

SAN LUIS OBISPO COLLEGE OF LAW

TORTS MIDTERM EXAMINATION

FALL 2021

PROF. R. ALLEN

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

TORTS QUESTION 1

David was driving a semi-truck with a trailer on northbound Highway 101 when the vehicle blew out a right front tire. David lost control of the semi-truck, crashed into a guardrail, causing the tractor to come off the trailer bed. The tractor rolled down the embankment and landed on top of a vehicle driven by Pyong. Pyong was fatally injured.

Pyong's long-time friend, Song, was a passenger. Song suffered slight physical injuries, but was inconsolable at the scene. She had watched her friend of 49 years get crushed before his eyes.

Pyong had no children and was estranged from her family. All her living relatives reside in South Korea.

A Highway Patrol investigator later determined that the blown tire was "bald" in violation of the applicable Vehicle Code. The statute is designed for traffic safety.

Song comes to you for advice. She wants to know if she has a case for her losses. Explain to Song the possible causes of action and the likely outcome for her of a lawsuit against David and his employer, Harry's Hauling Company.

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Fall 2021
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TORTS QUESTION 2

On or about February 13, 2021, at 9:00 in the morning, Javadi was inside of her residence. She lives in the guest house on property owned by her daughter and son-in-law. She was about to turn on the television when she heard a knock on the door. She opened the door. At the door was a very big man, later determined to be Nomar, who pushed her back and entered the residence.

Once he entered the residence, Nomar asked where the bedroom was. Javadi walked ahead of him and showed him the location of the bedroom. Nomar forced her to sit on the bed. Javadi asked the man if he were a robber, and he replied yes, that he wanted money. Javadi said that her money was in her purse, and told him he could open it. She thought if he took the money, he would leave. Nomar took \$250 from her purse and then placed it into his wallet.

After getting a glass of water, Nomar went into a second bedroom. In the second bedroom, Javadi kept money in a purse in a basket under some clothes. According to Javadi, the man took that money, which she estimated was \$4500. Nomar then used an exercise band to tie Javadi's hands together and the cord from an iron to tie her legs together. He then pushed her onto the bed. From that position, she could hear the man drive away in her grandson's truck.

Nomar drove the truck for approximately 200 miles. He stopped to put gas into the truck. Nomar did not appreciate that it was a diesel truck. By placing gas into the tank and turning the ignition, Nomar ruined the truck's fuel system and made the truck inoperable.

Javadi comes to you because she wants to file a claim for all the damages she from Intentional Torts she suffered. Please explain what Intentional Torts have been committed against her by Nomar.

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Torts Question 3

Pablo is visiting San Francisco to watch his favorite team, Los Doyers, play the San Francisco Giants. Pablo is unfamiliar with the City, but is told by his hotel's concierge that the tram, owned and operated by the City, is the best way to get to the ballpark and back.

Pablo takes the tram toward the ballpark. He cannot understand the map on the wall of the tram car and is unsure at what station to disembark. Seeing a EXIT sign for Candlestick Park on the adjacent highway, Pablo decides to get off the tram at the next station.

When Pablo disembarks the tram, he immediately gets an ominous feeling. He turned to get back on the tram, but its doors closed and it took off leaving him alone on the tram platform. Unsure of where to go, he begins to walk in the general direction of the ballpark. Unbeknownst to Pablo, he is walking in a very bad neighborhood. Before too long, he is surrounded by a gang of six large young men with tattoos, hoodies, and poor hygiene. When they see Pablo's baseball cap, they begin to push and taunt him.

Dingo, the leader of the gang, is holding a four foot long 2x4 that is imprinted with the words "Welcome to South San Francisco." Dingo pushes through the others and lands a horrific blow to the right side of Pablo's head. The others in the gang begin to kick and hit Pablo too. Pablo awakens in the hospital to learn he has suffered a traumatic brain injury and a burst eardrum, likely from the blow by Dingo, and a broken arm and several broken ribs. He is unsure who caused the injuries to his arm and ribs, but assumes the injuries were caused by some of the other members of the gang.

The police ultimately apprehend the six perpetrators. Pablo is able to identify them all.

After release from the hospital, Pablo decides to sue the gang for their intentional torts and City for its possible negligence. Discuss.

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Issue	Rule	Analysis	Concl'n	Points Allotted
Pablo v. City				
Negligence (2 points)	Over-arching Negligence elements (2 points)			/4
Duty (2 points)	All foreseeable plaintiffs; Special relationship (<u>Palsgraf v. LIRR</u>) (4 points)	Pablo a passenger on the tram (2 points)	(1 pt)	/9
SOC (2 points)	RPP (2 points)		(1 pt)	/5
Breach (2 points)	<u>Blyth</u> ; <u>Carroll Towing</u> ; Hand Balance Test (2 points)	Burden less than risk-understandable map (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For; substantial factor; alternative theory (<u>Summers v. Tice</u>)	But For Map; But for Pablo getting of the tram at the wrong station; But for gang; who caused	(1 pt)	/15

	(4 points)	specific injuries (8 points)		
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	Harm was caused by criminal act/intentional tort of others (2 points)	(1 pt)	/7
Defenses (2-5 extra points)				
Pablo v. Gang				
Battery (2 points)	Willful and intentional act that causes harmful or offensive touching (2 points)	Dingo hit with 2x4; others kicked and hit P (2 points)	(1 pt)	/7
Assault (2 points)	Willful and intentional act that causes reasonable apprehension of immediate or harmful touching (2 points)	Surrounded; pushed; taunted before hit with 2x4 and kicked and hit by others (2 points)	(1 pt)	/7

IIED (2 points)	Intentional or reckless, extreme and outrageous act that causes severe emotional distress (2 points)	No information, but can be reasonably presumed (2 points)	(1 pt)	/7
Damages (2 points)	General; Special Punitive? (2 points)	Head/ears (Dingo); leg (unknown); ribs (unknown); Presumption of gang defendants (4 points)	(1 pt)	/9
Total points possible				/77

TORTS QUESTION 2

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Once he entered the residence, Nomar asked where the bedroom was. Javadi walked ahead of him and showed him the location of the bedroom. Nomar forced her to sit on the bed. Javadi asked the man if he were a robber, and he replied yes, that he wanted money. Javadi said that her money was in her purse, and told him he could open it. She thought if he took the money, he would leave. Nomar took \$250 from her purse and then placed it into his wallet.

After getting a glass of water, Nomar went into a second bedroom. In the second bedroom, Javadi kept money in a purse in a basket under some clothes. According to Javadi, the man took that money, which she estimated was \$4500. Nomar then used an exercise band to tie Javadi's hands together and the cord from an iron to tie her legs together. He then pushed her onto the bed. From that position, she could hear the man drive away in her grandson's truck.

Nomar drove the truck for approximately 200 miles. He stopped to put gas into the truck. Nomar did not appreciate that it was a diesel truck. By placing gas into the tank and turning the ignition, Nomar ruined the truck's fuel system and made the truck inoperable.

Javadi comes to you because she wants to file a claim for all the damages she from Intentional Torts she suffered. Please explain what Intentional Torts have been committed against her by Nomar.

Issue	Rule	Analysis	Concl'n	Points Allotted
Trespass to Land (2 points)	Intentional, willful enter onto real property of another; damage? (2 points)	Nomar pushed Javadi back and entered residence; loss of use (mesne damages?) (2 points)	(1 pt)	/7
False Imprisonment (2 points)	Intent to confine or restrain with no defense (2 points)	<ul style="list-style-type: none"> • Told her to sit • Tied hands and legs together (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)	Invaded home; told her he would rob her; tied her up, took her money; took her grandson's truck (2 points)	(1 pt)	/7
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points)	<ul style="list-style-type: none"> * took \$250 * took \$4500 * took truck, not hers, but in possession (2 points)	(1 pt)	/7

Conversion (2 points)	Will, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points)	* took \$250 * took \$4500 * took truck, not hers, but in possession, ruined truck by putting gas into tank (2 points)	(1 pt)	/7
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	<ul style="list-style-type: none"> ● Pushed her into home ● Pushed her onto bed ● Tied her hands with exercise band ● Tied her legs with cord (2 points)	(1 pt)	/7
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	<ul style="list-style-type: none"> ● Pushed her into home ● Said he would rob her ● Pushed her onto bed ● Tied her hands with exercise band ● Tied her legs with cord (2 points)	(1 pt)	/7

Damages (2 points)	General Special Punitive (6 points)	Pain and suffering from pushing and tying up; scared; Medical expenses; Truck repairs; Reprehensible conduct to be punished (6 points)	(1 pt)	/15
Total points possible				/64

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TORTS QUESTION 1

David was driving a semi-truck with a trailer on northbound Highway 101 when the vehicle blew out a right front tire. David lost control of the semi-truck, crashed into a guardrail, causing the tractor to come off the trailer bed. The tractor rolled down the embankment and landed on top of a vehicle driven by Pyong. Pyong was fatally injured.

Pyong's long-time friend, Song, was a passenger. Song suffered slight physical injuries, but was inconsolable at the scene. She had watched her friend of 49 years get crushed before his eyes.

Pyong had no children and was estranged from her family. All her living relatives reside in South Korea.

A Highway Patrol investigator later determined that the blown tire was "bald" in violation of the applicable Vehicle Code. The statute is designed for traffic safety.

Song comes to you for advice. She wants to know if she has a case for her losses. Explain to Song the possible causes of action and the likely outcome for her of a lawsuit against David and his employer, Harry's Hauling Company.

Issue	Rule	Analysis	Concl'n	Points Allotted
Wrongful Death (2 points)	Survivors or Estate can bring action	Song is a long-time friend, not a	No, but	/7

	(2 points)	survivor or estate (2 points)		
Negligence (2 points)	Over-arching Negligence elements (2 points)			/4
Vicarious Liability (2 points)	Employer liable for harm caused by employee in course and scope of employment (2 points)	If David working for Harry's Hauling when accident occurred, doing what he was supposed to be doing, then Harry's is liable (2 points)	(1 pt)	/7
Duty (2 points)	All foreseeable plaintiffs (2 points)	Driving, so all other drivers (2 points)	(1 pt)	/7
SOC (2 points)	RPP (2 points)	Driving on bald tires (2 points)	(1 pt)	/7
Breach (2 points)	<u>Blyth</u> ; <u>Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points)	Burden less than risk (2 points)	(1 pt)	/7
SOC (2 points)	Statute if P in class to be protected; blow-out the harm to be	Driving with 1/16 depth of tire tread instead of required 4/32 (2 points)	(1 pt)	/7

	prevented; nexus (2 points)			
Breach (2 points)	Violated statute. Conclusive v. rebuttable presumptive negligence (2 points)	David driving on insufficient tire tread. There is/is not nexus between statute and harm to Song (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For (2 points)	But For lack of tire tread, tire would not have blown? (2 points)	(1 pt)	/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	Harm was caused in fairly unusual way, but was reasonably foreseeable (2 points)	(1 pt)	/7
Damages (2 points)	General; Her Loss of Consortium; Special Punitive? (2 points)	Pyong died instantly; Burial costs; close enough relationship?; Not done maliciously (2 points)	(1 pt)	/7
Defenses (2-5 extra points)				
NIED (2 points)	<u>Amaya</u> ;	In close proximity; saw	(1 pt)	/7

	<u>Dillon v. Legg</u> ; or <u>Thing v. LaChusa</u> elements (2 points)	injuries occur; Song is not closely related, but is a long-time friend (2 points)		
Conclusion		Yes or no negligence and Song's ability to recover		1
Total points possible				/82

87

1)

Negligence

Negligence requires a defendant to have a duty of care applied to the proper standard of care (SOC) of which defendant breaches causing damage/harm, with no defenses.

Duty

Duty is a legal obligation to avoid exposing others to unreasonable risk through one's conduct or by forces within one's control. Duty is owed to any reasonably foreseeable plaintiff (RFP), established an affirmative act by the defendant, or by a special relationship.

RFP

In the famous *Plasgraff v LIRR* case the majority opinion written by Justice Cardozo stated that a duty is owed to any RFP who is in the "zone of danger" and, writing in the minority opinion, Justice Andrews wrote that a duty is owed to anyone in the world.

Here, David (D) is a semi-truck driver on Highway 101. A semi-truck driver requires a special license to drive due to its weight and length. This would mean D is held to a higher professional standard than a normal driver of a car or truck. D owes a duty to everyone who is on the road with him, as everyone is a RFP and in the zone of danger. Pyong (P) and Song (S) were in a vehicle on the road proximate to D.

Thus, D owes a duty to P and S.

Affirmative Act

An affirmative act can be when a defendant places a plaintiff in peril.

Here, D's affirmative act is that he was driving a truck with a bald tire on the public highway.

① Thus, D's affirmative act placed P and S in peril.

Special Relationship

A special relationship is a relationship like an employer-employee, parent-child, jailor-jaillee, psychiatrist-patient, and more. Based on these relationships a special duty of care can be established.

Here, D does not have a special relationship to S or P.

Thus, not special relationship is established between D and S and P.

Standard of Care

SOC requires that a defendant conduct oneself according to a level of care a normal member of society reasonably would so as not to expose others to unnecessary harm/risk. A SOC can be established by the reasonably prudent person (RPP) standard, statute/regulations, and custom/standards.

RPP

Everyone has a duty to conduct themselves as a RPP so as not to expose others to unreasonable risks/harms.

Here, D driving a semi-truck has a duty to everyone on the road to conduct himself as a RPP.

Thus, D owes a duty as a RPP to P and S.

Statutes/Regulations

excellent

A SOC is established by statutes so as to protect others from harm while conducting the type of activities covered by the statutes. For a plaintiff to make a claim that a statute violates the harm to the plaintiff must be the type the statute is designed to prevent, the plaintiff must be in the class of people the statute is designed to protect, the defendant violated the statute, and there is a nexus between the violation of the statute and the harm to the plaintiff.

Here, D lost control of his semi-truck as a result of a "bald" tire popping. There is a statute outlining that a bald tire is in violation of vehicle safety. Because D lost control of his truck, the truck was towing a tractor that fell off his trailer crushing and killing P and injuring S. P and S were in their vehicle on the road next to where D lost control, thus, they were in the class of people the vehicle safety code was designed to protect. Bald tires violate the safety code because bald tires do not handle well in wet conditions, brake well, and they pop more easily as in this instance they did. D's violation of the safety code by driving on a bald tire is a case of *negligence per se*.

Thus, D owes a SOC to P and S based on the four elements of *negligence per se*.

Customs/Standards

Defendants owe others a SOC based on industry customs and standards. Semi-truck driving is a large industry requiring a separate licensing and training to safely perform the task. One of those tasks must be inspecting the truck before driving.

Here, if D had inspected his truck and the tires before transporting a heavy load, he would have seen that a tire was bald and not safe to drive.

Thus, D has a SOC to P and S based on industry customs.

Breach

Breach is the exposing of others to unreasonable risk due to negligent acts. Breach is measured by the formula $(B < PL)$ Justice Learned Hand created which measures the burden of protecting against a harm versus the risk of harm and the severity of injury.

Here, D caused a wreck, and P's death, because he negligently drove a semi-truck with a bald tire. Driving a vehicle with a bald tire is exposing others on the road to unreasonable risk.

Thus, D ~~reach~~ ^{breached} his SOC to P and S by driving with a bald tire.

Burden on Δ ?
Risk to TT ?

1.5

Res Ipsa Loquitor

Res ipsa loquitor (RIL) is a theory of tort negligence that stands for "the thing speaks for itself" meaning that a type of harm does not occur without negligence. The elements of RIL are the injury does not occur without negligence on the defendant's part, the instrument that caused the harm needs to be in the full control of the defendant, the plaintiff is blameless.

Here, D was in full control of his semi-truck and his load came off his trailer as a result of a bald tire popping. One does not drive on a bald tire unless they are negligent.

Thus, D breached his SOC based on RIL.

Causation

Causation is the actual (but for) and proximate (legal) cause of a harm due to a negligent breach of a SOC. For a defendant to be found liable a plaintiff needs to prove causation by a preponderance of evidence.

Actual Cause

The actual cause is the "but for" cause, meaning but for the defendant's actions the harm would not have occurred.

Here, D's tire popped because it was bald. But for D driving a load on a bald tire, the tractor on his trailer would not have fallen onto P and S's vehicle.

Thus, D is the actual cause of P and S's harms.

Proximate Cause

Proximate cause is the idea that the harms resulting from a negligent act are reasonably foreseeable and defendant's actions are a substantial factor, beyond just trivial, in the plaintiff's harms.

Here, D based on his special training required for semi-truck driving, he should reasonably know that if a tire pops he would have difficulty controlling his truck and that would cause a danger to others on the road.

Thus, D driving on a bald tire is the proximate cause of P and S's harms.

Damages

Damages are the harms caused by the negligent act. Damages can be grouped into general (pain and suffering, emotional distress, and hedonic damages), special (economic, wrongful death, and loss of consortium), and punitive damages (on top of the other damages more punitive damages can be added to dissuade others from the same type of thing in the future).

General

S would be able to collect general damages as she was injured and suffered severe emotional distress at the scene. S also lost a life long friend.

can she collect for that?

Special

S would likely not be able to collect special damages unless her emotional distress, or her injuries, were severe enough she was unable to work for a time.

Punitive

D ~~would~~ was negligent but not malicious or wanton in his actions, thus, S would likely not collect punitive damages.

Negligent Infliction of Emotional Distress (NIED)

NIED is a harm established in the case *Thing v La Chusa* where one can collect damages based on emotional distress experiences as a result of a negligent harm. For a plaintiff to collect, based on the most modern case law in *Thing*, the plaintiff needs to be present at

the scene when the injury occurs, aware that the injury is happening to another, experience severe emotional distress as a result, and be related to the injured party.

Here, S was right next to P when P was killed, S was inconsolable at the scene as a result, ^{↑ closely} but S and P are not related. P has no relative in the USA. S may not be able to collect damages as a result of NIED since S is not related to P. Though S could argue that since P has no family within a few thousand miles and S was a long time friend, that S was as good as a relative and a jury may find for S.

4. **Defenses**

Vicarious liability

D may argue that though he was the driver of his truck that his employer Harry's Hauling Company (HHC) is who is responsible for the bald tire. There are not enough facts to know if D is an employee of HHC but drives his own truck as though he was an independent contractor or if D was driving one of HHC's trucks. If D was an independent contractor he would likely be the sole person liable but if he was driving one of HHC's trucks, and not his own, then likely HHC would be liable for putting D in a truck with a bald tire as the employer has a special relationship with their employees based on the theory of *Respondeat superior*, meaning the employer is responsible for what their employees do in the course and scope of their work. D was work in the course and scope of his job at the time the tire popped, so HHC could be vicariously liable.

END OF EXAM

Issue	Rule	Analysis	Concl'n	Points Allotted
Wrongful Death (2 points)	Survivors or Estate can bring action (2 points)	Song is a long-time friend, not a survivor or estate (2 points)	No, but	0/7
Negligence (2 points)	Over-arching Negligence elements (2 points)			4/4
Vicarious Liability (2 points)	Employer liable for harm caused by employee in course and scope of employment (2 points)	If David working for Harry's Hauling when accident occurred, doing what he was supposed to be doing, then Harry's is liable (2 points)	(1 pt)	7/7
Duty (2 points)	All foreseeable plaintiffs (2 points)	Driving, so all other drivers (2 points)	(1 pt)	7/7
SOC (2 points)	RPP (2 points)	Driving on bald tires (2 points)	(1 pt)	7/7
Breach (2 points)	<u>Blyth</u> ; <u>Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points)	Burden less than risk (2 points)	(1 pt)	5/7

SOC (2 points)	Statute if P in class to be protected; blow-out the harm to be prevented; nexus (2 points)	Driving with bald tires (2 points)	(1 pt)	7/7
Breach (2 points)	Violated statute. Conclusive v. rebuttable presumptive negligence (2 points)		(1 pt)	5/5
Actual Causation (2 points)	But For (2 points)	But For lack of tire tread, tire would not have blown? (2 points)	(1 pt)	7/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	Harm was caused in fairly unusual way, but was reasonably foreseeable (2 points)	(1 pt)	6/7
Damages (2 points)	General; Her Loss of Consortium; Special Punitive? (2 points)	Pyong died instantly; Burial costs; close enough relationship?; Not done maliciously (2 points)	(1 pt)	7/7
Defenses (0-5 extra points)				1
NIED (2 points)	<u>Amaya</u> ; <u>Dillon v.</u> <u>Legg</u> ; or	In close proximity; saw injuries	(1 pt)	7/7

	<u>Thing v. LaChusa</u> elements (2 points)	occur; Song is not closely related, but is a long-time friend (2 points)		
Conclusion		Yes or no negligence and Song's ability to recover		1
Total points possible				70/80

1. This Duty occurs when the defendant has placed a RFP in peril and has time to warn of the peril. Not appropriate in this case.
- 1.5 The analysis requires a determination of whether the burden upon the D is less than the probability of serious injury to a reasonably foreseeable plaintiff.
2. Res Ipsa Loquitor is the use of circumstantial evidence to establish a fact that leads to a determination of negligence. Here, we know that the tire was bald and blew out. If we did not know why the tire blew out, then RIL would be appropriate.
3. Could Song collect for the Wrongful Death of Pyong? Could she recover for her own minor injuries if she received treatment?
4. Vicarious Liability is not a defense. It is a concept that allows plaintiff to sue the respondeat superior in strict liability because of its relationship to the tortfeasor. Thus, P will make this argument to get to the "deeper" pockets of the employer.
5. Very impressive work. Scaled score: 87

92

2)

Assault

Assault is a willful act with the intent to cause harmful or offensive touching, where the plaintiff has reasonable apprehension of the imminent harm.

intends to cause

OR

Javadi was in her home when a large man, later to be determined to be Nomar, pushed her back and entered the residence. Assault is a willful act with intent to cause harmful or offensive touching, and the plaintiff has to have reasonable apprehension of the imminent harm. The act of pushing Javadi, and later stating that it was a robbery is circumstantial evidence to show that the push itself was willful and intentional, Javadi did not know Nomar, as it was discovered later who he was. Javadi likely saw the large man raise his arms and move towards her, which would satisfy the reasonable apprehension, or reasonable anticipation of the harm.

Javadi would have a successful claim for assault.

Battery

and intentional

Battery is a willful act causing harmful or offensive touching.

Nomar pushed Javadi, which constitutes harmful or offensive touching. Later on in the robbery, Nomar tied Javadi's arms and legs together, which also constitutes harmful or offensive touching.

Javadi would have a successful claim for battery.

Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress is an intentional act that causes the plaintiff to suffer emotional harm. If in the event the person is not closely related, the plaintiff must show physical ailments derived from the emotional distress, such as nausea.

Although a robbery could be scary and cause emotional distress, there is not sufficient evidence to support an emotional distress claim. Nomar forced Javadi to sit on the bed, and was complying with the demands of Nomar hoping that he would leave, however, there is no evidence to support that she suffered any emotional damages from the robbery.

Javadi would likely not have a successful claim for intentional infliction of emotional distress.

False Imprisonment

False imprisonment is the unlawful detainment of another, where the detained did not willingly get detained, they are aware they are being detained, and there is no reasonable means of escape.

Nomar forced Javadi to sit on the bed, then he tied her hands together with an exercise band, and tied her legs together with the cord from an iron. Javadi was aware she was tied up, and the fact that she could only hear the man drive away in her grandson's truck is evidence to support she was unable to get out of the situation she was in, giving her no reasonable means of escaping.

Javadi would likely have a successful false imprisonment claim.

Trespass to Land

Trespass to land is the unlawful entering of another persons land.

Nomar unlawfully entered the dwelling of Javadi by pushing her, then walking in without Javadi's permission.

Javadi would likely have a successful trespass to land claim

✓ Trespass to Chattel

Trespass to chattel is the unlawful interference with another persons property, causing damage.

Nomar took a total of \$4,750 from Javadi. \$250 of it was in Javadi's purse, and the other \$4,500 of it was kept in a purse in a basket under some cloths. Although he stole the money, there is no evidence that he caused damage to any of Javadi's property.

Javadi would likely not have a successful claim to trespass to chattel.

2.

✓ Conversion

3. Conversion is the unlawful interference with another persons property, causing significant damage.

There is insufficient evidence to show that Nomar caused any significant damage to Javadi's property. Javadi's grandson would have a successful conversion claim, as Nomar failed to appreciate that the truck was diesel when he filled it with gas, completely ruining the transmission and making the truck inoperable, however, the truck was not Javadi's.

Javadi would not have a successful claim for conversion.

Damages

Damages include general damages, special damages, and punitive damages. General damages are pain and suffering, and negligent infliction of emotional distress. Special

damages are economic damages, such as loss of wages and medical expenses, and loss of consortium. Lastly, punitive damages are damages designed to punish the defendant, and deter others from causing similar harm.

Javadi would likely collect general damages, special damages, and punitive damages. Her general damages would stem from the pain and suffering of the battery and the false imprisonment. Her special damages would be the \$4,750 from the stolen money, and she would collect most on the punitive damages, punishing Nomar for the acts he did, and attempting to ~~detour~~ ^{deter} the public from doing similar acts.

Defenses

Necessity

For a necessity defense, a person may only trespass for the preservation of human life.

Nomar did not enter the home out of necessity; Nomar entered the home to commit a robbery.

Nomar would not have a successful necessity defense

Consent

The defense would likely assert a consent claim, stating that Javadi consented to being tied up, as there is no evidence to support she struggled or fought back. Additionally, Javadi was compliant during the entire robbery, however, Javadi was compliant out of duress. She was hoping that the more she complied, the less harm she would receive, and the quicker Nomar would leave the home.

Conclusion

Javadi would likely have successful claims for assault, battery, false imprisonment, and trespass to land.

END OF EXAM

4.

Issue	Rule	Analysis	Concl'n	Points Allotted
Trespass to Land (2 points)	Intentional, willful enter onto real property of another; damage? (2 points)	Nomar pushed Javadi back and entered residence; loss of use (mesne damages?) (2 points)	(1 pt)	7/7
False Imprisonment (2 points)	Intent to confine or restrain with no defense (2 points)	<ul style="list-style-type: none"> • Told her to sit • Tied hands and legs together (2 points)	(1 pt)	7/7
IIED (2 points)	Intentional reckless, extreme and outrageous conduct that causes severe emotional distress, direct or indirect victim (2 points)	Invaded home; told her he would rob her; tied her up, took her money; took her grandson's truck (2 points)	(1 pt)	6/7
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points)	<ul style="list-style-type: none"> * took \$250 * took \$4500 * took truck, not hers, but in possession (2 points)	(1 pt)	6/7

Conversion (2 points)	Willful, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points)	* took \$250 * took \$4500 * took truck, not hers, but in possession, ruined truck by putting gas into tank (2 points)	(1 pt)	6/7
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	<ul style="list-style-type: none"> • Pushed her into home • Pushed her onto bed • Tied her hands with exercise band • Tied her legs with cord (2 points)	(1 pt)	6/7
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	<ul style="list-style-type: none"> • Pushed her into home • Said he would rob her • Pushed her onto bed • Tied her hands with exercise band • Tied her legs with cord (2 points)	(1 pt)	6/7

Damages (2 points)	General Special Punitive (6 points)	Pain and suffering from pushing and tying up; scared; Medical expenses; Truck repairs; Reprehensible conduct to be punished (6 points)	(1 pt)	13/15
Defenses Extra credit, 0-4 pts				2
Total points possible				59/64

1. You need a better Rule for IIED; for example, Intentional reckless, extreme and outrageous conduct that causes severe emotional distress, direct or indirect victim.
2. Nomar also took the grandson's truck parked in front of her house. If she was in possession of that, what is the likely outcome regarding a cause of action for Trespass to Chattel or Conversion?
3. By taking the cash hasn't Roman substantially interfered with her use of her personal property? Does she need to be the owner to pursue a claim for Conversion, or is it enough that she was in possession? If she only needs to be in possession, was she?
4. Excellent work! Scaled score: 92.

89

3)

Pablo v Dingo and the gang

Intentional torts

Assault: Reasonable apprehension that immediate harm will be caused

Here we see Dingo and his gang push and taunt Pablo. Though they made contact with Pablo they could sue for assault as well as battery.

Battery: Willful intentional harm physical contact

Here we see that when Dingo hits Pablo in the head and then the other gang members hit and kick Pablo they have caused willful intentional harm to Pablo. Pablo could sue for battery

False imprisonment: Confining someone without their consent and without a way to escape.

Here we see that when Dingo and his gang surrounded Pablo they confined him without his consent. Pablo could sue Dingo and his gang for False imprisonment.

Intentional infliction of emotional distress (IIED): an extreme reckless act that causes significant emotional distress in another.

Here we see that that when Dingo and his gang surrounded Pablo and then beat him that this could create significant emotional distress. Pablo could sue from IIED.

Defenses:

Consent: when someone gives their permission or consents to the act it is a complete defense. Pablo did not give consent so this is not a valid argument

Defense of self or others: using reasonable force appropriate to protect oneself or another is not a valid argument for Dingo and the gang. Pablo at no time was a threat that they needed to protect themselves from.

Pablo v San Francisco (SF)

Negligence: when one owes a duty of care to another and breaches that duty causing harm

Duty:

-Reasonably prudent Plaintiff

-Placing someone in peril

-initiating a rescue

-Special relationship

Here we see that Pablo could not read or understand the signs posted on the walls of the tram car. Pablo is a reasonably prudent plaintiff. Pablo was in peril when he entered the area of the gang. There was no rescue or special relationship between SF and Pablo

SOC:

carrier - passenger ?

-Reasonably prudent person

-Standard of industry

-Statute

NO! (3)

Here we see Pablo as the reasonably prudent person. SF set the standard of industry by placing maps on the walls of the tram. All persons entering the tram should be able to understand the maps. SF did not violate any statutes

Breach of duty

(4) Weighing the harm caused verses the action it would have taken to reduce or alleviate the negligence that caused the harm. Hands rule

Here we see that had the SF made the maps understandable by all then Pablo may not have gotten off at an exit that he did not want to get off at.

o Negligent infliction of emotional distress: negligence creates a situation that causes significant emotional distress

Here we see if SF is negligent in not maintained their maps on trams Pablo would not have been in a situation that the gang beat him that created a situation that could cause significant emotional distress. Pablo can sue for negligent infliction of emotional distress.

Causation

proximate: Legal cause, the intervening actions that caused the harm

Here we see that if SF had made the maps understandable by all then Pablo would not have been in the situation that led to him being beat by the gang. SF could be the proximate cause for Pablo's injuries.

(6)

Actual: But for test

Here we see that but for the maps were understandable by all then Pablo would not have gotten off at the exit that led him to be beat by the gang. SF did not beat Pablo the gang did but for the maps been clear he may not have gotten off at the exit he did.

Harm:

-Unforeseen:

Here we see that when Pablo got on the tram he could not foreseen being beat by a gang

-Foreseen;

Here we

-Direct harm

Here we see that SF is not liable for the direct harm caused to Pablo. His injuries were caused by the gang when they beat him.

Damages, Punitive, general, special

Defenses:

-contributory

-comparative

-Assumption of risk

END OF EXAM

Issue	Rule	Analysis	Concl'n	Points Allotted
Pablo v. City				
Negligence (2 points)	Over-arching Negligence elements (2 points)			4/4
Duty (2 points)	All foreseeable plaintiffs; Special relationship (<u>Palsgraf v. LIRR</u>) (4 points)	Pablo a passenger on the tram (2 points)	(1 pt)	7/9
SOC (2 points)	RPP (2 points)		(1 pt)	4/5
Breach (2 points)	<u>Blyth</u> ; <u>Carroll Towing</u> ; Hand Balance Test (2 points)	Burden less than risk-understandable map (2 points)	(1 pt)	7/7
Actual Causation (2 points)	But For; substantial factor; alternative theory (<u>Summers v. Tice</u>) (4 points)	But For Map; But for Pablo getting off the tram at the wrong station; But for gang; who caused specific injuries (8 points)	(1 pt)	7/15

Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	Harm was caused by criminal act/intentional tort of others (2 points)	(1 pt)	5/7
Defenses (0-5 extra points)				4
Pablo v. Gang				
Battery (2 points)	Willful and intentional act that causes harmful or offensive touching (2 points)	Dingo hit with 2x4; others kicked and hit P (2 points)	(1 pt)	7/7
Assault (2 points)	Willful and intentional act that causes reasonable apprehension of immediate or harmful touching (2 points)	Surrounded; pushed; taunted before hit with 2x4 and kicked and hit by others (2 points)	(1 pt)	7/7
False Imprisonment (0-5 extra points)				5

IIED (2 points)	Intentional or reckless, extreme and outrageous act that causes severe emotional distress (2 points)	No information, but can be reasonably presumed (2 points)	(1 pt)	5/7
Damages (2 points)	General; Special Punitive? (2 points)	Head/ears (Dingo); leg (unknown); ribs (unknown); Presumption of gang defendants (4 points)	(1 pt)	4/9
Defenses (0-5 extra points)				3
Total points possible				69/77

1. Each of your intentional tort BARFs need to be refined.
2. Write in sentences, not bullet points.
3. The defendant must act as a reasonably prudent tram operator.
4. The Hand formula declares that when the burden on the defendant to do something else is less than the probability of serious injury to a foreseeable plaintiff, then the failure to do that less burdensome act is a breach of his duty of care.
5. BARFs incomplete.
6. You seem to have switched Actual causation and Proximate causation. You need to make these issues clear.
7. You wrote about every issue on the matrix. Very good. Work on clear and concise BARF statements and you will achieve mastery. Scaled score: 89