

Module J problem set

Situation #1

A person is driving a car. He sees a pedestrian crossing the street in front of him. The driver does not apply the brakes, turn the steering wheel, or do anything else in response to seeing the pedestrian. The car hits the pedestrian. Would you classify the driver's role in this incident as misfeasance or nonfeasance?

Does it make a difference if the driver's foot was on the gas pedal, or if the driver's hands were on the steering wheel? Suppose that at the moment the driver saw the pedestrian, the car was coasting forward but the driver was not touching the gas pedal or the steering wheel. Is it misfeasance or nonfeasance?



Would it make a difference if it was an autonomous (self-driving) vehicle? Suppose that the person got into the car, entered a destination into the computer system of the car, and then the car was driving automatically to the destination without further input from the driver. The driver sees the pedestrian and realizes the car may hit the pedestrian, but does nothing. Is that misfeasance or nonfeasance?

Suppose again that it is a self-driving car, but the person gets into the car, programs in the destination information, and then goes to sleep. The person is still asleep at the moment when the car hits the pedestrian. If the pedestrian sues the person, claiming it is negligent not to stay awake while operating the self-driving car, is this an allegation of misfeasance or nonfeasance?

Situation #2

An elderly man rented an apartment in a small housing complex. When he moved in, he met the building manager. The next day, the man mentioned to the manager that he wasn't feeling well and had pain in his legs and stomach. The building manager said that she would drive the man to the doctor, but when the man was ready to leave, she said that she was busy and he would have to wait until later that day. An hour later, the building manager was walking past the door to the man's apartment, which was open, and she saw the man was walking around in his apartment and carrying a pistol. The man seemed confused when the building manager spoke to him. The building manager asked why the man was holding the gun, and the man said "Guns take care of all problems." The building manager said "It can cause problems though." She took the gun and was going to take it back to her office in the building, but the man protested, so she took the gun and put it on the top shelf of the closet in the man's apartment, thinking he would leave it alone if she put it away there. The man seemed to have calmed down, so the building manager said she would take the man to the doctor later that afternoon. An hour later, the man killed himself with the pistol.

Imagine that this was a factual scenario you were asked to analyze for a test or exam. Think about it and make quick list of issues you would discuss.

Situation #3

Larry served a six-year sentence in a state prison. His criminal record included about two dozen arrests, for assault, robbery, and many drug offenses. He had a severe addiction to heroin for ten years before he went to prison. While in prison, Larry had psychotic and hallucinatory episodes, and prison medical officials diagnosed him as suffering from schizophrenia.

As the time for his release from prison was approaching, Larry applied to attend a state university. In his application, he disclosed his past problems, including his criminal record. He was admitted to the university as part of a program for people overcoming severe educational disadvantages. After his release from prison, Larry started to attend classes at the university. He became friends with several other students and moved into a house with them. They were unaware that Larry had a criminal record and had been in prison. Several weeks after moving into the house, Larry had a fight with the students with whom he was sharing the house, and he stabbed three of his housemates. Two died, and one was stabbed six times but survived.

A lawsuit was brought against the university on behalf of the two students who died and the one who was injured. The lawsuit claimed that it was negligent for the university to admit Larry as a student and not warn other students about him.

The university brought a motion to dismiss the case, arguing that the university did not have a duty to protect other students from Larry.

Should the motion be granted?

Situation #4

The video for this assignment included a scene from the movie “A Christmas Story,” where a boy named Flick was injured when he got his tongue stuck on a frozen flag pole. Imagine that you are Flick’s attorney and you are thinking about potential tort claims that could be asserted on his behalf.

Schwartz was the boy who “triple dog dared” your client to put his tongue on the flag pole. Do you believe that Schwartz had a duty to your client? Was this nonfeasance? Do any of the exceptions apply, where liability could be imposed for failing to help someone?

There were many other children who witnessed the incident. Do you believe those children had a duty to help your client?

