

MONTEREY COLLEGE OF LAW

TORTS

MID-TERM EXAMINATION

FALL 2017

Professors D. Spini & M. Masuda

Instructions:

There are three (3) questions in this examination. You will be given three (3) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

MCL
Torts Midterm Examination
Fall 2017
Professors D. Spini & M. Masuda

QUESTION 1

Alan was driving his college buddy Bob back to the dorm. While driving his VW Beetle on the freeway, Alan ran out of gas. Alan and Bob knew it would take a long time to walk to the nearest off-ramp, so they decided to jump the freeway wall and walk through the neighborhood and straight to a gas station.

Carl was in his second story bedroom when he saw two young men jump over his back fence and into his back yard. Carl grabbed his BB gun that looked like a .22 rifle. Carl intended to “shoo” the men off his property.

By the time Carl got his BB gun and went down stairs, Alan and Bob had taken two of Carl’s bicycles out of Carl’s garage. Alan and Bob intended to borrow the bikes to go to the gas station. They intended to bring the bikes back.

Carl shouted “Stop thieves or I’ll shoot!” at Alan and Bob. That inspired the boys to jump on the bikes and peddle fast.

Carl shot at Alan and Bob, but missed. Instead, Carl’s shot hit his neighbor Dave. Dave passed out from fright, but landed comfortably in his bed of begonias. He awoke moments later to find a small BB in his upper right thigh.

Discuss the potential causes of action that the parties may have against each other, if any, and possible defenses, if any, that any party may assert.

Question 2

First Meeting

Freddie Garcia moved to a new school to live with his sister, an EMT. His first day at the new school, Coach Reynolds ran up to Freddie, who was 6'2" and weighed 365 pounds -- almost none of which was muscle. Coach pleaded with him to join the football team for their first public practice that evening. When Freddie explained that he and his friends spent their time playing video games and that he'd never touched a football before, Coach told him that there'd be "a little bit of a learning curve," but he was built for football. He'd make friends, which can be hard in a small town, and all the girls would love him in his oversized jersey.

First Practice

That evening, Freddie showed up at practice. The Coach asked, "Did you bring your proof of physical?" Freddie had never had a physical exam before. In fact, he didn't even know what one was, but he wanted all the girls to like him, so he nodded his head. Then, when he and Coach were alone, he told Coach the truth. Coach responded, "We've got to have a proof of physical on file because the Education Code requires it and they'll fine us if you get caught practicing without one, but I'll let you practice today, anyway. It's just conditioning tonight. No gear."

Freddie was out of shape and struggled to breathe and keep up with the team while running laps almost immediately. A junior named Mel lapped Freddie, then ran alongside him. Mel said, "Look at your man-boobs jingle. I'm going to pants you in front of the people watching in the stands right now." Freddie was too out of breath to respond and was bright red and sweating profusely. He stopped. Mel gave him a playful kick in the rear to scoot him along. Freddie dropped to his knees and vomited.

After Practice

Per tradition, some of the team members met up with some parents and some of the players who had graduated from last year's team for shakes and burgers at Jack's diner after practice. Mel invited Freddie. After Freddie ordered his burger, Mel's older brother, Ryan, followed Freddie to the bathroom and put up a chair against the door that would prevent Freddie from leaving the bathroom. Freddie thought he was more than strong enough to push down the door through the chair and exit, but he didn't because he couldn't afford to pay for a broken chair. He tried once to get out, failed, then stayed in the bathroom for 45 minutes. Finally, Ryan went and got him. Ryan said, "Hey man, can't have you eating that food. You gotta get in shape for the team. So, I drank the milkshake and ate your burger while you were in here."

Question 2 continued ...

Final Practice

The following morning, Freddie told Coach that he wouldn't be able to get a physical until the following week due to his sister's work schedule. Coach told him that the statute allows for any licensed physician to perform the physical. "I'll have a team supporter who is a 'doc' at practice this evening," Coach said. When Freddie showed up, the doc cleared him to play in 90 seconds after listening to his chest with a stethoscope and asking him to cough. He filled out a form signing it "Doctor of Chiropractic."

This practice was worse. Freddie felt weaker. He told the coach he was dizzy and the coach said to "suck it up and get stronger." After Mel started flicking Freddie's ears, Freddie became uncharacteristically angry, turned, and punched Mel in the neck. Freddie then fell and stayed down, grasping his chest with a contorted look of pain on his face.

After 15 minutes, Coach called an ambulance. Coach told the dispatch Freddie's full name. Dispatch sent an ambulance staffed by Freddie's sister, who was distraught seeing what appeared to be his lifeless body at the scene. She immediately injected insulin into his heart. As it turns out, Freddie's heart has a right ventricle that was much bigger and stronger than his left ventricle, a condition medical doctors are trained to detect via stethoscope easily in a case as severe as Freddie's. The right ventricle was simply overpowering the left. The injection of insulin actually amplified the strength of the right ventricle and it completely overpowered its weaker counterpart. Freddie went into cardiac arrest and he's currently in a coma. His doctors believe he has suffered a brain injury due to oxygen deprivation from cardiac arrest.

Discuss whether Freddie can recover for any intentional torts or under any theories of negligence against Coach, Mel, Ryan, or Sister for any wrongs that may have occurred. What defenses, if any, can any of these parties assert?

Question 3

Big M Trucking is an agricultural transport company located on the east side of Highway 101 in south Salinas. Trucks from this company pick up and haul produce from ranches located to both the north and south of the trucking yard. The trucking yard itself is located on Berry Road, which forms a “T” intersection with the northbound lanes of 101. Trucks leaving the yard can either go to the right, onto northbound 101, or to the left, onto southbound 101.

Although left turns from Berry Road onto southbound 101 are legally permissible, for safety reasons the company has an internal policy that trucks intending to travel south first turn right and travel approximately three miles north to an overpass in order to access southbound travel. This maneuver typically adds 10 minutes to the travel time of truckers with southbound destinations. It is the custom, however, for truckers leaving the yard early, before 5:00 a.m., to simply make a left turn onto southbound 101 due to the light traffic in the early hours.

One morning a Big M truck driver exits the yard at 4:30 a.m., drives down Berry Road, and starts a left turn onto southbound 101. Before he can complete his left turn he is required to pause to let an oncoming southbound car pass, and approximately one foot of his trailer is left in the fast lane of northbound 101. An oncoming car driven by Jesse H hits the portion of the trailer sticking out into his lane, and sustains serious head injuries. Jesse H had no driver’s license, and was talking on his cell phone when the accident occurred. California has statutes that require a driver’s license, and prohibit talking on a cell phone while driving.

Travelling three cars behind Jesse was Monica W. Monica and Jesse have lived together for 10 years, have 2 children together, but are not married. Monica, who knew Jesse was driving closely in front of her heard, but did not see the collision. She came upon the scene within seconds, saw that Jesse was severely injured, and suffered severe emotional distress.

Emergency personnel arrive, and an ambulance transports Jesse to a local hospital. Monica follows the ambulance to the hospital. Approximately 5 miles from the accident scene, Monica, still distraught, runs into the back of the ambulance. As a result of this second collision, Monica sustains personal injury, and Jesse, who is knocked off his gurney, breaks his arm.

Jesse sues Big M Trucking for his head and arm injuries. Monica also sues Big M Trucking for emotional distress and her own physical injuries. Big M disputes the claims.

Explain the theories of liability supporting the claims of both Jesse and Monica. Discuss the potential defenses of Big M trucking to the claims brought by Jesse and Monica.

Torts-Question 1/AnswerOutline/Fall 2017/R.Allen

ISSUE	FACTS	POINTS
Trespass to Land C v. A&B	They decided to jump the freeway wall and walk through the neighborhood and straight to a gas station.	I 2 R 2 A 2 C 1
Trespass to Chattel C v A&B	Alan and Bob and taken Carl's bicycle out of Carl's garage. Alan and Bob intended to borrow the bike to go to the gas station. They intended to bring the bike back.	I 2 R 2 A 2 C 1
Conversion C v A&B	Same facts as above	I 2 R 2 A 2 C 1
Possible Defense for A&B: Private Necessity	While driving his VW Beetle on the freeway, Alan ran out of gas. Alan and Bob knew it would take a long time to walk to the nearest off-ramp, so they decided to jump the freeway wall; Carl shouted "Stop thieves or I'll shoot!" at Alan and Bob. That inspired the boys to jump on the bike and peddle fast.	I 2 R 2 A 4 C 1
Assault A&B v C	Carl shot at Alan and Bob, but missed	I 2 R 2 A 2 C 1
Battery A&B v C	Carl shot at Alan and Bob, but missed	I 2 R 2 A 2 C 1
Possible Defenses for C: Defense of Real Property		I 2 R 2

Defense of Chattel Self-Defense		A 2 C 1
False Imprisonment A&B v C	Carl shouted "Stop thieves or I'll shoot!" at Alan and Bob. That inspired the boys to peddle faster.	I 2 R 2 A 2 C 1
Possible Defenses for C Reasonable detention to investigate/citizen's arrest		I 2 R 2 A 2 C 1
Transferred Intent D v. C	Carl shot at Alan and Bob, but missed. Instead, Carl's shot hit his neighbor Dave.	I 2 R 2 A 2 C 1
Assault D v C		I 2 R 2 A 2 C 1
Battery D v C		I 2 R 2 A 2 C 1
Intentional Infliction of Emotional Distress (IIED) D v C	Dave passed out from fright, but landed comfortably in his bed of begonias. He awoke moments later to find a small BB in his upper right thigh.	I 2 R 2 A 2 C 1
Total Points		93
* Leaving room for interesting and unexpected responses or you can adjust point allotment as desired		

Issue	Facts	Points
Possible Deceit / Misrepresentation F v. Coach	Coach told him "there'd be a little bit of a learning curve" and that he was built for football.	I 2 R 1 A 1 C 1
First Practice		
Negligence (Per Se) F v. Coach, School	He's a dangerously obese person doing the same conditioning as fit young athletes. Reasonable Coach would have trained differently. Coach allowed him to play without a physical examination even though "the education code requires us to have one on file" and an agency fines.	I 2 R 2 A 2 C 1
Possible Defense to Negligence: Assumption of Risk F. v. Coach	Coach told F. it would be conditioning tonight.	I 2 R 1 A 1 C 1
Conditional Assault F. v. M.	"If you don't run faster... I'll pants you in front of those people in the stands"	I 2 R 2 A 2 C 1
Possible Defense to Assault: Consent	Football Practice	I 2 R 1 A 1 C 1
Battery	"Playful kick in the rear to scoot him along"	I 2 R 2 A 2 C 1
Possible Defense to Battery: Consent	Football Practice	I 2 R 1 A 1 C 1
After Practice		
False Imprisonment	Ryan put up a chair confining Freddie to the Bathroom. But, "Freddie thought he was more than strong enough to push down the door"	I 2 R 2 A 2

	<i>ough the chair and exit, but he didn't because he couldn't afford to pay for a broken chair."</i>	<i>C 1</i>
<i>Trespass to Chattels -- possessory right?</i>	<i>"Hey man, can't have you eating that food. You gotta get in shape for the team. So, I drank the milkshake and ate your burger while you were in here."</i>	<i>I 2 R 2 A 2 C 1</i>
<i>Conversion</i>	<i>Same facts as above.</i>	<i>I 2 R 1 A 1 C 1</i>
<i>Final Practice</i>		
<i>Negligence Theory F. v. Coach</i>	<i>Poor Supervision</i>	<i>I 2 R 2 A 2 C 1</i>
<i>Negligence (per se) Theory</i>	<i>No physical exam / "Doctor of Chiropractic" / "As it turns out, Freddie's heart has a right ventricle that was much bigger and stronger than his left ventricle, a condition medical doctors are trained to detect via stethoscope easily in a case as severe as Freddie's."</i>	<i>I 2 R 2 A 2 C 1</i>
<i>Battery F. v. M.</i>	<i>"After Mel started flicking Freddie's ears..."</i>	<i>I 2 R 2 A 2 C 1</i>
<i>Battery - Potential Implied Consent F. v. M.</i>	<i>Football Practice. Custom?</i>	<i>I 2 R 1 A 1 C 1</i>
<i>Battery F v. P</i>	<i>A parent watching from the bleachers responded by running over and tackling Freddie.</i>	<i>I 2 R 2 A 2 C 1</i>
<i>Battery - Defense of Others</i>	<i>Freddie not privileged to use excessive force. "Freddie became uncharacteristically angry, turned, and punched Mel in the neck."</i>	<i>I 2 R 1 A 1 C 1</i>
<i>Battery / Negligence F. v. S.</i>	<i>"She immediately injected insulin into his heart."</i>	<i>I 2 R 2 A 2 C 1</i>
<i>Battery - Consent Implied-By-Law</i>	<i>"seeing what appeared to be his lifeless body at the scene"</i>	<i>I 2 R 1</i>

<i>F. v. S.</i>		<i>A 1</i> <i>C 1</i>
<i>TOTAL</i>		<i>105?</i>

ANSWER TEMPLATE

Torts Midterm

Question 3 – D. Spini

General discussion of negligence elements (duty, breach, causation, damage): 40 pts max

Basic breach of duty by leaving trailer sticking out into northbound lane (10 pts)

Increased duty based on company internal policy (10 pts)

Compliance with statute allowing left turns does not equal absence of negligence (5 pts)

Custom of truck drivers leaving early does not equate to no negligence (5 pts)

Analysis of increased burden of driving extra 10 minutes to avoid left turn (10 pts)

Comparative negligence of Jesse: 20 pts max

Lack of driver's license and negligence per se – administrative statute (10 pts)

Talking on cell phone – purpose of statute and harm meant to avoid (10 pts)

Damage claims of Monica: 20 pts max

Emotional distress under Dillon v. Legg (10 pts)

- "close relation" to injury victim as common law but not legal spouse
- Awareness of injury producing event at time of occurrence

Physical injury claims (10 pts)

- "But for" analysis and foreseeability discussion

Damage claims of Jessie: 20 pts max

Initial head injury claims (10 pts)

Secondary broken arm claims under foreseeability analysis (10 pts)

1)

Question 1

Intentional tort is a volitional act with intent to cause harm to another that results in damages. The intentional torts are battery, assault, false imprisonment, intentional infliction of emotional distress, trespass to land, trespass to chattels, and conversion.

Bob v. Carl v. Alan

Trespass to Land:

Is a physical invasion of another person's land with intent to physically invade. It does not have to result in harm.

Here, Alan and Bob ran out of gas on the freeway and decided to take a short cut to get to the gas station. They demonstrated intent by jumping over Bob's fence and physically invade into Bob's backyard and into his garage in order to take the bicycles.

Conclusion: they will be found guilty of trespassing onto Bob's property.

Defense: A defense to trespass is a public or private necessity. The former benefits a large number of people and the latter benefits a small number of people. Here, Carl and Alan could assert that they had a private necessity to take a short cut through Bob's property because they were stranded on a freeway with no gas. This defense is not likely to be successful as they could have walked there, it would have taken longer, but there is no demonstration of Carl or Alan being in danger and needing to trespass onto Bob's land for their safety.

Trespass to Chattels:

Trespass to chattels in the taking of another person's property, with the intent to depriving of them of the use their personal property. If they damaged them and they were repairable, it would be intermeddling and if did not return them or damaged them completely that would be conversion and they would have to pay to replace the bicycles. Here, Carl and Bob took two bicycles belonging to Bob and with an intent to borrow them and to bring them back later. The taking of the property with the intent to deprive Bob of his use makes them guilty of trespass to chattels, if they did slight damage or did not return the bikes or did substantial damage then they would be guilty of intermeddling or conversion.

Defense: Carl and Alan could assert that they intended to return the bikes and since they were not in use by Bob at that time, they could assert that they did not deprive him of his use. They may also try to assert the private necessity defense, that they bikes were necessary because it was an unsafe neighborhood, it was about to get dark -- but Bob seeing them from his second story window and no inclement or life threatening weather is mentioned, this defense will likely fail.

Carl v. Alan Bob

Assault is to create a reasonable fear or apprehension in another person that immediate harmful or offensive contact may occur that could cause serious bodily injury or death. Here, Bob saw the two men jump his fence and grabbed his BB gun, as Carl and Alan got the bikes out of the garage, he shouted, "stop, thieves or I'll shoot!" That inspired the boys to jump on the bike and peddle fast. It is not evident that the boys were frightened, but they may have a reasonable belief that the gun was real and it may have instilled fear in them causing them to jump on the bikes and race away.

Defense of Property

A person may use reasonable force to defend against trespassers. The boys did trespass and a BB gun is not deadly force to use against trespassers onto your land. However, the boys were leaving with the bikes, not further attempting to enter into Bob's house, therefore his defense against trespass ended when the boys were apparently leaving the property. He is not likely to prevail on this defense.

Recapture of Chattels

A person may use reasonable force to reclaim their property that is rightly theirs after a timely demand to return the property to them. .

It could be argued that a BB gun was reasonable force to use in Bob's effort to reclaim his chattels and that Bob made a timely demand for their return. The boys did not return the bikes instead they sped away and the use of a BB gun may be considered reasonable in his defense of property. Bob states that he only intended to shoo them away, therefore he did not intend to shoot them, and therefore he was not actually going to commit immediate bodily injury or harm to either boy.

Bob is likely to prevail on Defense to Chattels through his use of assault with a BB gun.

Dave v. Bob

Battery

Is the intention to cause harmful or offensive contact with another person.

Bob aimed his BB gun at the fleeing boys, however he hit Dave instead. While his intent was to hit the boys, the intent was transferred when it struck Dave. Transferred intent can be the intended tort against the intended individual, a different tort against the same individual, or a same tort against a different person. Here Bob missed the boys and shot Dave. He intended to cause harmful or offensive contact and did in fact do so.

Bob is guilty of battery against Dave.

Assault

Assault is to create a reasonable fear or apprehension in another person that immediate harmful or offensive contact may occur that could cause serious bodily injury or death. Dave could assert that being shot by Dave caused his such fear that he passed out and fell into his begonia's. Dave's fear meets the element for assault and Bob would be found guilty of assault, despite Bob not being hurt by the fright. He only had to feel fear in order for assault to be a committed.

Negligence

Is demonstrated when a person has a duty of care to other individuals, breaches that duty by lowering that standard duty of care, thereby breaching it, the breach causes harm and results in damages.

Here Bob had a duty of care to anyone in the proximate zone of danger (Cordozo, majority view) or to a duty to everyone (Andrews, minority view). His standard duty of care was to not act in a dangerous or reckless way that could foreseeably cause harm to anyone in the proximate zone of danger. Bob violated that duty by aiming his BB gun at the boys, missing and hitting Dave instead. This breach of his duty caused Dave's injury. Causation is the actual and proximate cause of the harm. Actual is also known as "but for" cause, but for Bob shooting his BB gun, would Dave be injured? The proximate cause could be the direct cause, a dependent intervening force, an intended consequence, an independent intervening force, and free, informed, deliberate human intervention. In this case, Bob's shooting his gun is the direct cause of Dave's injury. Bob will be liable for any injuries caused to Dave.

Were there any proximate causes for Dave's harm? The proximate cause is defined as was the result foreseeable? Carl and Alan stealing the bicycles and Bob defending against the trespass to his land and his chattels. Therefore, Carl and Alan are a proximate cause of

Dave's injury as it is foreseeable that someone may get hurt as the two boys are speeding recklessly away on bicycles and an owner may chase them down or try to reclaim his property with reasonable force.

Defenses for Bob in Battery, Assault, and Negligence against Dave could be assumption of risk, contributory or comparative negligence. Here Dave had no assumption of risk as he was just standing outside his house or in his yard and so assumption of risk is not applicable. Contributory negligence is if Dave had any contribution to the risk, he can not claim any damages. Here Dave is an innocent party. Was Dave comparatively negligent -- pure or partial? No he did not contribute to the harm what was caused to him.

Bob could assert defense to property could be asserted in his use of reasonable force, but this defense is not applicable to his actions of battery or negligence against Dave as he was not directly involved in trespassing to land or chattels. Bob could assert a joint and several liability defense and claim that proximate cause of the Dave's injury is the result of the boys' actions and all three parties would be responsible for paying Dave and Bob only has to sue the one with the most money and the other defendant's have to sue each other to work out how to settle it equitably among them.

END OF EXAM

2)

Question 2

Freddie v Coach

Negligence per se:

Negligence:

In order to recover for negligence plaintiff must show duty, breach, causation and damages.

Duty: A person owes a duty of reasonable care to all foreseeable plaintiffs. The standard of care is that of a reasonable, ordinary, prudent person. The RPT has same physical characteristics as defendant, average mental ability, and same knowledge as other members of the community.

Here, the facts indicate that the coach had a duty towards Freddie because he was in charge of all the football players. In other words, because Freddie was part of his football team, Coach had a duty towards Freddie. Further, The Coach had a duty to Freddie because he created the peril by telling him to "suck it up and get stronger," after Freddie told the coach he was feeling dizzy.

Breach:

A defendant breaches his duty when he fails to act like a reasonably, prudent person.

Negligence per se is a presumption of evidence that demonstrate that defendant breached his duty. More specifically, under negligence per se a person breaches his/her duty when he violates a statute, ordinance or regulation. Plaintiff must be within the class of people the statute intends to protect, and plaintiff's harm must be the type of harm that the statute intends to avoid.

Here, the facts indicate that the the Coach told Freddie, " We've got to have a proof of physical on file because the Education Code requires it and they'll fine us if you get caught practicing without one, but I'll let you practice today, anyway. It's just conditioning tonight. No gear." The Code was intended to protect students like Freddie, because they wanted to make sure that the students who engaged in sports were physically capable. The code also intended to protect health conditions from becoming aggravated as a result of the sport. If Freddie would have submitted to the physical his health issues would have been discovered prior to him having a cardiac arrest. The Coach violated the code by allowing Freddie to practice without the physical and breached his duty.

Another important point is that that when Freddie collapsed he called the ambulance after 15 minutes had already passed. The coach had a duty to mitigate since he created the peril by enlisting Freddie with promises, and telling him to perform after Freddie exhibited abnormal signs. The coach needed to call the ambulance way faster then he did.

Causation:

Defendants act must be the actual and proximate cause of the harm or injury. Actual cause is the "but for", why proximate cause focusses on foreseeability.

But for the Coach letting Freddie practice and play without a physical, Freddie's health condition wouldn't have gotten worse. It was foreseeable that a person with a heart condition wouldn't be able to keep up with the demands of football practice and fully

perform in the actual games. Eventually, a person with a heart condition would have gotten really sick. Therefore, Freddie's cardiac arrest was totally foreseeable given his health condition.

Damages:

Damages is basically harm or injury.

did he?

Freddie collapsed and actually died before the ambulance arrived (facts indicate he was unresponsive). Thus, Freddie was seriously harmed because of the Coaches' negligence.

Defenses of the Coach:

Assumption of risk:

Plaintiff assumes the risk by knowingly engaging in the activity.

The Coach will argue that Freddie assumed the risk when he decided to join the team. Basically the coach would say that Freddie knew about the demands and took the risk. However, this defense is weak because nothing in the facts indicate that Freddie was aware of his condition.

Freddie v Mel

Assault:

Assault is an intentional act that causes apprehension of imminent harmful or offensive contact without consent or privilege.

Here, the facts indicate that Mel told Freddie he was going to pants him in front of the people watching in the stands at the moment. Freddie at that moment knew that Mel intended to embarrass him in front of the people. However, it is unlikely that Freddie would recover for assault because assault requires more than mere words, and Mel was simply running beside him at the time.

Battery:

Battery is harmful or offensive contact with someone's person without their consent or privilege.

Here, the facts indicate that Mel gave Freddie a playful kick in the rear to scoot him along. A kick in the rear can be considered offensive especially if it's done in front of a crowd. Further it's evident that Freddie never consented as he was too out of breath to say anything. Moreover, Freddie dropped to his knees and vomited further showing he wasn't feeling good and could have never consented because he was sick.

Mel's Defenses:

Consent:

Consent can either be express or implied. Mel would likely argue apparent consent, in which plaintiff's consent is implied by his conduct.

Mel would argue that Freddie consented to being kicked in the rear as he never told him to stop or anything as a matter of fact. However this defense is weak for Freddie was too weak to consent.

Freddie v Ryan

False imprisonment:

False imprisonment is when a person restrains or confines another to a bounded area without no means of escape. Plaintiff must be aware there are no means of escape.

Here, the facts indicate that Ryan followed Freddie to the bathroom and put up a chair against the door that would prevent Freddie from leaving the bathroom. Although Freddie believed he could push down the door and exit he decided not to do that because he couldn't afford a broken chair. However, the facts also indicate that later on, Freddie actually changed his mind and tried to get out but failed and so he was forced to stay in the bathroom for 45 minutes until Ryan came and got him. So, Ryan confined Freddie to the bathroom using a chair and Freddie initially believed he could get out but later discovered he couldn't, he couldn't escape unless someone liberated him.

Thus, Ryan would be liable for false imprisonment.

Conversion:

A substantial interference with someone's right of possession of property. Conversion is more serious than trespass to chattel because property is either damaged or destroyed.

ID:

Exam Name: TortsMCL-F17

Here, the facts indicated that after Ryan got Freddie he notified him that he had drank his milkshake and eaten his burger. So, basically he took Freddie's property and completely used it for his own benefit.

As a result, Ryan would have to give Freddie the cost of the milkshake and burger or buy Freddie a milkshake and burger of the same value.

Freddie v Sister

Medical Negligence

END OF EXAM

3)

Question 3

Jessie v. Big M Trucking

Negligence

Is demonstrated when a person has a duty of care to other individuals, breaches that duty by lowering that standard duty of care, thereby breaching the standard, the breach causes harm and results in damages.

Here the Big M Truck Driver had a duty as an automobile driver to drive with ordinary care. Big M trucking may even have a higher standard of care as he is driving a tractor trailer and they require extra training in order to be licensed to drive them.

Big M Trucker has a duty of care to anyone in the proximate zone of danger (Cordozo, majority view) or to a duty to everyone (Andrews, minority view). His standard duty of care was to not act in a dangerous or reckless way that could foreseeably cause harm to anyone in the proximate zone of danger. Big M Trucking violated that duty by driving his truck in a reckless way. It is 4:30 in the morning and it is possible that a driver traveling on the freeway at a high rate of speed would not have time to avoid a collision. This breach of his ordinary care of duty as an automobile driver caused Jessie's injury. Jessie will assert that the Big M trucker violated company policy in making the left hand turn onto 101S and drove recklessly thereby breaching his standard of care.

However, the truck driver is likely to assert that while it is his company's policy to make a right onto 101N and then make a U turn to safely access US 101S, it has been customary and usual for all drivers to make a direct left turn onto 101S if they leave the yard before

5:00 AM. The trucker left at 4:30 AM and there are no statutory restrictions -- such as signs that say "no left turn on 101S and he was permitting another car to pass by before he made the complete turn. He could assert a defense that he did not lower his standard of care and that there was room to pass on the highway as his bumper was only one foot over the line.

Jessie's duty of care: Jessie also has a duty of care as an automobile driver and he failed to meet those standards by talking on his cell phone while drive, which likely caused him to be distracted and he breached his duty of care by not paying attention and was unable to avoid crashing into the trailer. Jesse also has a statutory duty to drive with a license and not talk on his cell phone while driving. This statutory duty applies to Jessie as he falls into the class of people that this statute is meant to apply to and he is doing the activity that this statute is meant to protect against - i.e. drive with a license in order to demonstrate that you know how to drive, understand the rules, and be a safe driver and to not drive with a cell phone, which can cause distracted driving and lead to accidents. Jessie violated both the duty of an ordinary driver and a statutory duty of care.

Causation is the actual and proximate cause of the harm. Actual is also known as "but for" cause, but for Big M Trucker would Jessie be injured? The proximate cause could be the direct cause, a dependent intervening force, an intended consequence, an independent intervening force, and free, informed, deliberate human intervention. In this case, Big M's truck is the direct cause of Jessie's head injury. Big M will be liable for the head injury caused to Jessie.

Were there any proximate causes for Jessie's harm? The proximate cause is defined as was the result foreseeable? Yes, a truck's trailer protruding onto a free can foreseeable result of a car accident. Therefore, Big M Trucker is the proximate cause of Jessie's injury as it is

foreseeable that someone may get hurt on a freeway at 4:30 in the morning when visibility is lower and the truck protruding onto the other lane.

Jessie is not the actual cause of the crash as it was the truck protruding onto the highway that led him to crash into it, however, due to his distracted driving and the darkness at 4:30 AM, he was a contributing force in this accident, his actions are a dependent intervening force and he is therefore also a proximate cause of his head injuries.

Jessie's arm was broken when his partner crashed into the back of the ambulance. The actual cause is the "but for cause" of his injury, but for being hit by the truck, he would not be riding in an ambulance that gets into an accident. Big M trucking is the actual cause of his broken arm. Was it foreseeable? No, it was not foreseeable that the ambulance would be crashed into by his partner due to her distraught nature. Monica's actions are an independent intervening cause, it is what occurred after the harm was caused to Jessie in the car accident and it was not foreseeable. But due to the actual cause, Big M Truck will be liable for Jessie's broken arm.

Defenses for Big M Trucker would be assumption of risk, contributory or comparative negligence.

Here Jessie could be held liable for assumption of risk as driving while talking on a cell phone has proven to be distraction which is the purpose of the statute - to prevent distracted driving and prevent accident.

Contributory negligence can be used as a defense as Jessie violated his statutory duty of care, by not driving with a license and talking on the phone. If this is a comparative state, either partial or pure (partial is if the party is 51% negligent then they cannot recover anything, and pure is if they are even 90% responsible they can still collect 10% of the damages), Jessie did contribute to the accident by violating his statute, not paying attention

and crashing into the truck. It is likely that he will recover a substantially under pure comparative negligence as the trucker has more culpability than Jessie.

Monica v Big M Trucking

Negligent infliction of emotional distress

Requires that the defendant engage in negligent behavior that is extreme and causes severe emotional distress to another person who either sees or perceives the harm that the negligence caused.

Here, Monica was several cars behind Jesse and came upon the collision within seconds, she witnessed Jesse as severely injured and she suffers emotional distress. A by-stander must be in the proximate zone of danger, be a in a special relationship with the person who is injured and they must suffer severe emotional distress. Monica and Jesse have been together for 10 years, they have two children together and she knew that Jessie was in front of her. Monica's meets the elements for Negligent infliction of emotional distress through the negligence caused by Big M Trucking (see above for negligence by Big M Trucking).

Negligence

(see Supra)

As Big M Trucking is the actual cause of Monica's emotional distress, they are also the actual and proximate cause of her personal injuries sustained when she crashed into the ambulance and was injured.

Causation is the actual and proximate cause of the harm. Actual is also known as "but for" cause, but for Big M Trucker hitting Jessie's car would Monica be suffering from emotional distress and is unable to drive her car, thereby causing her injury?

The proximate cause could be the direct cause, a dependent intervening force, an intended consequence, an independent intervening force, and free, informed, deliberate human intervention. In this case, Big M's truck is the direct cause of direct cause of Monica's injury. Big M will be liable for Monica's injuries.

Were there any proximate causes for Jessie's harm? The proximate cause is defined as was the result foreseeable? Yes, a truck's trailer protruding onto a free can foreseeable result of a car accident. Therefore, Big M Trucker is the proximate cause of Monica's as it is foreseeable that someone who is very distraught would not be able to appropriately drive their car and may get into an accident.

Big M Trucking can argue that Monica failed in her duty of care as an automobile driver and because she was distraught and distracted by her emotions, she failed in her duty of care. Monica's failure of her duty is a breach and did contribute to the cause of her injuries.

Conclusion: Big M Trucking is guilty of negligence and is liable for the injuries and emotional distress Monica sustained.

Defenses

Big M trucking could assumption of risk as both Jessie and Monica assumed a risk when they drove as distracted drivers, they could assert comparative negligence and Jessie would not fully recover due to his contribution to the accident due to breaching his duty of care.

END OF EXAM
