

Lewis and Clark College Law School

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GRADE _____

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1)

===== **Start of Answer #1 (2947 words)** =====

Any reference to Cindy Cinema refers to her estate, given her death and Oregon's survival statute. Defendant is referred to as (D) and plaintiff is referred to as (P). The burden of proof is on the (P) and the standard of proof is a preponderance of the evidence, meaning that it is more likely than not.

Cindy Cinema (Cindy) v Alex Bodwin (Bodwin)

Duty-duty: We assume a duty exists unless a no-duty rule applies. In this case, Bodwin's discharge of the gun is likely considered a misfeasance, not a non-feasance, therefore he does owe Cindy a duty. Even if Bodwin argues that not checking the gun is non-feasance, a better analysis is whether the (D) caused the risk of harm (since you can always frame misfeasance as not doing something), which Cindy could argue Bodwin did by not doing a final check.

STD: Bodwin owes Cindy a reasonable standard of care, which is what a reasonable and prudent person would do under the same or similar circumstances.

Breach: To determine breach, we balance the burden of the counterfactual untaken precaution (B) against the probability (P) and severity of harm (L) that could occur as a result of the (D)'s actual underlying conduct ($B < P \times L$). Because it is possible that Bodwin did not pull the trigger and the police inspection of the Colt does not shed light on the issue, we cannot assume that the underlying conduct of Bodwin was to pull the trigger. However, Cindy could argue that Bodwin should have conducted a final check of the firearm for safety, which he did not. The burden of checking would be very low, especially given that Bodwin had worked with firearms on set before and would be expected to be knowledgeable on how to identify dummy rounds. However, he had never used antique firearms and had not handled a firearm at all in years, which might make him less qualified to do a final check. The fact that Bodwin held himself out to have his skills "at the ready" to the Hollywood Reporter may be evidence of breach, although it is unclear whether he made the same representations to his cast and crew. The harm that we foresee as a result of not doing a final check is the possibility that someone on set gets shot by a live round. The L of this is high, given that getting shot could result in severe bodily harm or death. The P is fairly low, given that the armorer is expected to have already checked the firearm for safety and Bodwin was not planning on pulling the trigger. Furthermore, there is no industry custom to dictate that an actor's final check is a low burden. In fact, some armorers prefer that actors

not re-check firearms, though there is no indication here that Amy had such a preference. On balance, because the burden of a final check is so low and the potential severity of harm is so high, Bodwin probably did breach by not doing a final check.

LCH: A legally cognizable harm is actual harm to one's person or property. In some situations other harms are legally cognizable, such as emotional distress. In this case, (P) was shot and killed, which is absolutely an LCH.

CIF: For conduct to be a cause in fact of (P)'s LCH, it must be found that but for (D)'s conduct, the (P) would not have suffered the LCH. Had Bodwin done a final check of the firearm, he would have more likely than not discovered the live round and had the armorer replace it, and Cindy would have never been injured. Therefore, (D)'s breach is a CIF of (P)'s LCH.

SOR: Both the injury and the (P) must be within the scope of risk of (D)'s negligence, meaning that a reasonable person would have foreseen this kind of harm occur to the same class of persons as the (P). In this case, the foreseeable harm was that someone on set would be shot by a live round and be seriously injured or killed, which is exactly what happened.

Cindy can probably recover from Bodwin for negligence.

Cindy v Frank Frist (Frank)

DD: Yes, leaving the gun unattended is misfeasance, not non-feasance.

STD: Reasonable care

B: We could argue that Frank should have checked the gun before handing it to Bodwin, which would have essentially the same analysis as done for Bodwin, given Frank's 15 years of experience, though there are no facts indicating he has experience with guns. However, here, we'll analyze the underlying conduct of leaving the gun unattended for an hour. The untaken precaution is staying with the gun, which has a very low burden. Even if Frank had a need to go other places to do his work, he could bring the gun or make sure that another colleague stayed with it. The foreseeable harm is that someone interferes, e.g., takes the gun for target practice, and compromises Amy's initial safety check, resulting in a live round getting mixed in and someone on set being shot and seriously injured or killed. The L is very high, as analyzed above. The P is slightly higher than for Bodwin, given that we cannot rely as heavily on Amy's initial safety check if the gun has been left unattended for an hour. Therefore, Frank

likely breached.

LCH: Cindy was shot and killed, which is an LCH.

CIF: It is unclear without knowing more information about how the live round got in the gun whether Cindy's injury would have occurred but for Frank leaving the gun unattended. It is just as likely that Amy accidentally loaded a live round, or that Dummy Bullets, Inc. accidentally sold a live round.

Another test for CIF is substantial factor, which says that if there are multiple independent causes, this one was a substantial one. We can't satisfy that here either, given that we have no idea whether this was substantial or a cause at all of Cindy's death.

SOR: Yes, see above.

Cindy could likely recover for Frank's failure to check the gun, as analyzed for Bodwin, but could probably not recover for Frank's leaving the gun unattended, given that we cannot show it is more likely than not to be a CIF of Cindy's injury.

Cindy v Amy Armor (Amy)

B: Because there is no evidence that Amy mistakenly loaded a live round, it would be very difficult to prove such underlying conduct. However, we can analyze the underlying conduct of being off-site during the scene. Amy was off-site doing work that another employee would normally do, so the burden of being on site would be either delaying the tight filming schedule or getting another employee to cover. Delaying the tight filming schedule for a movie on a tight budget would be high burden. It's more likely than not that getting another employee to cover instead would also be a high burden, given that there are clearly not any spare employees. As analyzed previously, the L of the foreseeable harm is very high. The P is rather low, given that Amy did a safety check before handing the gun to Frank and leaving the set. On balance, it seems unlikely that Amy breached.

CIF: Because Amy had already done a safety check and would likely not have done another, unless she knew Frank had left the gun unattended, it is unlikely that her leaving the site was a CIF of Cindy's LCH.

Unlikely to succeed, given that Amy probably did not breach and her conduct was probably not a CIF of the injury.

Cindy v Larry Lines (Larry)

DD: Yes, see above.

STD: Reasonable care.

B: The underlying conduct is the decision to film the movie in the middle of the mountains. The untaken precaution was choosing a more accessible location. It is unclear what the burden of such a precaution would be. Given that the film has a tight budget, a historical setting, and includes the use of firearms, it may be that it was unduly burdensome to find a more accessible location for the film. On the other hand, it is likely that there are other mountain sites not in the middle of the mountains which are remote enough to be safe for firearms and appropriate for the historical setting but still more accessible by ambulance, though such a site might be more expensive. The foreseeable harm is that someone on set would get seriously injured and would not be reached by an ambulance promptly, resulting in serious injury or death. The severity of such a harm is very high. The probability is somewhat low, given that other safety precautions are used and there is a medic on site. However, the probability is raised by the fact that firearms are involved in the film. On balance, it is difficult to determine whether this site selection was a breach of reasonable care duty.

LCH: Cindy died.

CIF: The facts specify that had the paramedics arrived 10 minutes sooner, Cindy's life probably would have been saved. But for the remote location of the film, selected by Lines, the paramedics could have arrived earlier, and Cindy would not have suffered an LCH of death.

SOR: This is exactly the kind of harm and (P) anticipated as a risk of being in a location that is too remote.

It is difficult to determine whether Cindy could recover from Larry, given that it is difficult to determine whether he breached.

Because Larry hired Amy, and she is an employee, he may also be vicariously liable for her negligence if she is held liable. I go into vicarious liability in more detail below.

Cindy v Dan Director (Dan)

B: Underlying conduct is giving the direction to cock the hammer. The burden would be somewhat low, given that it would be easy to do but would affect the director's (and Cindy's) vision for the movie. Though the L is high, given that the gun should be loaded with dummies and the trigger was not supposed to be pulled, the P is very low. Dan probably did not breach.

Even if Dan did breach, Cindy agreed with his direction, and would be barred under traditional contributory negligence.

Cindy v Rust Movie Productions, LLC. (Rust)

Under the doctrine of vicarious liability, a (D) is strictly liable for harm resulting from a third party's tortious conduct if that third party is in an actionable relationship with the (D) and if the conduct occurred within the scope of that relationship. Strict liability means that the (D) is liable even if they acted with reasonable care. An employee-employer relationship is one such relationship, and is a specific type of vicarious liability called respondeat superior. An independent contractor does not count as an employee.

Rust is not liable for acts by the producers themselves or by above the line personnel, as these are all independent contractors. It is, therefore, not liable for Bodwin discharging the gun, Dan's direction to cock the hammer, or Larry's decisions to hire Amy and shoot in a remote location. However, Rust is liable for any act by a majority of the board, because that is an act by Rust itself. It is also liable for the acts of below the line personnel, classified as employees. This includes the first AD (Frank), the gaffer (Gary), and the armorer (Amy). Rust could also be liable for hiring independent contractors if those contractors were knowingly incompetent, but that likely does not apply here. The closest possibility would be Amy's lack of experience, and she qualifies as an employee anyways.

Therefore, Cindy can recover from Rust for any action which holds Frank, Gary, or Amy liable.

Cindy could also sue Rust for hiring Larry, as this was a unanimous decision and therefore was an act of Rust. However, given that Larry was very experienced, there is no indication that Rust was negligent or breached a duty of reasonable care in hiring Larry.

Because Rust rented the church, they are considered the land possessors during the filming. Rust owes

reasonable care to all entrants, and cannot claim no duty for 3rd persons.

Cindy v Mandy Medic (Mandy)

DD: Nonfeasance does not apply because Mandy voluntarily undertook care of Cindy. There is a duty.

STD: Reasonable care.

B: Cindy may argue that Mandy should have been equipped with more than 5 units of blood. Mandy had the film-industry standard amount, but complying with industry custom does not establish due care, though it may be evidence that doing more would be too burdensome and therefore there was no breach. Five units is the standard for typical film productions, but Cindy could argue that since this film involved the use of firearms, it was not typical. Furthermore, the film was located in the middle of the mountains, a relatively remote setting. The B is supplying more blood. This may be quite a high burden, depending on how much more blood was needed and how difficult it is to secure and store universal blood. Given that an ambulance could have saved Cindy with its "many more units of blood and other blood products," it seems likely that the amount needed would be very burdensome for Mandy to have secured. The L is quite high, given that the foreseeable harm would be injury or death by bleeding, but the P would be very low, given that Mandy would expect the utmost precaution to be taken to ensure that no live rounds are discharged and no one is injured. Furthermore, Cindy was injured in a unique way, given that there was nowhere to put a tourniquet to stop the bleeding and a major artery was cut, making the probability of an injury Mandy couldn't mitigate even lower. Therefore, it is unclear whether the burden of the untaken precaution is lower than the probability and severity of harm from the underlying conduct.

LCH: Death from excessive bleeding is a definite LCH.

CIF: Cindy would not have died but for Mandy having an insufficient supply of blood.

SOR: Death of someone on set from excessive bleeding is exactly the kind of harm and (P) we would foresee.

Cindy is unlikely to recover from Mandy because it is more likely than not that she did not breach by having only 5 units of blood.

Garry Gaffer (Gary) v Bodwin

Gary said that he feels assaulted and battered by Bodwin when the gun fired. Assault is an intentional tort which requires that the (D) intend (desire or know with substantial certainty) to cause the (P) apprehension of imminent harmful or offensive contact, and that the (P) actually reasonably and justifiably anticipates imminent harmful or offensive contact. In this case, Bodwin had neither desire nor knowledge with substantial certainty that the gun would fire and cause any apprehension in the (P). Furthermore, (P) likely did not anticipate imminent harmful or offensive contact given that he had not even heard the direction to cock the hammer and only was aware of the gunshot when he felt a whoosh of air and residual gunpowder. Therefore Gary will likely not succeed on a claim of assault.

Battery is an intentional tort which requires that the (D) intend to contact the plaintiff and the contact be harmful (cause physical impairment) or offensive (offend a reasonable person's sense of dignity). In a dual-intent jurisdiction, it would also require that the (D) intend the contact to be harmful or offensive. We have no information on which jurisdiction we are in. Again, this claim fails on multiple points, given that Bodwin did not have intent as analyzed above. Furthermore, it is questionable whether a whoosh of pressurized air and residual gunpowder counts as contact, which is defined as actual contact with a person's body or closely associated object. Even if it were to count as contact, it did not harm Gary and would not offend a reasonable person's sense of dignity. There is no special sensitivity of Gary's that we (or (D)) are aware of. Therefore Gary will likely not succeed on a battery claim.

Gary may also try to sue Bodwin for negligent infliction of emotional distress (NIED). He likely cannot recover as a direct victim, given that he was never placed in the zone of danger and did not fear for his life. He only felt the whoosh of air and residual gunpowder which, while terrifying, did not seem to make him fear for his safety. There are also no exceptions to the zone of danger which apply here, given that this was not a mishandling of a dead body, a special relationship, or a mistaken death notice. He may try to recover for closely related bystander NIED, which requires that the third person suffer sudden and serious bodily harm as the result of (D)'s negligence, that (P) be closely related to the third party, and that (P) be present at the time of injury. In this case, the third party (Cindy) was suddenly and seriously injured and Gary was certainly present. We also found above that Cindy likely has a case against Bodwin (D) for negligence. Gary certainly suffered severe emotional distress, given that he "was overcome with emotion, shock, and trauma", and has difficulty working and concentrating. The issue turns on whether Gary counts as closely related. Though they are close friends who had worked together on many movies, closely related typically refers to a blood family member or partner, which

Gary is not. He is unlikely to recover for NIED for a closely related bystander.

Bodwin v Amy

NIED, would likely not succeed for reasons above

Harry Husband and Karli Kid v Bodwin, Frank, Amy, Larry, Rust

wrongful death

Question #1 Final Word Count = 2947

===== **End of Answer #1**=====