

MEE Question 1

On the evening of July 4, a woman went to the end of her dock to watch a fireworks display on the lake where her house was located. The woman's husband remained inside the house. The fireworks display was sponsored by the lake homeowners association, which had contracted with a fireworks company to plan and manage all aspects of the fireworks display.

The fireworks display was set off from a barge in the middle of the lake. During the finale, a mortar flew out horizontally instead of ascending into the sky. The mortar struck the woman's dock. She was hit by flaming debris and severely injured. When the woman's husband saw what had happened from inside the house, he rushed to help her. In his hurry, he tripped on a rug and fell down a flight of stairs, sustaining a serious fracture.

All the fireworks company employees are state-certified fireworks technicians, and the company followed all governmental fireworks regulations. It is not known why the mortar misfired.

The woman and her husband sued the homeowners association and the fireworks company to recover damages for their injuries under theories of strict liability and negligence. At trial, they established all of the above facts. They also established the following:

- 1) Nationally, accidents involving fireworks cause about 9,000 injuries and 5 deaths each year. About 15% of these accidents are caused by mortars misfiring in the course of professional fireworks displays, and some of these accidents occur despite compliance with governmental fireworks regulations.
- 2) Even with careful use by experts, fireworks mortars can still misfire.
- 3) Although a state statute requires a "safety zone" of 500 feet from the launching site of fireworks when those fireworks are launched on land, the statute does not refer to fireworks launched on water. Neither the homeowners association nor the fireworks company established such a zone.
- 4) The average fireworks-to-shore distance for this display was 1,000 feet. The woman's dock is 450 feet from the location of the fireworks barge; at only three other points on the lake is there land or a dock within 500 feet of the fireworks barge location.

After the conclusion of the plaintiffs' case, both the homeowners association and the fireworks company moved for a directed verdict on the basis that the facts established by the evidence did not support a verdict for the plaintiffs.

The trial judge granted the motion, based on these findings:

1. Fireworks displays are not an abnormally dangerous activity and thus are not subject to strict liability.
2. Based on the evidence submitted, a reasonable jury could not conclude that the conduct of the fireworks company was negligent.
3. The misfiring mortar was not the proximate cause of the husband's injuries.
4. The homeowners association cannot be held liable for the fireworks company's acts or omissions.

As to each of the judge's four findings, was the judge correct? Explain.

1) Please type your answer to MEE 1 below

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(Essay)

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As a preliminary issue, to grant a directed verdict, the evidence presented must be so that no reasonable juror could differ and the evidence is clearly in favor of the moving party. The evidence is viewed in light most favorable to the nonmoving party.

1) The judge was incorrect regarding the strict liability of firework displays. The issue is whether firework displays are an abnormally dangerous activity.

Specifically, can the risk associated with the activity be eliminated with reasonable care. Strict liability can be imposed for abnormally dangerous activities that cause

injuries. To be abnormally dangerous, the risks associated with the activities cannot be eliminated with reasonable care and must not be normal in the area where conducted. Other facts consider the degree of the potential harm and the usefulness of the activity in the community. Further, the harm caused has to be from the abnormally dangerous propensity of the activity for strict liability to apply. Here, nationally, accidents involving fireworks cause about 9,000 injuries and 5 deaths each year. About 15% of these accidents are caused by mortars misfiring in the course of professional firework displays, and some of these accidents occur despite compliance with governmental fireworks regulations. Further, even with careful use by experts, fireworks mortars can still misfire. Eventhough, all the fireworks company employees were state-certified fireworks technicians, and the company followed all governmental fireworks regulations, the potential risk associated with mortars cannot be eliminated. In this case, it is not known why the mortar misfired. Further, the mortar's misfire is what caused the woman's injuries; thus, it was a result of the dangerous propensities of the mortars misfiring. Furthermore, while firework displays may be common in the area during certain holidays, it is not a normal activity in the area. Therefore, in light of this evidence, the judge was incorrect, because there is plenty of evidence that could cause reasonable jurors to differ.

2) The judge was incorrect regarding whether a reasonable jury could not conclude that the conduct of the fireworks company was negligent. The issue is whether the location that the fireworks company decided to shoot the mortars from was a breach of a duty owed, either by negligence per se or by breaching the duty. To establish negligence, the plaintiffs must prove that the defendant owed the plaintiffs a duty of care, that the defendant breach that duty of care owed to plaintiffs, actual and proximate cause, and damages. The duty of care owed is that of a reasonable prudent person under the same or similiar circumstances and is only owed to foreseeable plaintiffs. Here, the fireworks company owed the plaintiffs a duty of care to not injure them with fireworks because this was a July 4th fireworks display, so it is foreseeable that people around the lake would watch. Breach of a duty is a fact question for the jury to decide. Only when plaintiffs have offered no evidence of a breach is the Court able to grant a directed verdict. Further, negligence per se if applicable establishes duty and breach. Negligence per se applies when there is a statute that sets a standard of care to protect those class of persons plaintiff is within. Here, there is a state statute requiring a "safety zone" of 500 feet from the launching site of fireworks when those fireworks are launched on land, the statuted does not refer to fireworks launched on water. Neither the homeowners association nor the fireworks display company established such a zone. Here, clearly the statute was designed to protect the class

of persons plaintiff is within, viewers of fireworks within 500 feet. However, it is not a clear as whether the statute is on point because it applies to land.

Nonetheless, there is no practical difference between distance on land and distance on water, both are distances and negligence per se should apply. However, if it does not apply, the fact that the fireworks company were close to the plaintiffs may be enough evidence of a breach. The woman's dock is 450 feet from the location of the fireworks barge; at only three other points on the lake is there land or a dock within 500 feet of the fireworks barge location. Therefore, a reasonable juror could find that the close proximity to the woman's dock was breach of the duty. Therefore, the court was incorrect.

3) The misfiring of the mortar was the proximate cause. The issue is whether a rescuer harmed in attempting to rescue is a foreseeable event. Proximate cause acts to cut off defendant's liability when too remote. A direct result of the negligence that is a within the natural occurrences is a proximate cause. The touchstone is foreseeability. Even in indirect cases, where there is another event after the defendant's negligence that acts in producing the harm, if a harmful result is foreseeable, it doesn't matter that the way it happen was unforeseeable. Further, rescuers are also foreseeable. Thus, if someone puts another in peril in need of rescue, the subsequent rescue is foreseeable. Here, the negligence of the mortar

hitting the woman produces a foreseeable result that someone who try to rescue/help her, including her husband. It doesn't matter that the manner of the injury, tripping on a rug, was foreseeable, just the that someone could be injured helping the woman. Therefore, the misfiring mortar was the proximate cause.

4) The issue is whether the Homeowner's associaton can be vicariously liable for the fireworks company's acts or omission. Specically, if the fireworks company is an employee or independent contract. A employer is only liable for the torts of its employees committed within the scope of their employment, this is known as respondeat superior. However, employer is not liable for torts of independent contractors, unless that activity was authorized or if the activity is an abnormally dangerous activity. Whether someone is an employee or independent contract is determined by whether the employer has the right to control the method and manner of completeing the job. Here, the Homeowner's association does not control the fireworks company, they just contracted with them and the company planned and managed all aspects of the fireworks display. However, as discussed above, this activity consituted a abnormally dangerous activity and the exception applies. Therefore, the homeowners association can be held liable.

