

## Question 1: Was Coach Smith negligent in allowing Amy to drive on Main Street?

1.) **Duty and Breach:** In 2007, the New Mexico Court of Appeals ruled that, “to impose a duty, a relationship must exist that legally obligates a defendant to protect a plaintiff’s interest, and in the absence of such a relationship, there exists no general duty to protect others from harm. Estate of Eric S. Harr v. Uwelling, 2007. As a driving teacher, Coach Smith was clearly obligated to protect his students to the best of his ability. Coach Smith was supervising Amy, satisfying the requirements of Amy’s learner’s permit. Furthermore, as a teacher who was grading Amy’s progress, Coach Smith had additional power over her, and therefore, had an additional responsibility to ensure that his expectations were not dangerously high. This interpretation fits with the New Mexico Court of Appeals court ruling in Chavez v. Desert Eagle Distributing Co. of N.M. 2007, where the court ruled that the existence of a common-law duty is determined based on the interests of the parties involved and the relationship between them.

In failing to prevent Amy from driving in an area she felt was unsafe and using her grades to encourage this unsafe behavior, Coach Smith breached his duty to accurately gauge and respond to his student’s driving abilities. As a teacher, Coach Smith had a duty to understand and inform his students of the grading system in the course. Coach Smith failed to remind Amy that the grades she earned in the driving course would not affect her overall grade point average at the time of the test. In the pressure of the moment, Amy could have easily forgotten these rules, and made her decision to drive on Main Street based on erroneous information, a factor Coach Smith ought to have considered when he decided to allow Amy to drive on Main Street.

Coach Smith was also negligent in failing to maintain working seatbelts in the car. Maintaining working seatbelts is clearly consistent with ordinary care for a regular citizen, but it is even more important for a driving instructor whose vehicle is much more susceptible to crashes. Coach Smith knew that the seatbelt was broken, and he should have also considered this as he allowed Amy to drive on Main Street. Even if he might have otherwise allowed her drive on, given danger created by the broken seatbelt, he should not have allowed her to drive on Main Street.

2.) **Proximate Cause:** In order for Coach Smith to be negligent, it must be clear that the accident was foreseeable result of his conduct. Certainly, if Coach Smith had not pressured Amy to continue driving, but instead prevented her from continuing with the test, Coach Smith could have avoided the accident. For Coach Smith to be considered negligent, his actions need not be the sole cause of the injuries. Instead, they merely need to aid in bringing about the injury. New Mexico v. General Elec. Co., 2004 Whether he could have foreseen the outcome is less clear. As a driving instructor, it can be assumed that the Coach Smith regularly dealt with nervous students. Still, Amy’s language was quite forceful, and she did tell Coach Smith that she had never driven on Main Street before. Since Coach Smith had asked that the students practice with their parents before the exam, it is clear Amy had not met expectations, and thus, Coach Smith ought to have prevented her from driving on Main Street. The seatbelt was responsible for a

great deal of Amy's injuries. A reasonably informed driving teacher would be aware that not wearing a working seat belt significantly increases the chance of being thrown from the car, resulting in the type of severe injuries Amy suffered. In the event of an accident, Coach Smith could reasonably foresee that she would suffer undue harm. Coach Smith could have foreseen the specific injuries Amy suffered, and, therefore, he is negligent. [2006-NMCA-119]

- 3.) **Damages:** Amy was thrown from the vehicle and suffered a variety of bodily injuries and underwent several months of rehabilitation. She is unlikely to regain her original level of mental acuity. Thus, Amy suffered substantial damages due to Coach Smith's actions.

### **Question 2: Is Amy negligent in deciding to drive on Main Street?**

- 1.) **Duty and Breach:** Amy's relationship to Coach Smith did not clearly obligate her to take care of her teacher. Still, Amy did have a duty to communicate effectively with the teacher and clearly state her position. Amy's language was vague, and there is no evidence that she repeatedly cautioned Coach Smith. Once she was entrusted with a learner's permit, her duty was to operate the car to best of her ability and ensure that she drove only in areas where she felt safe, as any reasonable person would. She failed to do this and ventured into an area that was too difficult.
- 2.) **Proximate cause:** Amy was the person who knew her driving abilities best. If anyone could have foreseen the accident, Amy is the person most likely to have been able to do so. There is no evidence in the fact pattern describing any other possible or intervening cause. Amy's lack of driving ability and her decision to continue on to Main Street were directly responsible for the accident. However, Amy's decision need not be the sole cause of her injury to be considered negligent. New Mexico v. General Elec. Co., 2004 So, we can therefore claim that both Coach Smith and Amy acted negligently.
- 3.) (Damages) The damages discussed above also apply.
- 4.) Even though Amy was negligent, she can still recover damages from Coach Smith. New Mexico is a comparative negligence state, so a plaintiff who was partially responsible for the damages incurred can recover the percentage for which they were not deemed responsible. A jury would determine the exact percentages, but Coach Smith would clearly be found to be more negligent than his student, since his duty extended beyond hers, and, given the unsafe seatbelt, his actions bordered on recklessness. Even if a jury were to find Amy more than 50 percent liable for the accident, she could still recover damages for the portion for which Coach Smith was found liable. Scott v. Rizzo, 1981.

### **Question 3-A: Is the Metro School District liable assuming Coach Smith was negligent?**

- 1.) Government entities and public employees are generally exempt from tort liability. The Tort Claims Act 41-4-4 NMSA 1978 grants immunity from tort liability for public employees and their respective employers so long as they are acting within the scope of their official duties. From a public policy perspective,

this statute applies the doctrine of sovereign immunity, strictly limiting the tort liability of government officials.

- 2.) Coach Smith was not a public employee. The Tort Claims Act 41-4-3 NMSA 1978 states that a public employee is a person who conducts work for or serves a government entity, provided they are not independent contractors. According to the common law definition, an independent contractor performs a service on request and is not employed on full-time, yearlong basis. Furthermore, the Internal Revenue Service distinguishes between the two groups based on the contractor's financial independence and ability to lose or gain profits and its overall level of control over its operations. Coach Smith's business earned a profit that was entirely separate from the school's budget, and the company was responsible for collecting its fees from the students (its customers). Safe Drivers R.U.S. controlled its own operations, and the links between it and the school were only to guide students to the course through the school's home page and to provide credit for the course on student's transcripts. Thus, Coach Smith can be said to be an independent contractor and therefore not a public employee.
- 3.) Coach Smith is not granted personal immunity under this statute. He is not a government employee, Coach Smith is not immune from liability based on 41-4-4 NMSA 1978.

**Question 3-B: Is the LLC liable, assuming Coach Smith was negligent?**

- 1.) A member of an LLC is not personally liable for the company's torts simply because they are employees, managers, or members of the company. The liabilities of an LLC are solely those of the LLC. 53-19-13 NMSA 1978 Coach Smith was the owner of a limited liability company called "Safe Drivers R.U.S." This limited liability company is indeed liable for Smith's acts or omissions.
- 2.) However, a person may be liable for an act or omission if they are acting as a designated manager of the company. 53-19-13 NMSA 1978 Coach Smith was the owner of a limited liability company called "Safe Drivers R.U.S." Despite the fact that Coach Smith may have been the official manager of his company, the duties he was performing in the incidents in question were not performed in his capacity as manager. Driving the car with his students was the day-to-day, non-managerial aspect of his business. Thus, as an individual, his limited liability company protected Coach Smith from liability.