

Legal drafting case brief law general essay

Law



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The courts defined the elements of ostensible agency based on Restatement (Second) of Agency § 267 and declined to adopt §429. The party asserting ostensible agency must demonstrate that (1) the principal, by its conduct, (2) caused him or her to reasonably believe that the putative agent was an employee or agent of the principal, and (3) that he or she justifiably relied on the appearance of agency. Sampson submitted affidavits including hospital forms in order to prove ostensible agency. The courts determined that Sampson did not prove any sufficient summary judgment evidence.

Moreover, the courts felt the summary judgment proof establishes that the Hospital took no act to make patients think the physicians were agents. The courts also looked to evidence regarding signs posted in the Emergency Rooms which notify patients that the emergency room physicians were independent contractors. As such it is a matter of law, " no conduct by the Hospital would lead a reasonable patient to believe that the treating emergency room physicians were hospital employees." Finally, the courts felt " Sampson had failed to raise a fact issue on at least one essential element of her claim." The courts reversed judgment and rendered that Sampson take nothing. Evaluation: If I were a patient that was misdiagnosed twice I would bring malpractice suit to the individual physician. If the hospital placed reasonable effort to make it known that their physicians are independent contractors, not agents.

Legal Drafting

Case Brief #2

Marla

Arevalo

Professor Evans

Robertson Tank Lines, Inc. v. Van Cleave, 468 S. W. 2d 354 (Tex. 1971)

Facts:

Alfred Dean Donaghey was the driver of a Robertson Tank Lines truck. After making his way from Corpus Christi to Odessa. He stayed and slept at his father's home, and returned to Champion Chemical where he was instructed to return the truck to Corpus. Instead of returning to Corpus, he visited his father and the next day he visited various beer joints and drank for about 12 hours. Subsequently, he left the truck and went to a café with his cousin, and Acie Van Cleave hit the rear of the unlighted truck.

Procedural History:

Acie Van Cleave's wife, Johnnie Van Cleave brought action on behalf of herself and as the guardian of their four children against the driver Alfred Donaghey and Robertson Tank Lines. The suit that was brought against driver, Alfred Donaghey individually was settled for \$300, 000. And was affirmed for that amount due to the fact the driver was found that the driver was acting within the scope of his employment for Robertson. At the District Court level entered an n. o. v judgment and the plaintiffs appealed. The Houston Court of Civil Appeals reversed and the defendant brought error.

Issue(s) and Holding(s):

Did the court err in its second opinion in the trial court judgment in which presumption from proof of ownership and scope of employment were rebutted?

Reasoning:

The courts reasoned that in regards to the Robertson driver, Alfred Donaghy was acting " within the scope of his employment for Robertson when he parked the truck (issue 3)." Moreover, the court examines the second opinion given by the court of civil appeals as follows, " the presumption arises from the face of the ownership of the truck and employment of the driver and when unrefuted, the presumption prevails that the driver was acting within the scope of his employment when the accident occurred." The court defines the legal requirements of acting, "(1) within the general authority given him, (2) in furtherance of the master's business, and (3) for the accomplishment of the object for which he is employed."

Donaghy stated he had started the truck to build air pressure with the goal of getting the truck to back to Corpus as instructed. The courts compare the facts of the case with the testimony the driver provided. Consequently, the courts reversed the court of appeals and affirmed the judgment of the trial court.

Evaluation:

I don't believe the Donaghy was acting within the scope of his employment. Furthermore, Donaghy decided to make a detour and make a personal stop after he had been drinking for many hours. I think Robertson Tank Lines

should be responsible because Donaghy is a driver and representative of Robertson Tank Lines.

Legal Drafting

Case Brief #3

Marla

Arevalo

Professor Evans

Texas Gen. Indem. Co. v. Bottom, 365 S. W. 2d 350 (Tex. 1963)

Facts:

Wilbur F. Bottom drove was an employee for Safety Convoy Company. Bottom had also purchased a new Ford tractor unit and had a written contract for the use of the truck. After purchasing the tractor, Bottom used his vehicle when he went home. Bottom was taking a load to Forney that morning and was supposed to return to Dallas. Several miles north of Hillsboro, Bottom was killed when his tractor unit overturned on October 11, 1959.

Procedural History:

Ruth Bottom, wife of Wilbur F. Bottom, brought suit under the Workmen's Compensation Act. At the district court level, entered a judgment for employer's insurance carrier and the plaintiff appealed. The Waco court of civil appeals affirmed and insurance carrier brought error.

Issue(s) and Holding(s):

Were Bottom's injuries sustained in the course of his employment? No, the judgments of the courts below are reversed, and respondent takes nothing.

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Reasoning:

The court examines section 2 of Article 8309, Vernon's Ann. Tex. Civ. Stat. which states, " injury shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employee while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere." The court further defines this definition to require plaintiff must show, " that the injury was of a kind and character that had to do with and originated in the employer's work, trade, business, or profession." Subsequently, the courts felt the accident resulted from, " hazards which he as a member of the traveling public encountered in making the trip to see his wife and to have the truck serviced in accordance with the lease agreement."

Evaluation:

I do not agree with this ruling. I feel that the lower courts had it correctly. Bottom was on his way back to Dallas from having the truck serviced, which is a requirement of his contract. I think that should be sufficient enough to qualify under the Workman's Compensation Act. Furthermore, the trucks be properly maintained, a duty required under his contract, or Bottom's contract would have been cancelled.

Legal Drafting

Case Brief #4

Marla

Arevalo

Professor Evans

Morris v. JTM Materials, Inc., 78 S. W. 3d 28 (Tex. App.—Fort Worth 2002, no pet.)

Facts:

Grant Morris was injured when his vehicle was involved in a collision with a vehicle being driven by Jerry Lee Largent. Largent, employed by JTM Materials, was driving while intoxicated in a truck owned by Hammer Trucking. Largent pleaded guilty to the driving while intoxicated charge.

Procedural History:

Morris brought suit against JTM and DVC citing the following, " negligent hiring, retention, and supervision of Largent, negligent entrustment, negligent failure to restrict Largent's access to the tractor-trailer after ordinary business hours, and negligent failure to prevent Largent from driving the truck after ordinary business hours. Morris also contended that Largent was JTM's statutory, actual, constructive, or borrowed employee and sought to recover from JTM under the Federal Motor Carrier Safety Regulations (FMCSR) and respondeat superior and borrowed servant doctrines. Finally, Morris sought recovery under joint enterprise, civil conspiracy, and vicarious liability theories. Finally, Morris sought recovery under joint enterprise, civil conspiracy, and vicarious liability theories." At the district court level, the court granted summary judgment in favor of JTM

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Carriers. The court of appeals held the following, "(1) if carrier was an interstate motorist carrier, it was vicariously liable for operator's negligence under Federal Motor Carrier Safety Regulations (FMCSR); (2) carrier exercised control over tractor-trailer, for purposes of determining whether carrier was vicariously liable for operator's negligence; (3) motorist did not conclusively establish that carrier was an interstate carrier, for purposes of motorist's summary judgment motion; (4) at the time of the accident operator of tractor-trailer not acting in the course and scope of his employment; (5) genuine issues of material fact precluded summary judgment on motorist's negligent hiring, retention and supervision claims; and (6) genuine issues of material fact precluded summary judgment on whether operator's actions on the night of the accident constituted a new and independent cause."

Issue(s) and Holding(s):

Did the trial court properly grant summary judgment in favor of the carrier?

We hold that an interstate motor carrier is vicariously liable as a matter of law, we reverse the trial court's judgment in part and remand those claims to the trial court. We affirm the remainder of the trial court's judgment.

Reasoning:

The court reviews the point of vicarious liability which includes statutory employee, contractual right to control, and Morris' motion for partial summary judgment. The courts define the definition of statutory employee under the Federal Motor Carrier Safety Regulations (FMCSR). The courts reason, "Largent's status.... is not determined by whether Largent was performing work for JTM when the accident occurred. Instead, Largent was

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JTM's statutory employee if JTM was an interstate motor carrier who had entered into an equipment lease agreement with Hammer Trucking."

Moreover, the courts cite the Interstate Common Carrier (ICC) Act which requires, " interstate motor carriers to assume full direction and control of the vehicles that they leased " as if they were the owners of such vehicles". Similarly, the courts examine the purpose of the amendment to the ICC act stating, "...thereby protecting the public from accidents, preventing public confusion about who was financially responsible if accidents occurred, and providing financially responsible defendants." Secondly, the court looks to contractual right to control in regards to duty to third parties by negligent use of equipment. The courts look to the lease agreement which outlined by Vernon's Ann. Civ. Stat. art 6701 C-1, " the parties hereto agree that the operation of such vehicle shall be under the control and supervision of the Company Lessee (JTM)." The courts apply the facts of this case and reason, " by the terms of the lease agreement, then, JTM not only retained the right, but assumed the duty to fully and completely control operation and supervision of the leased equipment." Subsequently, the courts felt that the court erred in giving summary judgment in JTM's favor, and sustain Morris' first point. Lastly, the courts address Morris's motion for partial summary judgment. Justice Walker outlines the burden on Morris to prove that JTM is an interstate motor carrier, and the lack of evidence that does not, " conclusively establish that JTM was an interstate carrier." Finally the court's hold " that the trial court did not err by denying Morris's motion for summary judgment."

Evaluation:

I think that the Morris should be able to recover completely from JTM Materials. I don't believe that the courts should have affirmed in part, instead reversed in full. While I think JTM took the proper precautions by screening its drivers it should be responsible regardless of the contract with Hammers Trucking.

Legal Drafting**Case Brief #5****Marla****Arevalo****Professor Evans**

Mata v. Andrews Transp., Inc., 900 S. W. 2d 363 (Tex. App.—Houston [14th Dist.] 1995, no writ)

Facts:

Stephen Joe Henry, was commuting from his home in Austin to Andrews Transportation in Houston when he collided into Rodolfo Mata's vehicle. Mata also brought suit against Henry, the lessor/owner and driver of truck as well as Andrews Transportation.

Procedural History:

At the trial court level, they judge entered summary judgment in favor of Andrews transport and Mata appealed. The Court of Appeals, held that (1) because carrier leased and did not own truck, presumption that driver was within the course and scope of employment while traveling to and from work was inapplicable so as to hold carrier liable for driver's alleged negligent acts

under respondent superior theory, and (2) exception to the general rule removing liability from employer for collisions involving employees traveling to and from work except where employee is furthering employer's business and being compensated for the time was inapplicable.

Issue(s) and Holding(s):

Can summary judgment be granted if the driver was in the scope of employment?

Reasoning:

The courts acknowledge that if the driver was within the course and scope of employment while traveling to and from work Andrews Transportation would be liable. In order to examine employer liability the courts apply: *Drooker v. Saeilo Motors*, 756 S. W. 2d 394, 396 (Tex. App.—Houston [1st Dist.] 1988, writ denied). The responsibilities the plaintiff would need to show include (1) within the general authority given him; (2) in furtherance of the employer's business; and (3) for the accomplishment of the object for which the employee was employed. When applying the facts of this case, the courts recognize that Andrews Transportation did not own the vehicle in question so it is not applicable. Furthermore, the courts emphasize that, " employers are generally not liable for accidents involving their employees while they are travelling to and from work." The courts cite both, *Texas General Indem. Co. v. Bottom*, 365 S. W. 2d 350, 354 (Tex. 1963) and *Robertson Tank Lines, Inc. v. Van Cleave*, 468 S. W. 2d 354, 357 (Tex. 1971).

Evaluation:

I don't agree with the court's decision not to award any reparations to Mr. Mata. I think Mata should be able to recover from Andrews Transportation Inc. as a driver, he is considered an agent of that company, and they should be liable.

Legal Drafting**Case Brief #6****Marla****Arevalo****Professor Evans**

Price v. Westmoreland, 727 F. 2d 494 (5th Cir. 1984)

Facts:

Sara Price agreed to ride with David H. Westmoreland to Oklahoma City where she was going to attend truck-driving school and work for Utah Carriers. While riding together January 10, 1980, Westmoreland maneuvered a sharp curve of the on-ramp to change highways to Interstate 40, Westmoreland's load shifted causing the cab and its trailer to overturn. Subsequently, Price sustained multiple fractures including a fractured vertebrae, sternum and pelvis, together with extensive bruises and a ripped left ear.

Procedural History:

At the district court level, the jury found that Westmoreland , "...was negligent in the handling of his truck and trailer at the time of the accident, in operating it at an excessive, dangerous, and unreasonable speed under

the circumstances, in failing to reduce his speed in obedience to the warning sign posted on the on-ramp, and in failing properly to arrange, stack, and secure a cargo on a trailer for highway travel so that it would not shift or change its center upon the stress of turning sharp curves." Additionally, the district court valued Westmoreland's negligence to the amount of \$125, 000. 00 citing the following, " a) pain and suffering, (b) diminished earning capacity, (c) loss of past wages, (d) reasonable and necessary future medical expenses." Judge Robinson denied the plaintiff the ability to recover any damages absolving Utah Carriers by applying Texas common law, because, " he exceed the bounds of his actual authority when he induced Price to ride with him." Price appealed and argued the Interstate Common Carrier (ICC) regulations makes Utah Carriers liable. The court of appeals applied federal law the carrier, which was operating under authority of ICC, which makes Utah Carriers liable.

Issue(s) and Holding(s):

Can the terms of Interstate Common Carrier be applied and allow for appellant to recover damages outlined at the district court level?

Reasoning:

The courts cite 49 U. S. C. § 10927 (a) (2) provides, " To protect the public, the Commission may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection." The courts categorize Sara Price as " public" and , emphasize this by citing White v. Excalibur Insurance Co., 599 F. 2d 50, 55 (5th Cir.). Moreover, the courts distinguish this point by repeating, " the public who are not directly engaged in furthering the economic interest of the carrier ... are <https://assignbuster.com/legal-drafting-case-brief-law-general-essay/>

made its responsibility under § 304." The Supreme Court outline Utah Carriers responsibility under the ICC regulations were made " to safeguard the public."

Evaluation: I think the law was misapplied when Judge Robinson applied Texas common law keeping Ms. Price an opportunity to recover from Utah Carriers. This was especially surprising after they specifically outlined the damages and responsibility of the collision that occurred at the hands of an agent of Utah Carriers regardless of circumstances. I am happy to see the right law being applied in this case.