idea of a waiver applying to him is null and void in that waivers are contracts that assume that the injured person is rational one and can thus be considered informed by nature of the waiver.

The school could apply the defense of contributory/comparative negligence (depending on the state in which SU-ME lies). The notes on the case state that the boy Smith Jr. was clearly out of the seat that his parents purchased for him and, since a minor, he would be under their protection. Thus, the fact that he was out of his seat and got hit would imply some negligence on their part in that they were not acting in good faith, as it were, on what they purchased (that is, the boy wasn't in the spot in the stadium for which he paid and, by extension, for which the protection applied). As for the outcome of the defense, I, again, do not think it would withstand the counter-argument that an usher is hired to maintain order of the exact kind needed in that scenario – otherwise, for what purpose would he be hired? Furthermore, the tenet of causation applying to the net would take the burden off the family/defendant because, in the end, had the organization fixed the ragged spots on the netting, the child's arm would not have been broken.

To conclude, I think that the school will lose this lawsuit due to the strong proof of its negligence and weakness in defense.

Question 2.

State University – Middle East

MEMO

To: State University – Middle East Coaching Staff and Athletic Personnel
CC: Conference Commissioner's Office, Opponent's Women's Tennis Coaching Staff
From: Jonathan E. Small **(**Head Athletic Director – State University – Middle East)
Date: April 27th, 2016
Re: Allegations of Hazing in Incident involving SU-ME Women's Tennis

On Saturday, April 24th, 2016, the SU-ME women's tennis team won their fifth straight conference championship as they defeated Opponent University. This win made Head Coach Bob Tennis the most winningest coach in history. We should commend and celebrate both feats. In an act to do just that - celebrate the victory - the captain thanked her teammates and, per tradition, called the freshman to the stage to perform SU-ME's fight song. The freshman obliged and afterwards Bob Tennis took over the microphone and summarily thanked the freshman for their performance, the fans for their support, and his team for yet another great season. The act described – the senior captain calling the freshman to the stage to sing – offended the coaching staff of Opponent University and they put a call in to the Conference Commissioner's Office to report the incident because it seemed, in their opinion, to violate the "zero tolerance" policy the conference has adopted with regard to hazing. The Conference Commissioner's Office contacted me and asked me to handle the situation. This memorandum explains my position with regard to the specific act and lays out a policy that will help guide our staff at SU-ME in handling similar situations in the future.

The general accepted definition of hazing is an activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them regardless of the person's willingness to participate. The act (or acts) involved in hazing are always intentional and targeted and can cause either emotional or physical stress/damage (or both) to those toward whom someone directs such acts. According to law, acts of hazing that cause physical injury, impairment of bodily function, or death accompany criminal charges ranging from misdemeanor to felony for the "hazer." Common hazing practices constitute, but are not limited to, the following: name-calling, verbal abuse, deprivation of daily needs, excessive exercise, excessive drinking, harassment (sexual or other), head shaving, or assault. Though the conference has adopted a zero-tolerance policy against it, one can clearly see that hazing is very broadly and ambiguously so pinpointing activities that do not fall under the specifically enumerated examples or fit neatly within the definition (as the one described above) is difficult.

Regarding this specific incident, I deem that and the SU-ME Women's Tennis Coaching Staff and Team did not subject the freshman who sang the school's fight song to hazing. First, the act did not physically harm anyone. Therefore, nothing in the act would be subject to criminal punishment. Secondly, the task assigned was benevolent in its intent – to laud the University (in that it was our very own fight song). Thus, those who assigned it meant it primarily to be contributory toward the already celebratory atmosphere for SU-ME not demeaning toward those

performing it. Third, the act was public and has been for many years. This makes it more of a tradition (as the team stated) than a subversive practice meant to demean or denounce others.

However, the freshman, when interviewed about the incident did, in fact, feel embarrassed as, undoubtedly, freshman in the past have felt. Likewise, outside observers, in this case Opponent University, also felt offended. Circling back to the definition of hazing, one must consider the feelings of others when enacting acts that single out individuals or groups. I remember a quote from my youth that stuck with me: "Perception is its own reality." Who is to say that, just because a team does something in public for the world to see that they do not do other things in private concealed from the scrutiny of the public eye? Similarly, who is to say that if student-athletes can get away with traditions like this in the public sphere with the implicit approval of the administrators in charge, they will not take it as license to descend a slippery slope and begin to institute other "traditions" on their own accord?

We at SU-ME will, therefore, reevaluate any practice deemed a tradition (as the one discussed here) and make it a full team activity or else do away with it altogether.

For example, in case outlined, from here on out the fight song should be sung by all members of the team together, including coaches, thus making it not a tradition that uplifts, excludes, and embarrasses but one that uplifts, includes, and inspires. Through such an approach, we will teach our student-athletes an even deeper meaning of community and present ourselves above reproach to the ever-increasing mélange of public eyes. Moreover, we will continue to hold our student-athletes to the highest degree of obedience (and subject them to utmost degree of consequence) with respect to those aspects of hazing explicitly mentioned in the definition.

If you have any specific questions concerning any such instances, please feel free to contact me directly.

Go SU-ME!

Sincerely,

Jonathan E. Small

Question 3.

In the situation regarding the female volleyball coach dating the student female volleyball trainer, my first action (or inaction rather) would be to not fire the volleyball coach regardless of my myriad concerns for the relationship she has with the trainer. There are two reasons for this decision. One, firing her for this reason could constitute "wrongful discharge" whereby I violate written contractual stipulations based on objective performance measures. Furthermore, if I were to fire the coach, I could open SU-ME up to a potential lawsuit based on Title VII of the Civil Rights Act of 1964 that elucidates, among other things, that one cannot hire, retain, and promote, based only on certain things – one of which, sexual orientation, might be argued in this case. In other words, I cannot fire someone for a subjective belief or, more to the point, for the perception of a subjective belief about sexual orientation. To conclude, though I may feel that the relationship is irresponsible, unnecessary and makes people uncomfortable, I cannot simply use my authority to terminate someone's employment without them having violated the contract and, in this particular case, unnecessarily subject the university to legal issues involving discrimination.

My second action would be to re-assign the female volleyball student trainer to another sport immediately (likely a male sport in a different season with a male coach). Since there is an explicit university policy detailing "conflict of interest in educational responsibilities resulting from consensual amorous or sexual relationships," the volleyball coach, who is a contractual employee of SU-ME, would be both aware of and bound by it. This action would thus untangle some of the potential personal biases that could influence the evaluation of the student trainer and, ultimately, professional responsibilities/decisions of both the coach and the trainer.

My third action, owing to Jay Gardner's Six Principles of Success, would be to speak straight and communicate directly with the two individuals (with my assistant athletic director present at the meeting) concerning both my decision to reassign the trainer. I would, first, affirm to them that I would speak to no one else about their relationship out of respect for their privacy and assure them that my assistant would do the same. I would also review with them the specific reason (citing the aforementioned policy) of reassigning the student female trainer. Lastly, I would review with them another protective measure that I have to keep in mind as the overall supervisor of the athletic department when considering relationships among co-workers – that of potential sexual harassment. I would be clear that I am not accusing either of them of this (the fact is, I have not witnessed them together in the workplace at this point) but discuss the legal aspects, specifically of quid pro quo sexual harassment, that would be avoided by reassigning the trainer. The coach has supervisor advantage over the trainer both by age and by title and, though the relationship is a consensual one between two adults (according to the verbal statement of the coach), it is best to be as prudent as possible when approaching relationships at work given their dynamic nature. In other words, keeping the student female trainer in volleyball could lead to some uncomfortable and potentially illegal/unethical issues if the relationship is rocky and/or ends poorly. Thus, since I, as the head administrator, am aware of the relationship and all the issues pertaining thereto regarding our aforementioned policy and other legal issues, reassigning the female student trainer is in the best interest of all parties concerned.