

SAN LUIS OBISPO COLLEGE OF LAW

TORTS

Midterm Examination

Fall 2020

Prof. J. Parker

Instructions:

There are three (3) questions in this examination. You will be given four (4) 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.

QUESTION 1

(60 points)

Defendant owns a large parcel with a pond on it. Defendant's parcel is in a contributory negligence jurisdiction. The parcel is located between a large city park and a residential neighborhood. The pond is long and narrow, and there are several boards set across it. The boards allow quick access to the far side of the pond. The boards are primarily used by the groundskeeper, who crosses the pond to clear excess vegetation on the far side. The groundskeeper often sees children using the boards as a shortcut to the city playground on the far side of Defendant's parcel. From his office on the property, Defendant often hears the groundskeeper yell "Get out of here! You kids don't have permission to be here!" In the last several months, the groundskeeper has been complaining that the boards need to be replaced. Defendant told the groundskeeper that the boards look fine, but groundskeeper told Defendant that the boards are flexing much more than they used to, which is a sure sign that the underside of the boards are starting to rot. Groundskeeper tells Defendant that he will go around the pond, until the boards are fixed.

Defendant gives permission to his friend to fish in the pond, but tells him not to use the boards, because they aren't safe to walk on. The friend is walking to the pond when he hears a large splash and several children crying out for help. The friend rushes to the pond and sees one child slip under the water next to the boards. The friend rushes onto the boards, reaches down and pulls the child out of the water. Defendant takes one step towards shore, the boards flex, and the friend loses his balance. As he begins to fall, the friend makes the decision to throw the child toward shore. The child lands on shore but hits his head on a rock. The friend suffers a ruptured disc in his back from the effort. The child suffers permanent brain damage.

Analyze each of the following claims for negligence and possible defense:

1. Child's claim against Defendant.
2. Child's claim against the friend.
3. Friend's claim against Defendant.

QUESTION 2
(20 points)

Plaintiff, a sixteen-year-old, is driving his motorcycle on the freeway. The posted speed limit is 65, but Plaintiff is traveling 85 miles per hour. Defendant owns a company that sells automatic pitching machines. The machines launch baseballs at 90 miles per hour. The company is located on a frontage road 30 yards from the freeway.

Defendant's employee is demonstrating the proper use of the machine, but he fails to check that the machine is properly aimed at the safety net. When the employee starts the machine, the baseball bypasses the net and crosses the freeway. Plaintiff sees several baseballs fly across the freeway in front of him. He tries to time it so that he crosses in between two baseballs. Plaintiff misjudges the timing and a baseball strikes his helmet. Plaintiff is knocked off-balance and crashes his motorcycle. Plaintiff incurs hospital bills, physical therapy, and repairs to his motorcycle totaling \$100,000.

In anticipation of trial, each party hired an accident reconstructionist and medical expert. All experts agree that Plaintiff would not have been able to stop his motorcycle in time, even if he had been traveling 65 miles per hour. They also agree that Plaintiff would have incurred \$70,000 in damages if he had been traveling 65 miles per hour.

4. Analyze Plaintiff's claim for negligence against Defendant and possible defenses in both contributory and comparative negligence jurisdictions.

QUESTION 3
(20 points)

A local theater company hired a director who was known for pushing the envelope in his productions. He worked with this theater company on numerous occasions in the past and many of the veteran actors had worked with him. The director had spent his youth playing football, and he often slapped his actors on their bottoms as a way to build camaraderie. He always warned actors ahead of time by asking "Who's ready to give it their all?" Whenever an actor responded with "I am," the director would slap the actor.

An aspiring actress who was new to the area was chosen to play the lead role. She only new that the director was well respected in the acting community. Rehearsals were flawless, and the group was preparing for opening night. Before the show began, the director asked several actors if they were ready to "give it their all," and each responded "I am."

The actress was eager to make a good impression, and when the director asked "Who's ready to give it their all," the actress said "I am!" The director slapped her on the bottom. Shocked by his action, the actress slapped the director, then locked herself in her dressing room, crying uncontrollably.

As a result of the incident, the actress was unable to perform on stage that evening. In the following months, she suffered crippling anxiety every time she tried to go onstage. As a result, her acting career quickly ended.

5. Analyze the following:
 - a. The actress's liability for intentional torts.
 - b. The director's liability for intentional torts.

SLO-Torts I -Fall2020-ANSWER OUTLINE

1. Child v. Defendant

Duty	Rule	/1 point
	Standard of care for landowners to trespassers	/2 points
Breach	Rule	/1 point
	Attractive nuisance	/8 points
Causation	Rule: Cause in fact	/1 point
	Rule: Proximate cause	/1 point
	Rescuer doesn't break chain of causation if reasonable under the circumstances.	/4 points
Damages	Rule	/1 point
	Likely costs are medical care, loss of future income	/1 point
TOTAL		/ 20 points

2. Child v. Rescuer

Duty	Rule	/1 point
	Standard of care for rescuers	/3 points
Breach	Rule	/1 point
	Actions reasonable in emergency situation?	/6 points
	Hand formula?	/5 points
Causation	Rule: Cause in fact	/1 point
	Rule: Proximate cause	/1 point
Damages	Rule	/1 point
	Likely costs are medical care, loss of future income	/1 point
TOTAL		/ 20 points

3. Rescuer v. Defendant

Duty	Rule	/1 point
	Standard of care for landowners	/2 points
	Identified as licensee	/1 point
Breach	Rule	/1 point
	Hand formula	/2 points
	Protect from hidden dangers, warned (AoR)	/2 points
Causation	Rule: Cause in fact	/1 point
	Rule: Proximate cause	/1 point
	Rescuer is foreseeable plaintiff	/2 points
	Actions reasonable under emergency circumstances?	/2 points
Damages	Rule	/1 point
	Likely costs are medical care, loss of future income	/1 point
Defense	Assumption of risk, warned of danger	/3 points
TOTAL		/ 20 points

4. Motorcycle v. Company

Duty	Rule	/1 point
	Standard of Care: RPP	/2 points
Breach	Rule	/1 point
	Hand formula	/1 point
Causation	Rule: Cause in fact	/1 point
	Rule: Proximate cause	/1 point
	Vicarious liability rule	/2 points
	Employer/employee relationship	/4 points
Damages	Rule	/1 point
Defense	Contrib: AoR	/2 points
	Contrib: Contributory neg	/2 points
	Comparative negligence	/2 points
TOTAL		/ 20 points

5. Intentional torts

Actress v. Director	Battery	
	Assault	

1)

Child v. Defendant

Negligence

A finding of negligence requires a duty with an established standard of care that is breached, causing damages.

Duty

A duty of care is owed to all foreseeable plaintiffs. Under the majority opinion from Cardozo, a foreseeable plaintiff must be in the zone of danger. Under the minority opinion from Andrews, a duty of care is owed to the world at large. Normally, trespassers are not owed a duty of care, but there is a duty to warn known and frequent trespassers about dangerous artificial conditions on the property. If the known or frequent trespassers are children and the land owner has an attractive nuisance on the property, there is a higher standard of care to maintain that attractive nuisance to mitigate harm.

In this case the Child was trespassing on Defendant's land. The Defendant clearly knew that children often trespassed on his land and used the boards on his pond to get to the playground because he had heard his groundskeeper yelling at them many times. Because of this, Defendant had a duty to warn them of dangerous artificial conditions and since they are children, he had a duty to properly maintain any attractive nuisances on his property. Defendant owed the children a standard of care of a property owner with an attractive nuisance in an area where children trespassers are known to be present.

Defendant did owe a duty of care to the Child.

Breach

A person breaches their duty when they fail to exercise the required standard of care. When a land possessor has an attractive nuisance in an area where children trespassers are known to be present, the land possessor will be held liable if: (1) there is a dangerous artificial condition, (2) if they know children are likely to be present, (3) know that there is a risk to the children, (4) the children fail to recognize the danger of the artificial condition, (5) the utility of maintaining risk is less than the cost of harm to the children, and (6) there was a failure to mitigate the harm. Hand's formula: If burden is less than the probability times the severity of the harm, then D breached their duty.

In this case, the defendant did have a dangerous artificial condition on his property. He had boards going across his pond that he was aware were unsafe. The pond is a natural condition, so it would not be an attractive nuisance alone, but the boards going across it are an artificial condition and Defendant knows that they are unsafe to walk on because his groundskeeper has told him that they are likely starting to rot, and the groundskeeper will not walk on them. The Defendant did know that children are likely to be present, he has heard his groundskeeper yelling at trespassing children and his property is situated right next to a playground, somewhere where children are likely to be. Defendant knew that the boards could pose a risk to children, he told his friend that they are unsafe to walk on, so he is clearly aware of the risk that they pose. The Child would not have known that the boards were likely rotting underneath and they had used them to cross the pond many times so they did not recognize the danger that they posed. It would have been very cheap for Defendant to fix the problem. He could have removed the boards completely, forcing the children to walk around the pond as the groundskeeper has elected to do, replaced them by buying new boards at the hardware store, or prevented the children from going near the pond at all by putting a fence around it. Any option would have been significantly less than the cost of a severe injury to a child. The Defendant did not do anything to mitigate the potential damage and left the boards as they were. Under Hand's formula, the cost of any of the potential ways to fix the problem would have been a much smaller burden than the probability times the severity of the harm.

Since Defendant met all the elements for an attractive nuisance and Hand's formula, he breached his duty of care to the Child trespasser.

Causation

The Defendant's actions must be the cause in fact and the proximate cause of the Plaintiff's injuries.

Cause in Fact

A defendant's act is the cause in fact if the Plaintiff's injuries would not have occurred, but for Defendant's actions.

In this case, if Defendant had properly maintained his attractive nuisance by either removing the boards completely, replacing them with safe boards, or somehow made them inaccessible to trespassing children, the Child would have never fallen in to the water, and therefore would never have sustained a brain injury.

But for Defendant's negligent maintenance of the pond boards, the Child would not have been injured, so Defendant is the cause in fact of the Child's injury.

Proximate Cause

A defendant's act is the proximate cause if the harm was a reasonably foreseeable result of their act. If there is a foreseeable intervening force that causes foreseeable results, Defendant will still be liable. Rescuers are foreseeable intervening forces and will not sever the causal connection to the original tortfeasor. Negligence of rescuers is also foreseeable, so results of their negligence will also be considered foreseeable and will not be considered superseding causes, so Defendant will still be liable.

A child falling into the pond was certainly a foreseeable result of the Defendant's negligence. The fall alone was not what caused this child's injury though. The friend saw the child slip under the water and decided to act. He had no duty to rescue the child, but it is foreseeable that he would do so. Once undertaking the rescue, rescuers have a duty to act as reasonably prudent people, but the fact that the situation is an emergency is taken into account so even though the friend threw the child towards shore, he was acting to prevent the child from drowning and his negligence will not be considered a superseding cause of Defendant's negligence.

The intervening force of the friend's actions did not sever the causal chain so Defendant is the proximate cause of the Child's harm.

Defense

Contributory negligence bars a plaintiff's right to recover if they were also negligent and their negligence partially caused their harm. In the majority of jurisdictions, a child has a duty to act as a reasonably prudent child of their age and experience level.

Since this is in a contributory negligence jurisdiction, D will likely try to argue that the child was also negligent in their action of walking on the boards. This is not likely to succeed because it is clear from the fact pattern that children often used these boards to cross the pond, so a reasonably prudent child at may not have understood the risk. The age of the child and their level of experience will be determining factors in this situation to decide their exact standard of care, but it is unlikely that there will be a finding that the child breached their duty to the Defendant.

Since the Defendant met all the elements of an attractive nuisance it is not likely that the child will be considered contributorily negligent and unable to recover.

Damages

Defendant is liable for any injury to the plaintiff's person or property. Even if the extent of the injuries is unforeseeable, Defendant will still be liable.

The child suffered permanent brain damages, which may have been an unforeseeable result of an accident involving the pond boards, but the defendant will still be liable even if the extent of the injury seems surprising. The Child will be able to recover for economic damages such as medical expenses and potentially his pain and suffering and emotional distress if his brain damage still allows him to perceive these things.

Defendant is liable for damages resulting from the Child falling into the water and getting thrown to shore by his friend.

Defendant is most likely liable for the harm caused to the child because he owed a duty of care, he breached that duty, his actions were the cause in fact and the proximate cause and the Child suffered damages from his harm.

Child v. Friend

Negligence

A finding of negligence requires a duty with an established standard of care that is breached, causing damages.

Duty

A duty of care is owed to all foreseeable plaintiffs. Under the majority opinion from Cardozo, a foreseeable plaintiff must be in the zone of danger. Under the minority opinion from Andrews, a duty of care is owed to the world at large. There is no duty to rescue a person if you were not the cause of their dangerous situation, but upon undertaking a rescue, a rescuer owes a reasonably prudent person standard of care to the person they are rescuing.

In this case, the friend did not have a duty to rescue the child but he chose to do so anyway. He owes the child the standard of care of a reasonably prudent person while undertaking this rescue. He has a duty to not abandon the rescue and leave the child in a worse situation than he found him in.

The friend owed a duty of care to the child.

Breach

A person breaches their duty when they fail to exercise the required standard of care. An emergency situation will be taken into account when determining if the duty was breached.

The friend decided to act when they saw a child in the water. As a result, the friend put himself in danger also and lost his balance on the dangerous pond boards. His decision to throw the child to shore was probably made in a split second with the intention of avoiding the child drowning in the pond. The child's attorney may argue that this was negligent and breached the standard of care of a reasonably prudent person because a reasonably prudent person wouldn't throw a child. The jury will need to take the emergency situation into account, and will likely find that this act was not a breach of the standard of care given the circumstances.

It is likely that the friend did not breach the standard of care that a rescuer owes to the person they are rescuing.

Causation

The Defendant's actions must be the cause in fact and the proximate cause of the Plaintiff's injuries.

Cause in Fact

A defendant's act is the cause in fact if the Plaintiff's injuries would not have occurred, but for Defendant's actions.

The friend's action of throwing the child can be considered the cause in fact of the child's injuries. This action is a substantial factor in causing the harm. Without the friend's action, the child may have still suffered permanent brain damage due to oxygen deprivation from being under water or hitting their head another way, or the child may have died as a result of drowning. The friend's act is a joint cause because either his act or the Defendant's negligently maintained pond boards could have caused the harm alone, but it is still a substantial factor so it is the cause in fact of the child's harm.

The friend's act can be considered the cause in fact of the Child's harm.

Proximate Cause

A defendant's act is the proximate cause if the harm was a reasonably foreseeable result of their act.

It is reasonably foreseeable that a child could be injured when being thrown toward shore as someone is losing their balance. Negligence of rescuers is also foreseeable, so it will not cut off liability from the Defendant's negligence, discussed above.

The friend's act could be considered the proximate cause of the child's harm.

Damages

Defendant is liable for any injury to the plaintiff's person or property. Even if the extent of the injuries is unforeseeable, Defendant will still be liable.

The child did suffer severe injuries as a result of the friend's act, but the friend is not likely to be held liable for those injuries.

The friend did have a duty to act as a reasonably prudent person once he decided to rescue the child, but he did not breach that duty by trying to save the child from drowning when he was also in danger of bodily harm. He acted in an emergency situation and did what he thought was in the child's best interest, to his own detriment so he will not be held liable even though his act could be considered the cause in fact and the proximate cause and the child was severely injured.

Friend v. Defendant

Negligence

A finding of negligence requires a duty with an established standard of care that is breached, causing damages.

Duty

A duty of care is owed to all foreseeable plaintiffs. Under the majority opinion from Cardozo, a foreseeable plaintiff must be in the zone of danger. Under the minority opinion from Andrews, a duty of care is owed to the world at large. Rescuers are considered foreseeable plaintiffs as long as their

rescue attempts are not reckless. Licensees are owed a warning of any known dangerous conditions on the property.

In this case, the friend would be considered a licensee on the Defendant's property since he was an invited social guest. Defendant gave him permission to fish in his pond. This was not a business transaction, so the friend was not an invitee but a licensee. Defendant knew the boards were dangerous, so he did warn his friend that they were not safe to walk on. On the way to the pond, the friend decided to disregard this warning and use the boards to rescue a child that fell into the water. He didn't have a duty to do so, but it is foreseeable that someone would try to rescue a child, so the friend is a foreseeable plaintiff. The Defendant would be held to the standard of care of a reasonably prudent person to a rescuer.

The Defendant owed a duty of care to his friend as a licensee and a rescuer.

Breach

A person breaches their duty when they fail to exercise the required standard of care. A Defendant breached their duty of care if they negligently put someone in peril and someone else is injured in a rescue attempt. Hand's formula: If burden is less than the probability times the severity of the harm, then D breached their duty.

The Defendant did not breach the duty of care of a land possessor to a licensee. He did not have a duty to make the pond boards safe for his friend, but he did have a duty to warn him about their danger, which he did. However, the Defendant also let an attractive nuisance exist on his property, negligently putting children and potential rescuers at risk of injury. A reasonably prudent person would not allow an attractive nuisance to exist on their property, so Defendant breached his duty of care to his friend and any potential rescuer. The burden of avoiding the situation of trespasser children needing rescuing is slight compared to the probability of it happening times the severity of the harm.

The defendant breached their duty.

Causation

The Defendant's actions must be the cause in fact and the proximate cause of the Plaintiff's injuries.

Cause in Fact

A defendant's act is the cause in fact if the Plaintiff's injuries would not have occurred, but for Defendant's actions.

Without the attractive nuisance on the property, the friend would not have felt the need to rescue a child from a dangerous situation. The Defendant knew it was dangerous and chose not to do anything about it, which allowed this whole scenario to happen. But for Defendant's negligent management of the pond boards, the friend would not have tried to rescue a child and would not have been injured.

Defendant is the cause in fact of his friend's injury.

Proximate Cause

A defendant's act is the proximate cause if the harm was a reasonably foreseeable result of their act.

It is foreseeable that someone will try to rescue another person in peril. The Defendant will argue that the friend was negligent in deciding to rescue the child when he had no duty to do so, but it is still foreseeable for that to happen, so it will not sever the causal connection between Defendant's negligence and the friend's harm.

Defendant was the proximate cause of the friend's injury.

Defenses

Contributory negligence

Contributory negligence bars a plaintiff's right to recover if they were also negligent and their negligence partially caused their harm. A Plaintiff may take risks while attempting a rescue without being considered contributorily negligent.

The Defendant will argue that the friend was contributorily negligent by acting, so he should not be able to recover from the Defendant for his injuries. An exception to contributory negligence is that most times rescuers will not be considered contributorily negligent if they are harmed while undertaking a rescue that was made necessary by the defendant's negligence.

A defense of contributory negligence is not likely to succeed in this case.

Assumption of Risk

A plaintiff may be denied recovery if they assumed the risk of damage caused by the defendant's acts. Plaintiff must have known of risk and voluntarily assumed it. Some risks cannot be assumed, such as risks in situations involving an emergency.

Defendant may also try to assert the defense of assumption of risk since his friend knew the boards were dangerous, since he just told him they were, and his friend acted voluntarily when he rushed to pull the child out of the water. This defense is also unlikely to succeed for Defendant since risks cannot be assumed in an emergency situation. The friend acted quickly, without time to think because the child was clearly in danger of drowning. This would be considered an emergency situation, so the friend could not assume the risk of injury in this circumstance.

A defense of assumption of risk is likely to fail.

Damages

Defendant is liable for any injury to the plaintiff's person or property. Even if the extent of the injuries is unforeseeable, Defendant will still be liable.

The friend was injured as a result of trying to rescue a child from the Defendant's attractive nuisance. He ruptured a disc in his back and will likely incur medical costs, potentially a loss of earnings if he needs surgery or is unable to work. He may also be entitled to damages for his pain and suffering.

Defendant will be liable for his friend's damages.

The Defendant owed a duty of care for a licensee to his friend as a social guest at his property and as a reasonably prudent person as a rescuer. Defendant breached his duty by allowing an attractive nuisance to exist, something that is likely to cause a situation where someone may need to be rescued. Defendant was the cause in fact and the proximate cause of the friend's harm, and neither contributory negligence or assumption of risk will be effective defenses to the finding of proximate cause. Because of this, Defendant will be liable for his friend's damages resulting from his back injury.

END OF EXAM

2)

Question 2

Plaintiff v. Defendant - Negligence

When analyzing a negligence case, the plaintiff must show that the defendant owed them a duty of care, the defendant breached that duty, the breach of duty was both the actual and proximate cause of the harm, and the plaintiff suffered damages.

Duty of Care:

A general duty of care is owed to all reasonably foreseeable plaintiffs. Under the majority view, the plaintiff must be within the foreseeable zone of danger. Under the minority view, a duty of care is owed to everyone. Here, the jurisdiction is not specified, so we will operate under the majority view. Here, it is reasonable to assume that a motorist on the highway would be a foreseeable plaintiff because the machines pitch balls at 90 miles per hour and the highway is only 30 yards away. It would be reasonably foreseeable that a ball aimed incorrectly could get launched onto the freeway.

Here, the Defendant owns a company that sells automatic pitching machines which would make him a professional (i.e. business owner) in his industry. Thus, a reasonable person standard for duty of care is not enough, but rather the standard of care for professionals can be required. A professional is expected to act with the care of an average member of the profession in good standing with the community.

Breach:

A person breaches their duty when they fail to exercise the required standard of care. Here, the doctrine of Respondeat Superior applies because the Defendant himself does not commit the potentially negligent act, but his employee does. the doctrine of Respondeat Superior states that an employer is responsible for the tortious acts of their employees if the tort was committed within the scope of their employment. In this case, the tortious act occurs when the employee is setting up and using the machine, which would be considered within the scope of their employment with the company owner. Thus the Defendant will likely be held liable for the acts of their employee.

Therefore, when the employee breached the professional duty of care by failing to inspect the aim of the machine before he starts the machine, the Defendant also breached that professional duty.

Causation:

In order for causation to be established, the Defendant's actions must be the cause in fact, and the proximate cause of the Plaintiff's injuries.

Actual Cause:

The Defendant's conduct will be the actual cause if the Plaintiff's injury would not have occurred "but for" the alleged breach of duty. As mentioned above, the Defendant is responsible for his employee's actions. Therefore, but for the employee failing to inspect the aim of the machine, the Plaintiff would not have crashed his motorcycle.

Thus, actual cause can be established.

Proximate Cause:

In addition to being the actual cause, the Plaintiff must prove his injury is a foreseeable result of the Defendant's conduct. Intervening forces that are also foreseeable will not break the chain of causation. Direct natural reactions to the Defendant's negligence are also foreseeable. However, if the intervening force is unforeseeable such as a crime or intentional tort of a third party, the chain of causation will be broken.

Here, it can be argued that rogue softballs flying at 90 miles per hour would foreseeably cause a motorist to crash their vehicle due to the close proximity of the highway to where the pitching machines shoot the balls. Thus, the Defendant's employee's failure to make sure the balls were aimed correctly at the safety net would be the proximate cause of the Plaintiff's injuries. However, the Defendant could argue that the speed at which the Plaintiff was driving his motorcycle was an intervening force that contributed to the accident. However, it would likely be argued that people speed on the highway all the time and is therefore a foreseeable intervening force which would not break the chain of causation. There is also expert evidence to show that had the Plaintiff been driving slower, the crash would still have occurred, but the damages would have just been mitigated.

Thus, proximate cause can be established.

Damages:

Once all of the above elements have been satisfied, a Defendant will be held liable for any injury to the Plaintiff's person or property even if the damage itself is not foreseeable (eggshell plaintiff rule).

As mentioned above, all of the above elements have been met and the Plaintiff did experience damages due to the crash of his motorcycle. Therefore, the Defendant is likely liable for the damages caused to the Plaintiff.

Defenses:

When determining negligence, the conduct of the plaintiff must also be considered as they must exhibit a reasonable standard of care. In a common law jurisdiction, a plaintiff's contributory negligence would completely bar recovery. They would also be barred from recovery if they knowingly and voluntarily assumed the risk of either expressly or impliedly. However, the majority operates under a comparative negligence system in which it is determined at what percentage the plaintiff's negligence affected the outcome against that of the defendant's and reduces the plaintiff's damages accordingly. In a pure system, a plaintiff can recover some damages no matter how much at fault they are. In a partial system, a plaintiff may not recover anything if the negligence rises above a certain threshold, usually 50%.

Under Contributory Negligence and Assumption of Risk:

As stated above, contributory negligence on the behalf of the Plaintiff bars recovery. Here, the Plaintiff exhibits negligence per se by violating the statute of the posted speed limit. Negligence per se exists when someone violates a statute which was designed to protect from a specific type of harm and damages are caused from the violation of the statute. Speed limit statutes are enacted to protect speeding motorists and surrounding motorists from damages caused by driving too fast. Thus, under negligence per se, the Plaintiff exhibits negligence by driving 20 miles per hour over the speed limit. Thus, Plaintiff will be found contributorily negligent. It can also be argued that the Plaintiff assumed the risk of his own negligence by voluntarily going too fast.

Thus, under a Contributory Negligence jurisdiction, the Plaintiff would be barred from recovery.

Under Comparative Negligence:

As stated above, under a comparative negligence jurisdiction, percentages of negligence are assigned to both the Plaintiff and the Defendant when considering fault and damages. Given the analysis of the experts, they evaluated that had the Plaintiff not been speeding, he still would have gotten into the accident, but his damages would have been \$30,000 less than when he was speeding. If you can take that to believe that the experts agreed that the speeding made the Plaintiff 30% more negligent for speeding, then you can establish how comparative negligence comes into

play. In these jurisdictions, some will bar recovery if the Plaintiff's negligence is ascertained to be more than 50%.

Here, the negligence has only been assessed to 30% on the part of the Plaintiff and 70% on the part of the Defendant. Thus, either under partial or full comparative negligence jurisdictions, the Plaintiff would be able to recover damages for the accident.

Conclusion:

The Defendant is probably liable under a Comparative Negligence Jurisdiction for the harm caused to the Plaintiff because the Defendant owed a specific duty of care to the Plaintiff as a professional, his employee breached that duty under the doctrine of Respondeat Superior, his actions were both the actual and proximate cause of the Plaintiff's harm, and the Plaintiff did in fact suffer from a harm resulting in damages.

The Defendant is probably not liable under a Contributory Negligence Jurisdiction because the Plaintiff's own negligence per se would bar recovery.

END OF EXAM

3)

Director's Liability for Intentional Torts:

Battery:

Battery is an intentional harmful or offensive contact with the P's person. Contact can be with anything connected to the P's person and P does not need to be aware of the the contact if it's one that society would deem harmful or offensive. Here, the director intentionally slapped the actress on the bottom. It is unclear if this was a harmful contact, but from the actress's response and from society's perspective, the contact was definitely offensive. Therefore, the director is likely liable for battery.

False Imprisonment:

False imprisonment requires: 1) an intentional act of confinement, 2) within a bounded area, 3) with no reasonable means of escape, that 4) causes injury. Threats of immediate violence are a sufficient act of confinement, but not future threats of violence or economic threats. Here, the director slaps everyone's bottom who responds that they are "ready to give it their all." Thus, it appears the director did not intentionally do this act in order to confine the actress. He was also not the person to lock the dressing room door. The actress could have unlocked and come out of the dressing room at any point. There were no threats of immediate violence. Therefore, it is unlikely the director will be liable for false imprisonment.

Intentional Infliction of Emotional Distress:

D intentionally or recklessly engages in extreme or outrageous conduct causing P's severe emotional distress. No physical symptoms required. Outrageous conduct that exceeds the bounds of decency in a civilized society. Courts will weigh 1) repetitiveness of conduct, 2) P's special sensitivities, 3) power disparity between P and D. Here, the director intentionally engages in outrageous conduct. He believes this conduct is part of camaraderie, but society would view this conduct as exceeding the bounds of decency in a civilized society. This is especially egregious as there is an apparent power imbalance between a director and an actress. This intentional act caused the actress severe emotional distress. She "was unable to perform on stage that evening," and "she suffered crippling anxiety every time she tried to go onstage." Therefore, it is likely the director will be liable for intentional infliction of emotional distress.

Battery and Intentional Infliction of Emotional Distress to Other Actors:

The director is also likely liable for battery and IIED to any and all other actors. However, he will only be liable for IIED to any who sustained severe emotional distress as a result.

Defense - Consent:

Consent is a defense to all intentional torts. Consent must be given by one with capacity, and can either be express or implied by custom, emergency, or P's conduct. However, D must stay within the scope of consent. Here, D will likely argue the actress consented to the slap on the bottom because when he asked, "Who's ready to give it their all?", she replied "I am!" However, the actress was new to the area and did not know of this particular custom that the director and other actors participated in. Thus, the actress lacked full understanding of what her response would induce. Therefore, it is unlikely the director will prevail with this defense.

If any other actors present claims against the director for battery or IIED, the director will likely argue consent. If the actors had a history of participating in the director's custom, then he has a better chance of winning with this argument. However, as a director there is an implied power imbalance and most in society would see his actions as extremely outrageous and inappropriate.

Actress's Liability for Intentional Torts:

Battery:

See above rule statement for battery. Here, the actress intentionally slaps the director causing an offensive and potentially harmful contact. Therefore, she is likely liable for battery. However, she will likely argue self-defense.

Self-defense:

Reasonable force is allowed if the D has a reasonable belief a tort is being or about to be committed against her. Here, the actress was responding to a slap on her bottom (battery). She was "shocked" and it is possible that she was unsure if the battery would continue. She had a reasonable belief and actual knowledge that a tort was being committed against her. She responded by a slap. A slap for a slap would be seen as a reasonable force. Therefore, the actress is likely not liable for battery.

Conclusion:

The director will likely be liable to the actress for battery and for IIED. The actress will likely have a valid defense of self-defense against the charges of her battery on the director,

END OF EXAM