

Samuel Marchant
Professor Wilson

A Very Unwise Decision

To begin, the family of the “other car” can hold a negligence case against Nick for many reasons. Negligence occurs when, “someone suffers injury because of another’s failure to live up to a required *duty of care*” (Miller 144). Since Nick killed the man in an unlawful U-turn, he did not fulfill his duty of care. To triumph in this case, the plaintiff will have to prove the four elements of negligence. The first element is duty, which is where “the defendant owed a duty of care to the plaintiff” (Miller 144). In this case, Nick’s duty to the defendant is to follow the laws of the road and stay in his lane. The duty of Nick is also measured by the reasonable person standard, that states, “the standard of behavior expected of a hypothetical ‘reasonable person’” (Miller 144). A reasonable person in this scenario would have waited until a legal U-turn was available. Clearly he did not, and Nick’s conduct breaches the second element (breach of duty) and may be treated as *negligence per se*. *Negligence per se* “may occur if an individual violates a statute or ordinance and thereby causes the kind of harm that the statute was intended to prevent” (Miller 149). From this we can see how Nick violated the traffic rules by crossing the orange cones. The third element consists of causation, which is “the defendant’s breach [causing] the plaintiff’s injury” (Miller 144). The decision to U-Turn at an illegal spot is directly the reason why the other man died. The damages caused by Nick, the fourth element, is legally recognizable as well. A legally recognizable damage is one where, “the plaintiff must have suffered some loss, harm, wrong, or invasion of protected interest” (Miller 146). The plaintiff in this case is the family, and obviously the loss of their relative is enough to fulfill these requirements. Overall, all of these would lead to a “causation of fact”. According to Miller, “If an injury would not have

occurred without the defendant's act, then there is causation of fact" (Miller 146). Clearly, the family has a valid case for negligence against Nick.

On the other side of things, Nick has justifiable defenses against these claims. To start, Nick can defend by saying it was the bar's fault that this all occurred. According to the Dram Shop Act, "A state statute that imposes liability on the owners of bars and persons who serve alcoholic drinks for injuries resulting from accidents caused by intoxicated persons" (Miller 150). Nick would state that "he had too much to drink", claiming that it is inherently the bar's fault. He could argue that the ramifications were caused by the bar's negligence to Nick's alcohol consumption. Another argument Nick could make is "the duty of landowners", which explains that "Landowners are expected to exercise reasonable care to protect persons coming onto their property from harm" (Miller 145) Specifically Nick can argue this in two ways. The first of his arguments could state that the traffic cones, which the government provided to block the opposing traffic, were not sufficient. Clearly, any car could break through this barrier and cause an increased amount of harm to others. Also, Nick could place negligence on the government if there were no signs expressing that the roads were slippery when wet. As seen in this case, "it is raining" and this could have caused him "[losing] control of the sports car". For these reasons, Nick has plausible defenses against the plaintiff.

The next legalities of this case is Nick versus the car repair company. The most clear way Nick can sue the car repair company is for "malpractice". Malpractice is stated to be, "Negligence – the failure to exercise due care – on the part of a professional" (Miller 145). This repair company has "knowledge, skill, or training superior to that of an ordinary person", so their conduct must be consistent with this reputation. Nick's injuries are directly caused by the filler

pipe (which is not bolted properly), which this company had fixed in the past. To add, Nick's injury aligns with "injury requirements" (Miller 146) because of the severe burns caused by the faulty filler pipe. On the other hand, the car repair company has a few defenses against Nick's claims. The first defense is superseding cause, which describes "an unforeseeable intervening event [that] may break the connection between a wrongful act and an injury to another" (Miller 148). The car repair company may argue that the event of Nick swerving and crashing into the opposing car is the "superseding" event which caused the explosion. If the cars had a strong enough impact, this outcome could still be the case. If this argument does not work out, the company can also defend that Nick has "comparative negligence". In California it allows comparative negligence, which states, "A rule in tort law, used in the majority of states, that reduces the plaintiff's recovery in proportion to the plaintiff's degree of fault, rather than barring recovery completely" (Miller 148). In California specifically, this will limit the damage charge proportionately to the company's fault. This can greatly decrease the company's liability, but they will still have to pay some amount of damages. This is because California has no "rule that prevents the plaintiff from recovering any damages if she or he was more than 50 percent at fault" (Miller 148). As one can see, both Nick and the car repair company have arguable claims in this case.

The last case that arises is one between the driver hit by the bus and Nick. The driver can claim the doctrine of "Danger Invites Rescue". This doctrine reports, "Sometimes, a person who is trying to avoid harm...ends up causing harm to another as a result. In those situations, the original wrongdoer is liable to anyone who is injured, even if the injury actually resulted from another person's attempt to escape" (Miller 149). The injuries caused from this individual is due

to both another person escaping (the pedestrian) and a person avoiding harm (the bus driver).

This would be a valid argument because ultimately the “original wrongdoer”, Nick, is at fault.

Another argument that the driver could make is “*res ipsa loquitur*”. This special doctrine claims that “negligence may be inferred simply because an event occurred, if it is the type of event that would not occur in the absence of negligence, the term means ‘the facts speak for themselves’”

(Miller 149). This would leave the burden of proof on Nick, meaning he would have to explain a situation where these events would occur without his negligence. This would leave him in a

tough corner, and it would be a good supporting argument to the danger invites rescue doctrine.

Moving towards Nick’s defense, he could try to place liability (once again) on the landowners. If they had no warning against a slippery sidewalk or a prevention from falling, Nick could argue

“Comparative Negligence” against the government. This is the best case scenario for Nick,

because putting full negligence on the government would be a long-stretch. Potentially, Nick can decrease his liability and place some of the plaintiff’s compensation on them. To a great degree,

all of these cases are multi-faceted and require a lot of thought in the courtroom.