Module 5 Moot Court Case Madison William Taylor

Question 1. A. **Please explain how these four tenets apply in this situation. Please give your opinion, based on these tenets, of whether the Smith Family will meet the burden of proof to successfully sue SU-ME under the theory of negligence. Please be specific and on point.**

Standard of care- The duty or responsibility of persons to act in a reasonable manner to provide for the safety of others. The responsibility of the sports group is to provide a safe sport environment. The netting behind the backstop was worn so the potential for danger is in existence. Furthermore the usher did not stop the child from running wild throughout the bleachers even after complaints. In fact the usher was laughing at the boy. Although those can be considered negligent acts other factors in the case must be examined. Involving case precedents the responsibility of the plaintiffs is involved. If the hurt boys parents had made him sit down then he certainly would not have gotten a concussion. Also he may not have been hit by a ball. Although the usher did not perform his duty he was in his place and supervision was involved. Also the baseball organization was incompliance with the industry standard of having a net to protect fan from foul balls. One could argue that the usher based on their relationship with the boy should be responsible for providing safety. However the usher breach of duty did not hurt the boy. The usher cannot prevent the baseball from hitting the boy which is what caused him to fall down and get a concussion. Importantly the defendant or baseball organization did not cause the boys harms. The family assumed the risk by going to the baseball game and sitting where they sat in the stands. Also the on the back of the tickets they read an understood the policies, procedures, and WAIVER of liability. Therefore the organization is following national, federal, and state law or regulation. I do not see how the ushers or any other individual action can be viewed as a cause in fact. The ball is what hurt the boy not the other failure to act. Furthermore no cause in action exists because the boy could have been hit by the baseball whether he was running around or sitting down. Moreover there is no proximate cause either. The act or failure to act is not the direct cause of the injury but at best an indirect cause. Furthermore under this principle defendants are not held responsible for all of their actions especially far reaching consequences. No direct causation exists because the intervening cause of the actions is the foul ball hitting the boy. The foul ball hitting the boy could have been foreseen but the plaintiffs assumed the risk by attending the game. Physical injury did occur to the boy as a result of the foul ball being the cause. Importantly by paying full price for the tickets the plaintiffs assumed the inherent risks and gave voluntary consent. The assumption of the risk is not explicitly expressed but is implied by the plaintiffs voluntarily taking part in the assignment. If anything the individual is guilty of comparative negligence. The only thing the usher was negligent about was allowing the kid to run up and down the aisles. I do not believe the lawsuit can be won based on the comparative fault of the principal. The plaintiff's negligence contributed to the situation by allowing their kid to run up and down the aisle or by the boy running up and down the aisle. Therefore they are at fault and paid for the tickets themselves and the baseball group had waiver and proper regulations in place.

Question 1. B. **What possible defenses to Negligence will SU-ME assert, and what do you feel will be the outcomes of these defenses?**

A major source will be comparative fault and contributory negligence. The parents of the boy were negligent since he is a minor they are responsible for his actions. They allowed him to inappropriately conduct himself at the ball park. Their negligence precedes the defendants. Although that is an absolute defense comparative negligence does enter into play. The usher would only be held responsible for certain damages. Also by having information regarding policies and procedures on the back of the ticket and waiver of liability the necessary framework for defense is established. The plaintiffs assumed the risk by paying full price for the tickets, going to the game, and sitting in the stanfs. This assumption is expressed and implied based on their willing and visible actions. In the end the lawsuit will not be won based on the actions of the plaintiffs and the warnings of the defendents.

Question 2: **Please write a memorandum to your head coach expressing your opinion as to this practice. It may be, or not be hazing. You must decide, and then base your decision to either punish or not punish, or what mechanisms, if any, you will put into place. Please be creative and all-encompassing, as this memo will be public information and could damage the reputation of the coach, if not done carefully (and harm SU-ME in the process). (Remember—this is fictional and just for my reading pleasure—and your grade)**

Question 3: **How would you address the situation above, based on the policy, and keeping in mind ideas about discrimination, privacy, and sexual harassment (hint: discuss all of these things).**

I would address the situation the following way. Discrimination involving the school policy document could infer that because of this relationship between coach and trainer or boss and employee adjustments must be made. Therefore a natural course of action would be to reassign the trainer to another sport or position. However if the trainers work was acceptable without a more directed policy in place the grounds for removal could be fought by the trainer who would oppose the move. Furthermore the argument could be made that the trainer is not a direct employee of the coach but simply a contract worker whose services are not affected or judged by the coach. This is where the discrimination policy enters into effect. In no way can the trainer or coach be fired for their relationship. Factoring into this decision would be Title IX numbers with male and female working numbers. Also I realize that the trainer and coach cannot be separated because their gender due to Title VII of the Civil Rights Act. Importantly both sets of workers possess the right to privacy. However they were seen eating dinner in public together and openly disclosed their relationship with the athletic. Therefore some of their privacy rights have been forfeited. Naturally work place interaction will occur because whether or not the trainer is specifically working with volleyball the coach and trainer will have access with each other in the work environment. The potential for sexual harassment is great. The reason for this potential is multilayered. First if the couple while together at work involves themselves sexually and one party does something the other does not want done then a lawsuit could develop. Also if the couple were to break up or date on uncertain terms and still encounter each other sexual harassment

contact could occur and the school or more specifically the athletic department could be held liable. If one of the parties made an advance the other did not like. Furthermore issues exist on road trips with hotel accommodations and room assignments. This could put members of the team into very precarious situations. Furthermore this could set a precedent that the school or administration does not agree with. Therefore action must be taken and the situation must be addressed. First of all the coach and trainer alike will keep their job. Fortunately it is not volleyball season and the summer is on the horizon. Over the summer I along with other university officials would draft a firm document outlining specifically the athletic department or programs stance on not only employee dating but sexual harassment in particular. In the document I would word it so the role of the trainer as an employee cannot date the coach of the same team. Importantly the new policy which would be enacted the following season would cover regulations involving all department dating. I would explain although everyone has the right to privacy when dating in the workplace this right is forfeited because it is a public place. Most importantly I would revisit the sexual harassment policies. I would have an outside speaker come in and provide an educational course on this topic. I would require an online class and course for employees. Furthermore I would ensure that the whole department is operating in a manner of dignity and respect and the sexual harassment will not be tolerated. Based upon the new and old policy I would reassign the trainer to another sport after explaining how this is a conflict of interest for the athletic department.