

KERN COUNTY COLLEGE OF LAW

TORTS

MIDTERM EXAMINATION

FALL 2022

PROF. J. VLAHOS

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

QUESTION 1

Harry was shopping at his local FOOD 4 US. He placed bananas, canned soup, and canned chicken in his basket, but placed a pack of razors in his coat pocket. He paid for the bananas, the soup, and the chicken, but not the razors. As he walked out of the store, he was confronted by Dude and Bart, security guards for the store. They demanded that Harry return with them to the store.

Harry, knowing why he had been stopped, pulled the razors out from his jacket and tried to hand them to Dude and Bart. Both refused to take the razors back. Instead, they insisted Harry enter a small "office." The office was about 5x10' in size. It had no windows. Harry began to get anxious due to pre-existing claustrophobia and refused to go into the office. He told Dude and Bart that they can keep the razors, but he wanted to leave.

When Harry tried to leave, Dude and Bart forcibly took Harry to the ground. Harry hit his head on the tile floor and suffered a traumatic brain injury. Harry also landed on the package of razors when he hit the floor. Several razors were broken.

Discuss the legal status of Harry while he was inside the store. Discuss only the Intentional Torts implicated by the fact-pattern. Discuss all possible defenses available.

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QUESTION 2

Greg was driving his very large pick-up truck east on Los Osos Valley Road. He was driving at the posted speed limit of 55 mph. In the bike lane, traveling in the same direction, was Lance, a proficient and experienced cyclist. Greg saw Lance in the bike lane. Greg felt sure he could remain fully in his lane and safely pass Lance. Greg passed Lance without moving from his lane and without slowing down.

As Greg checked his rearview mirror, he saw Lance wobble and crash into the berm of the highway. Greg was confident that he did not hit Lance, and assumed Lance was a poor cyclist. When questioned by police later, the officer noticed that Greg's right-side mirror was slightly damaged. Greg told the officer he did not know how the damage to his mirror occurred.

At the time Lance crashed into the berm, his buddy Floyd was drafting on his wheel. Floyd was so emotionally distraught that he was unable to effectively assist Lance. By the time paramedics arrived, Floyd was seen vomiting on the side of the road. He continues to have nightmares about the incident.

Lance decides to sue Greg for the injuries he sustained. Lance broke his right arm and suffered a concussion. He is unable to work at his manual labor job. He cannot pay for the MRI and hospital stay. He also now has a phobia about road cycling. Floyd continues to have nightmares. Both cyclists come to you for advice on pursuing a negligence cause of action against Greg. Discuss

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QUESTION 3

Paul and his good friend Tim have tickets to see the New York Rangers Stanley Cup playoffs game against the Colorado Avalanche, which takes place at the New York Rangers home stadium. As it is a playoffs game, tickets are completely sold out. Tim is a huge Avalanche fan and is wearing an Avalanche hat and hockey jersey, while Paul, a Rangers fan, is wearing New York Rangers fan gear. The game is close, but in the end, the Rangers prevail and beat the Avalanche 4 to 2. On their way out of the stadium, Daniel, accompanied by his girlfriend, Delilah, walks behind Paul and Tim. Delilah, begins to hackle Tim, yelling at him to take off his Avalanche hat and jersey, cussing, and spewing offensive racial slurs. Uncomfortable with the situation, Paul keeps looking around the stadium for security, but none are around as they exit the stadium and move into the parking lot where Paul has parked his car after paying \$20. Finally, Tim turns toward Daniel and Delilah and tell them to “just shut up already!”

“Hey, you ain’t gonna talk to my girl that way,” Daniel yells, raises his fist, and steps toward Tim. Eager to prevent a fight, Paul steps between Daniel and Tim. But it is too late. Daniel’s fist crashes into Paul’s head and Paul loses consciousness, falls to the ground, and hits his head on the concrete. Daniel and Delilah take off running, while Tim yells for help. It takes the New York Rangers stadium security more than five minutes to arrive in the stadium parking lot—the scene of the incident—after a good Samaritan tracked them down and alerted them to what had just happened. Paul is taken to the hospital where he has to undergo emergency brain surgery and remains in a coma for three days. Luckily, a witness to the incident is able to identify Daniel and Delilah, who are ultimately apprehended.

Paul comes to you to figure out what claims he has against Daniel and the owners of the New York Rangers stadium. Discuss.

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ANSWER OUTLINE

Q1

| Issue | Rule | Analysis | Concl'n | Points Allotted |
|-----------------------------------|--|--|---------|-----------------|
| Status (2 points) | Invitee Licensee Trespasser (2 points) | Harry should be considered a licensee. The store has a Duty of Reasonable Care (2 points) | (1 pt) | /7 |
| Intentional Torts by Harry | | | | |
| Trespass to Chattel (2 points) | Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points) | took razors for a few minutes; damage unintentional (2 points) | (1 pt) | /7 |
| Conversion (2 points) | Willful, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points) | took razors for a few minutes; damage likely irreparable, but not intentional (2 points) | (1 pt) | /7 |

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|---|--|---|--------|----|
| | | | | |
| Intentional Torts by Dude and Bart | | | | |
| | | | | |
| False Imprisonment (2 points) | Intent to confine or restrain with no defense (2 points) | Forced back to store; Forced into "office"; Taken to floor (2 points) | (1 pt) | /7 |
| | | | | |
| Battery (2 points) | Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points) | Confronted; forced back to store; Forced into "office"; Taken to floor (2 points) | (1 pt) | /7 |
| | | | | |
| Assault (2 points) | Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points) | Harry likely apprehensive being taken back to store and toward "office"; apprehensive in advance of battery (2 points) | (1 pt) | /7 |
| | | | | |
| IIED (2 points) | Intentional reckless, extreme and outrageous conduct that causes severe emotional distress, direct or indirect victim (2 points) | Difficult to assess: perhaps Dude and Bart are justified; no discussion re emotional distress as a result, distress caused by claustrophobia (2 points) | (1 pt) | /7 |

| | | | | |
|-----------------------|--|--|--------|-----|
| Damages (2 points) | General Special Punitive (6 points) | Pain and suffering from TBI; scared; Present and future medical expenses likely; lost wages, if working; reprehensible conduct to be punished? (6 points) | (1 pt) | /15 |
| Defenses | Shopkeepers Privilege | Harry had taken razors; reasonable believe in need to stop; detained for reasonable period of time? | | /7 |
| Total points possible | | | | /71 |

Q2

| Issue | Rule | Analysis | Concl'n | Points Allotted |
|--------------------------------|--|--|---------|-----------------|
| Lance's Cause of Action | | | | |
| Negligence (2 points) | Over-arching Negligence elements (2 points) | | | /4 |
| Duty (2 points) | All foreseeable plaintiffs (2 points) | Driving, so all other drivers and cyclists (2 points) | (1 pt) | /7 |

| | | | | |
|------------------------------------|---|--|--------|-----|
| SOC (2 points) | RPP Statute (4 points) | Driving speed limit; fully in the proper lane (2 points) | (1 pt) | /9 |
| Breach (2 points) | <u>Blyth; Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points) | Reasonable person move away from cyclist; Burden of moving away from cyclist against possible risk to cyclist (2 points) | (1 pt) | /7 |
| Res Ipsa Loquitor (2 points) | Prosser: Injury does not occur in the absence of negligence; defendant control of the instrumentality; Plaintiff blameless (2 points) | Experienced cyclist not likely to fall down; D driving truck; P was in the proper bike lane (2 points) | (1 pt) | /7 |
| Actual Causation (2 points) | But For (2 points) | No Actual Cause facts (2 points) | (1 pt) | /7 |
| Proximate Cause (2 points) | Direct Harm or RFH? Intervening Acts? (2 points) | No Proximate Cause facts (2 points) | (1 pt) | /7 |
| Damages (2 points) | General; Special; Punitive? (6 points) | Pain and suffering from injury; emotional | (1 pt) | /11 |

| | | | | |
|--------------------------------------|---|---|--------|-----|
| | | distress; loss of enjoyment; wages; medical expenses (past and future); punitive damages for reprehensible conduct? (2 points) | | |
| Floyd's Cause of Action | | | | |
| NIED - Indirect Victim (2 points) | <u>Amaya/Engler</u> , <u>Dillon v. Legg</u> or <u>Thing v. LaChusa</u> elements (2 points) | Floyd has physical manifestations, present and contemporaneous observer, but is not a close "relative" (2 points) | (1 pt) | /7 |
| Conclusion | | Yes or no negligence by Greg (1 point) | | /1 |
| Total points possible | | | | /67 |

Q3

| Issue | Rule | Analysis | Concl'n | Points Allotted |
|---------------------------------|--|--|---------|-----------------|
| Intentional Torts Daniel | | | | |
| Battery (2 points) | Willful and intentional act causing harmful or | Transferred intent; Punched; Fall to floor | (1 pt) | /7 |

| | | | | |
|---|--|---|--------|-----|
| | offensive touching, direct or indirect (2 points) | (2 points) | | |
| Assault (2 points) | Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points) | Certainly apprehension: words plus balled fist Transferred intent (2 points) | (1 pt) | /7 |
| IIED (2 points) | Intentional reckless, extreme and outrageous conduct that causes severe emotional distress, direct or indirect victim (2 points) | Difficult to assess: perhaps justified; no discussion re emotional distress as a result, distress caused by fight, serious injury (2 points) | (1 pt) | /7 |
| Damages (2 points) | General Special Punitive (6 points) | Pain and suffering from TBI; scared; Present and future medical expenses likely; lost wages, if working; reprehensible conduct to be punished? (6 points) | (1 pt) | /15 |
| Negligence against NY Rangers Stadium owners | | | | |

| | | | | |
|-----------------------------------|---|---|--------|----|
| Negligence (2 points) | Over-arching Negligence elements (2 points) | | | /4 |
| Duty (2 points) | Invitee Licensee Trespasser All foreseeable plaintiffs (2 points) | Paul should be considered an invitee. The defendant has a Duty of Reasonable Care Playoffs game and attendees likely emotionally charged; fights are foreseeable Duty by landowner to protect in common areas; parking lot; security (4 points) | (1 pt) | /9 |
| SOC (2 points) | RPP (2 points) | Provide security at games (2 points) | (1 pt) | /9 |
| Breach (2 points) | <u>Blyth; Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points) | Should have provided security (2 points) | (1 pt) | /7 |
| Actual Causation (2 points) | But For (2 points) | Security could have prevented/broken up fight (2 points) | (1 pt) | /7 |
| Proximate Cause | Direct Harm or RFH? | Even though criminal act by | (1 pt) | /7 |

| | | | | |
|-----------------------|---|--|--------|----|
| (2 points) | Intervening Acts? (2 points) | third person, probably not superseding cause because reasonably foreseeable that fights would happen after playoffs game (2 points) | | |
| Damages (2 points) | General; Special; Punitive? (2 points) | Pain and suffering from injury; emotional distress; loss of enjoyment; wages; medical expenses (past and future); punitive damages for reprehensible conduct? (2 points) | (1 pt) | /6 |

99

Great Job

1)

FOOD 4 US v. HARRY

TRESPASS TO CHATTELS:

Trespass to chattels is defined as the intentional interference with another's use or possession of their property that results in damages.

Here, Harry intentionally took razors from Food 4 us. He intentionally interfered with Food 4 us' possession of their property when he decided not to pay for the razors and leave the store with them.

Therefore, Food 4 US would have a viable cause of action for trespass to chattels.

If found liable Harry would be on the hook for damages related to the loss of use, however brief.

CONVERSION:

Conversion is defined as the the intentional substantial interference with another's use or possession of their tangible property that results in complete destruction of dispossession.

almost

Here, Harry intentionally took razors from Food 4 us. He intentionally interfered with Food 4 us' possession of their property when he decided not to pay for the razors and leave the store with them, and was ready to completely dispossess them of their property. In fact he did for a brief time. The razors were ultimately broken, though that was not due to the conduct of Harry as he attempted to return them to the store.

Food 4 Us would have a less viable action for conversion as the razors were causally destroyed by the intentional tort of another.

HARRY v. FOOD 4 US

FALSE IMPRISONMENT: ✓

False imprisonment is defined as the intentional confinement of another within a bounded area, where the person who is being confined has not given consent and is aware of their confinement. There is no time requirement that must be met in order to have a viable action for false imprisonment.

Here, Dude and Bart, insisted on Harry coming to a small "office" after they confronted him for theft despite Harry trying to return the stolen razors. The office was very small and there was no windows. These facts show that this was indeed a bounded area where there was not any reasonably apparent ways to exit--the only way to exit was guarded by dude and Bart who subsequently would use force. And so when Harry attempted to leave from the door he entered; he was forcibly prevented from exiting by dude and Bart. While Harry may have impliedly consented to initially going to the office; his conduct and attempt to leave show that he no longer consented to remain in the office.

Therefore, Harry may have a viable cause of action for the intentional tort of False imprisonment.

Harry may be able to recover: nominal damages(those that affirm plaintiff's rights), economic compensatory damages(past-present-prospective injury-related medical bills, and wage loss), special damages(non-economic related to pain and suffering), and punitive damages(for purposes of punishing the defendants).

DEFENSE:

SHOPKEEPER'S PRIVILEGE: ✓

Dude and Bart would try to raise the defense of shopkeeper's privilege which allows a shop keeper to: 1) reasonably detain; 2) some one who is reasonably suspect of theft; 3) for a reasonable period of time (10 to 15 minutes).

Here, Dude and Bart, confronted Harry for theft. Harry confessed to them and attempted to return the razors immediately. Dude and Bart refused the razors and placed Harry in a small office. It is not known for how long Harry was confined on the office but when he attempted to leave Dude and Bart used force to keep him confined. The use of force is not associated with the reasonable application for the shopkeeper's privilege to prevail.

Thus, this defense will likely fail.

CONSENT:

If a plaintiff gives the defendant their implied or express consent then a defendant may not be found liable for false imprisonment.

Here, Dude and Bart will argue that Harry gave them his implied consent, shown by his conduct and willingness to go back to the store, to go back to the office. Even if that is the case, Dude and Bart's subsequent conduct effectively exceeded that scope of consent initially given by Harry because the facts show when he attempted to leave that he no longer gave his consent to remain in the office. Also he was previously requesting to leave before that juncture.

Thus, this defense will likely fail.

BATTERY:

Battery is defined as the intentional infliction of harmful or offensive contact against another or their person.

Here, Bart and Dude, intentionally forced Harry to the ground. The specific intent to bring him to the ground was crucial to preventing him from leaving. In determining whether this contact was harmful and/ or offensive we look to the reasonable person standard. A reasonable person in Harry's position would certainly consider being forced to the ground with enough force to break the razor pack on his person to be offensive contact if not harmful. In order to bring about this contact dude and Bart made applied direct contact to Harry.

Therefore, Harry has a viable cause of action for the intentional tort of battery.

Harry may be able to recover: nominal damages(those that affirm plaintiff's rights), economic compensatory damages(past-present-prospective injury-related medical bills, and wage loss), special damages(non-economic related to pain and suffering), and punitive damages(for purposes of punishing the defendants).

RECAPTURE OF CHATTELS:

Recapture of chattels acts as a viable defense to an intentional tort if the defendant acts in fresh pursuit of the property wrongfully taken from them. They must also only attempt to take it from the wrong doer and it is required they make a request for the wrongdoer to return the property before using force.

Here, Dude and Bart will argue that Harry was attempting to flee with the razors and that they exercised reasonable force in stopping him from fleeing in order to recapture the razors. However, this defense will likely fail because Harry had already offered to return the razors and they refused them.

ASSAULT:

Assault is defined as the intentional creation of the apprehension of immediate harmful offensive contact against another or their person.

Here, Harry was brought forcibly to the ground by Dude and Bart. It is unclear whether Harry was aware that Dude and Bart were going to take him to the ground as they may have been standing guard inside the office or standing outside. Dude and Bart had clear intent (discussed in battery analysis) in bringing on the harmful and offensive contact upon Harry. When analyzing assault it is important to assess whether the plaintiff had knowledge of impending contact; thus, if Harry was aware (saw volitional movement) of the imminent harmful and offensive contact (discussed in battery analysis) then that would be sufficient to meet the requisite apprehension needed for assault.

Thus, if Harry had the requisite apprehension of imminent and harmful and offensive contact, then he would have a viable cause of action for the intentional tort of assault.

Dude and Bart would attempt to raise the same recapture of chattels defense as discussed above; which would again, likely fail.

Harry may be able to recover: nominal damages (those that affirm plaintiff's rights), economic compensatory damages (past-present-prospective injury-related medical bills, and wage loss), special damages (non-economic related to pain and suffering), and punitive damages (for purposes of punishing the defendants).

LEGAL STATUS OF HARRY: ✓

Invitee:

An invitee is the class of persons that enter into the land of another to conduct business and thus provide the land owner with a benefit. The landowner owes them the following duties: 1) duty to exercise reasonable care in conducting activities on the land; 2) duty to take reasonable care in inspecting and making safe the premises; 3) and duty to warn of any known dangers.

Here, Harry was a customer at food 4 us who was entering onto the land to purchase groceries. Thus, when he was lawfully purchasing the items he was owed all the duties that would be owed to an invitee

Unknown Trespasser:

An undiscovered trespasser is the class of persons that enter into the land of another without the landowners consent and that the landowner owes no duty to.

When Harry entered into the land of Food 4 US, and attempted to steal the razors-- he effectively became an undiscovered trespassor to whom the landowner owes no duty.



2)

Negligence

To prove negligence, a plaintiff must prove that all the following are true: 1) they are owed a duty of care by the defendant, 2) the defendant breached that duty, 3) the plaintiff was harmed, 4) the breach of the duty was the actual and proximate cause of that harm, and 5) they suffered damages.

1) Duty of Care

General Duty - Reasonably Prudent Person Standard

Every defendant owes to every plaintiff the duty of a reasonably prudent person. That is, every defendant is obligated to behave as a reasonably prudent person would behave under the same or similar circumstances. A defendant's physical limitations are imputed onto the reasonably prudent person, but mental limitations are not.

Further, some special duties are imposed depending on the relationship between the parties. A physician or lawyer has a duty to behave as a competent member of their profession to their patients or clients. Innkeepers and common carriers are required to exercise maximum care, since they are liable for even slight negligence.

Greg's Duty to Lance and Floyd

Here, there is no special relationship between Greg and either Lance or Floyd. The reasonably prudent person standard applies here. Greg owes the general duty to Lance and Floyd to not harm them.

Because Greg owed a general duty of care to Lance and Floyd, element 1 has been satisfied.

2) Breach of Duty

To show that someone has breached their duty of care, the plaintiff must demonstrate that the defendant did something that a reasonably prudent person would not do under same or similar circumstances, or that the defendant failed to do something that a reasonably prudent person would have done under same or similar circumstances.

Greg's Breach of his Duty

Greg was apparently driving carefully, since he was not speeding. He saw Lance in the bike lane and believed he could safely pass him. It is unclear from the facts whether Greg actually struck Lance or Floyd, or if he merely drove close to them. Greg could also have been negligent by driving a pickup truck too large for the road he was on.

The trier of fact is responsible for determining whether Greg breached his duty to Lance and Floyd. The trier of fact will analyze the accident using several standards.

Negligence Per Se

Negligence per se exists when there is a statute prohibiting or compelling certain behavior, and that statute is designed for the protection of a specific group of people. If there were a statute in effect which required a motorist to change lanes when approaching cyclists, and the motorist failed to do so, then negligence per se could be established. If, on the other hand, there were a statute prohibiting vehicles over a certain size and weight, and Greg violated that statute, it would not be negligence per se, because such a statute would be designed for the protection of the road surface and not of bicycle riders.

Here, the only statute mentioned is the 55 mile per hour speed limit. Since Greg did not exceed that speed limit, negligence per se would not apply here.

Res Ipsa Loquitur

Res Ipsa Loquitur is used to establish negligence when the nature of the accident itself demonstrates that someone must have been negligent for the harm to have resulted at all. Here, the fact that both Lance and Floyd were harmed tends to show that Greg was negligent in some way or another. Since Lance was an experienced and proficient cyclist, it is unlikely he would have crashed had Greg not been negligent. Further, because there was damage to Greg's mirror, it tends to show that there was some contact between Greg's mirror and Lance, causing the crash.

Custom and Practice

A plaintiff can produce evidence of the normal custom & practice of reasonable persons under same or similar circumstances to establish a breach of duty.

Lance and Floyd could use evidence of custom and practice to demonstrate that drivers usually move to the side when they are passing bicyclists, and that Greg failed to follow the custom and practice of moving further away. This would also tend to show that Greg was negligent.

Assuming that Lance and Floyd can demonstrate to the satisfaction of the trier of fact that Greg breached his duty by not behaving as a reasonable person under the same or similar circumstances, element 2 of negligence will have been satisfied.

3) Harm

- Not a sep. element just incorporate in damages analysis

The plaintiff must prove that he was harmed by the defendant's negligent act or omission. Here, although it is unclear exactly what Greg's negligent act is, it is clear that both plaintiffs were harmed. Lance crashed his bicycle resulting in injury, and Floyd was emotionally distraught. Both plaintiffs in this case can easily prove they were harmed by Greg's act or omission, so element 3 of negligence is satisfied.

4) Actual & Proximate Cause

To prevail on their claim, both plaintiffs must demonstrate that Greg's act was the actual and proximate cause of their harm.

Actual Cause

To prove that a negligent act is the cause of harm, a plaintiff must prove their harm would not have occurred "but for" the negligent act or omission of the defendant.

Here, Lance must prove by a preponderance of the evidence that he would not have wrecked his bicycle but for the negligent act or omission of Greg. Lance can testify at trial that he would not have fallen but for Greg hitting him with his mirror. Floyd, on the other hand, can argue that he would not have been distraught but for Greg's striking Lance.

Proximate Cause

To prove that a negligent act or omission is the proximate cause of harm, a plaintiff must prove that each item of harm they are claiming flows from the original negligent act in a foreseeable way.

Here, Lance fell from his bicycle, and his fall was caused by the negligent act or omission of Greg. When he fell, Lance suffered a broken arm and a concussion. Further, he cannot work. Each of these items of harm were natural and probable consequences of Greg's negligence. There was nothing unusual or unforeseeable about the injuries to Lance. On the contrary, each of these items of harm are easily foreseeable. If you knock someone off their bicycle with a vehicle, it is extremely likely that the victim will be severely harmed. Lance has therefore proven that Greg's act or omission was the actual and proximate cause of his harm.

Floyd suffered severe emotional distress when Greg nearly hit him. Driving extremely closely to a bicyclist is likely to cause significant emotional distress, so Floyd has also proven that Greg's act was the actual and proximate cause of his harm.

Because both Lance and Floyd have proven that Greg's breach of his duty to them was the actual and proximate cause of their harm, element 4 has been satisfied.

5) Damages

Because Lance and Floyd have been able to prove each of their claims for negligence, they are entitled to damages. Lance will be able to recover economic damages for his broken arm and concussion, lost wages from his inability to work, and for the MRI and hospital stay. He will also be able to claim the noneconomic damages of pain & suffering since he experienced significant pain and continues to suffer a phobia of road cycling. If Floyd suffered economic damages for doctor's visits and paramedic fees, he will be able to recover those. He will also be able to recover noneconomic damages of pain & suffering for the nightmares he continues to have.

Neither Lance nor Floyd will be able to recover punitive damages. Punitive damages are not allowed for negligence cases.

Because all five elements of negligence have been satisfied, Greg is liable to both Lance and Floyd for their claims of negligence.

Reduction of Damages - Plaintiffs' Fault

If at trial Greg were able to demonstrate that one or both of the plaintiffs were also negligent, their damages will be reduced. Exactly how they will be reduced depends on whether the accident occurred in a contributory negligence jurisdiction, or a comparative negligence jurisdiction.

Contributory Negligence

Under the traditional contributory negligence rule, if a plaintiff is also negligent, and that negligence contributed to their harm, their recovery will be totally barred.

Here, to prove contributory negligence, Greg would need to prove by a preponderance of the evidence that Lance was also negligent. Greg could prove this if Lance was riding too close to the lane of traffic, or contributed to the accident in some other way. If Greg is successful, Lance will not be able to recover any damages from Greg.

Likewise, if Greg can prove Floyd was negligent, perhaps because he was drafting behind Lance and therefore riding too close to him, Floyd would also not be allowed to recover any damages from Greg.

Comparative Negligence

If, on the other hand, the accident occurred in a comparative negligence jurisdiction (which it probably did, since the majority of states follow the comparative negligence rule), then Greg would be able to reduce his liability by whatever percent each plaintiff contributed to their own harm. Under pure comparative negligence, the reduction would be the percent of fault by which each plaintiff shared.

For example: If Lance's damages were \$100,000 but Greg's negligence only contributed to 70% of the harm (and the other 30% was the responsibility of Lance), Lance would only be allowed to recover \$70,000.

Some states that follow the comparative bar recovery if the Plaintiff was 51% or more at fault - this means that even though Greg were 49% negligent, he would not pay any damages at all. Most states have abandoned this rule and have adopted the pure form of comparative negligence.

Under the facts of this case, Floyd is more likely to have his damages reduced since he was likely negligent for riding too closely to Lance.

Conclusion

Lance and Floyd are both likely to recover against Greg on actions for negligence, but each is likely to have his damages reduced by comparative negligence.

9/11

3)

Intentional Torts of Daniel

Assault

Assault is an intentional act which creates the reasonable apprehension of imminent harmful or offensive contact. Words alone cannot constitute an assault: the words must be accompanied by some act which creates the apprehension.

Here, Daniel yelled at Tim, raised his fist, and stepped toward him. Daniel did not commit an assault when he yelled, but did so when he raised his fist and stepped toward Tim. Because Tim was facing Daniel when Daniel raised his fist and stepped toward him, Daniel committed an assault on Tim.

Battery

Battery is an intentional act which causes harmful or offensive contact with the person of another.

Transferred Intent

The intent necessary for an intentional tort transfers from one person to another, and from tort to tort. When Daniel formed the necessary intent to commit an assault on Tim, but struck Paul instead, the intent Daniel had to assault Tim became the necessary intent to commit a battery on Paul.

Even though Daniel did not intend to strike Paul (he intended to strike Tim), the intent element was satisfied because it transferred from Tim to Paul. Further, harmful contact did ultimately occur, and the movement of his fist was sufficient to constitute the act necessary for battery.

Because Daniel struck Paul, and had the required intent when he struck him, Daniel committed a battery against Paul.

Intentional Infliction of Emotional Distress

To prove a claim for intentional infliction of emotional distress, the plaintiff must prove that the defendant intentionally committed an act so outrageous and reprehensible that it actually caused severe emotional distress.

Here, Daniel punched Paul in the face, causing him to fall to the ground and hit his head. He then underwent brain surgery and a coma. If Paul suffered severe emotional distress from this event, Daniel will be liable to him for intentional infliction of emotional distress.

Damages - Thin Skull Plaintiff

Daniel will argue that he should not be responsible for Paul's damages because they far exceeded what would normally be expected from a simple punch to the face. But Daniel will be liable anyway. A defendant takes the plaintiff as he finds him. The fact that more harm than anticipated resulted to Paul is irrelevant: Daniel will have to pay for all of Paul's damages, including the brain surgery and hospital bills resulting from the coma.

Punitive Damages

Punitive damages, which are noneconomic damages awarded for the purpose of punishment and discouragement of bad behavior, are available to plaintiffs who were the victims of intentional torts. Daniel's acts were especially malicious, so Paul will be able to recover punitive damages against Daniel.

Liability of the owners of the Stadium

Vicarious Liability

Vicarious liability exists when someone commits an intentional tort or an act of negligence in the normal course and scope of their employment. Neither Daniel nor Delilah were employees of the New York Rangers, so vicarious liability for their intentional torts does not attach here.

Negligence

Paul may successfully pursue a claim for negligence against the owners of the stadium.

To prove negligence, Paul must prove that the owners of the stadium 1) had a duty of care owed to him, 2) breached that duty, 3) that he was harmed, 4) that the breach of their duty was the actual and proximate cause of his harm, and 5) damages.

1) Duty of Care - Invitee

The relationship between the parties is relevant for determining which duty of care is owed to Paul by the owner of the stadium.

An undiscovered trespasser is someone present on the land without the permission of the owner or possessor, and without the owner's knowledge. A landowner owes no duty of care to an undiscovered trespasser. If the landowner knows of, or has reason to believe that a trespasser is

present, the landowner has a duty to warn the trespasser of a highly dangerous artificial condition which exists.

A licensee is someone who is present on real property with the consent of the landowner, and the primary purpose of their presence is for their own benefit. Social guests are the most common form of licensees. The landowner has a duty to warn of or make safe any patent dangerous natural or artificial condition on their property.

An invitee is someone who is present on real property with the consent of the landowner, and the primary purpose of their presence is for the benefit of the landowner. Customers at a business are the most common form of invitees. The landowner has a duty to warn of or make safe any latent or patent natural or artificial condition on their property. The landowner also has the duty to inspect their property for dangerous conditions. If the landowner knows or has reason to know that criminal activity commonly occurs on their property, the landowner's duty also includes keeping invitees safe from that criminal activity.

Here, because Paul was in the stadium's parking lot (and had paid for the privilege of being there), he was present as an invitee, so the owner of the stadium owed him the highest duty of care. Paul will therefore be able to prove at trial that element 1 of negligence has been satisfied.

2) Breach

Paul must also present evidence at trial that the owner of the stadium failed to do something that their duty required of them. Paul did not see any security when he left the building. Further, it took a bystander five minutes to find a security guard and bring them to Paul's aid. Here, the owner of the stadium breached their duty to make safe a dangerous condition which existed on their property. It was reasonably foreseeable that rowdy hockey fans would fight in the parking lot after the game.

The Hand Formula

A court would find the Hand Formula useful for determining whether or not the stadium was negligent in this case. If the cost to prevent the harm is less than the cost of the harm multiplied by the likelihood of that particular type of harm happening, then the Hand formula suggests that negligence exists. Here, the expected harm is a severe injury due to a fight between hockey fans. The cost to prevent that harm is the cost of additional security guards. If the cost of a severe injury multiplied by the likelihood of that injury is more than the cost to hire additional security, then a court employing the hand formula would find that negligence existed and that the owner of the stadium breached their duty.

Because the owners of the stadium could have made their parking lot safe by hiring additional security, and the Hand formula suggests it was reasonably cost-effective to do so, Paul will be able to demonstrate that the owners of the stadium breached their duty to keep him safe, and element 2 is satisfied.

3) Harm

A plaintiff must demonstrate that they were harmed. Here, Paul suffered a brain injury and was in a coma. There is no reasonable argument to be made that Paul was not harmed, so element 3 is satisfied.

4) Actual and Proximate Cause

Paul must present evidence that his harm was actually and proximately caused by the breach of the stadium owner's duty to him. Paul was 'actually' harmed if his harm would not have occurred but for the breach of the stadium owner's duty, and he was 'proximately' harmed if the type of harm he suffered was a reasonably foreseeable result of that breach.

Here, Paul would not have been attacked by Daniel if there were more security in the lot. The but-for test has been satisfied, and Paul's harm was actually caused by the stadium's breach.

Further, the harm Paul suffered was reasonably foreseeable. The entire purpose of security in a parking lot is to prevent crime. Paul was the victim of a crime, which is the type of harm that this duty was specifically intended to prevent. Therefore, Paul will also be able to prove that his harm was proximately caused by the stadium's breach of duty.

5) Damages

Finally, Paul must prove his damages. Paul suffered economic damages because he had to pay for the ride to the hospital, for brain surgery, and all the hospital bills associated with his coma. Paul also suffered noneconomic damages for pain and suffering as a result of the attack.

Paul is not entitled to punitive damages because punitive damages are not available in a negligence action.

yes, they are.

Defense to Negligence - Assumption of Risk

The stadium owner can defend against their own negligence by asserting that Paul assumed the risk of the harm he suffered.

A plaintiff assumes the risk of harm when he is aware there is a significant risk he could be harmed by taking some action, and voluntarily assumes the risk by taking the action anyway. The assumption may be express or implied.

Here, the stadium will argue that Paul impliedly assumed the risk of harm because he knew that there was a risk of being struck by Daniel, and stepped between Daniel and Tim anyway. Based on Paul's assumption of risk, the stadium owner may successfully defend Paul's claim of negligence against them and Paul may not recover any money.

On the other hand, if their assumption of risk defense is unsuccessful, the stadium may attempt to reduce Paul's damages through either Contributory Negligence or Comparative Negligence.

Reduction of Damages - Contributory Negligence

Contributory negligence will bar Paul's recovery, if he lives in a jurisdiction which employs the contributory negligence rule. Under the contributory negligence rule, if a plaintiff contributed to his harm by being negligent at all, then he is completely barred from recovery. The stadium owner will allege that Paul was negligent because he stepped between Daniel and Tim as they were preparing to fight. This would likely be enough to prove that Paul contributed to his own harm (even in a slight way) and completely bar his recovery.

Reduction of Damages - Comparative Negligence

If the stadium owner can prove Paul was negligent in a comparative negligence jurisdiction (which is most states), then Paul's damages will be reduced by the percentage by which Paul contributed to his own harm. If the stadium is able to prove that Paul was 51% negligent and they were only 49% negligent, it is possible that Paul will not be able to recover at all, since some states bar recovery if the Plaintiff is more at fault than the Defendant.

However, in most states, Paul would still recover at least some damages even if he were more than 50% at fault for the harm he suffered.

Conclusion:

Paul will recover damages from Daniel for battery and intentional infliction of emotional distress. Paul will also recover damages from the stadium owner for negligence, assuming that he is not barred from recovery by the contributory negligence doctrine.

END OF EXAM