

MONTEREY COLLEGE OF LAW
HYBRID
TORTS SEC. 2
MIDTERM EXAMINATION
FALL 2023
PROF. L. HOLDER

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

QUESTION 1

Dan lives in a house near the Little League baseball park. Dan's front yard is not fenced. Dan's next-door neighbor, Ned, has a fenced front yard with a swing gate secured by an unlocked latch. A "No Trespassing" sign hangs on the gate. Dan likes to sit just inside his open garage drinking beer and watching the kids play baseball. Dan owns a Pitbull terrier named Comet. When the mood strikes him, Dan likes to sic Comet on unsuspecting men walking in front of his house. Comet has never bitten anyone but will charge ferociously at unfamiliar men barking and snarling. Dan laughs uproariously at the pedestrians' terrified reactions.

On a warm afternoon, Lisa and Jason were walking their leashed golden retriever, Toby, near the baseball park. Jason and Lisa were new to the neighborhood and didn't know about Dan and his dog Comet. Lisa and Jason paused on the public sidewalk under the large shade tree in front of Dan's house and watched a bit of the baseball game.

Lisa and Jason heard Dan's buddy say, "Are you going to do it?" Within seconds, Lisa and Jason heard dog barking coming from Dan's house. They turned and saw Comet charging them barking and snarling. Terrified, Jason moved in front of Lisa and Toby and hit Comet with his walking cane. Comet yelped and was stunned. Jason pulled Lisa and Toby towards Ned's house, opened Ned's gate, and closed it behind them, putting the fence between themselves and Comet. Lisa was sobbing and felt weak, but Jason was furious, red in the face and shaking. They didn't notice Toby digging up a rare white variegated Monstera in the flower bed.

Ned came running, yelling at Lisa and Jason that they were trespassing. Dan was screaming at Jason, "Why did you hit my dog? He never hurts anyone!" Dan said to Lisa, "I'm sorry ma'am, I didn't see you." Dan gathered Comet and took him back up to the house. Comet had a broken leg from where Jason hit him with the walking stick. Lisa and Jason moved to leave Ned's yard with Toby. Ned stood in front of the gate, grabbed Toby by the collar, and refused to allow Lisa, Jason, and Toby to leave his yard until they gave Ned their contact information.

Discuss only intentional torts and defenses.

Lisa and Jason against Dan? Dan against Jason?

Ned against Lisa and Jason? Lisa and Jason against Ned.

TORTS Mid Term Examination
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QUESTION 2

Jason works for NASA at Kennedy Space Center (KSC). Jason was invited to “Family Day” at KSC on a Saturday. Anticipating over 20,000 people would attend, including employees, contractors, and their families, NASA hired Tent King to set up huge event tents, with tables and chairs. NASA was providing hot dogs, ice cream, and for a small fee, beer. NASA’s most iconic buildings were open to be toured, including the VAB and the Launch Control Center.

Tent King started erecting the huge tents on Friday. To maintain stability and prevent “lift off,” each tent pole was weighed down with two 40-pound sandbags. On Friday afternoon, the breeze at KSC was particularly gusty, and one huge tent blew over. Jason watched Tent King’s workers scrambling after the tumbling tent and had a good laugh with some other engineers. Tent King righted the tent, and all appeared “ready for launch” for Saturday.

On Saturday, Jason and his wife Lisa arrived at Family Day. At the security gate onto KSC, workers had placed a large electronic sign programmed to display, “CAUTION GUSTY WIND.” Jason showed Lisa the VAB and other sites around the immense campus. Lisa’s favorite NASA ball cap blew off in a wind gust, never to be found. Parched and windblown, Jason and Lisa bought a couple of beers and settled in with some hot dogs, chips, and ice cream at the tables and chairs under a huge tent. As they relaxed, a wind gust elevated the tent like a kite, and a 2” diameter steel tent pole flew at Jason hitting him across his face, breaking his nose and orbital bone, knocking out four front teeth, and rending him unconscious. Seeing Jason’s injuries, Lisa vomited into a nearby trash barrel. KSC’s contracted paramedics, and the only paramedics allowed on KSC, PARAGOV, quickly arrived to take Jason to the hospital. But PARAGOV would only assist Jason after Lisa signed a document assuming risk of any injury from PARAGOV’s services. Lisa rode along with Jason in the ambulance to the hospital. While still on KSC, the ambulance was overturned by a wind gust, which left Lisa with a concussion.

Because of hurricane risk and the potential for property damage, Brevard County, where KSC is located, has an ordinance requiring all tent poles for huge tents to be weighed down with at least two 50-pound sandbags.

Jason sued Tent King and NASA in negligence for his injuries.
Discuss Jason’s rights and remedies, and applicable defenses.

QUESTION 3
(Same facts as Question 2)

Jason works for NASA at Kennedy Space Center (KSC). Jason was invited to “Family Day” at KSC on a Saturday. Anticipating over 20,000 people would attend, including employees, contractors, and their families, NASA hired Tent King to set up huge event tents, with tables and chairs. NASA was providing hot dogs, ice cream, and for a small fee, beer. NASA’s most iconic buildings were open to be toured, including the VAB and the Launch Control Center.

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On Saturday, Jason and his wife Lisa arrived at Family Day. At the security gate onto KSC, workers had placed a large electronic sign programed to display, “CAUTION GUSTY WIND.” Jason showed Lisa the VAB and other sites around the immense campus. Lisa’s favorite NASA ball cap blew off in a wind gust, never to be found. Parched and windblown, Jason and Lisa bought a couple of beers and settled in with some hot dogs, chips, and ice cream at the tables and chairs under a huge tent. As they relaxed, a wind gust elevated the tent like a kite, and a 2” diameter steel tent pole flew at Jason hitting him across his face, breaking his nose and orbital bone, knocking out four front teeth, and rending him unconscious. Seeing Jason’s injuries, Lisa vomited into a nearby trash barrel. KSC’s contracted paramedics, and the only paramedics allowed on KSC, PARAGOV, quickly arrived to take Jason to the hospital. But PARAGOV would only assist Jason after Lisa signed a document assuming risk of any injury from PARAGOV’s services. Lisa rode along with Jason in the ambulance to the hospital. While still on KSC, the ambulance was overturned by a wind gust, which left Lisa with a concussion.

Because of hurricane risk and the potential for property damage, Brevard County, where KSC is located, has an ordinance requiring all tent poles for huge tents to be weighed down with at least two 50-pound sandbags.

Lisa sued Tent King for NIED, and PARAGOV for negligence.
Discuss Lisa’s rights and remedies, and applicable defenses.

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QUESTION 1

Issues outline: 20 points per issue.

Intentional tort claims

Lisa and Jason against Dan? Dan against Jason?

Ned against Lisa and Jason? Lisa and Jason against Ned.

1. L&J v. D for Assault. Transferred intent as to Lisa. There are no defenses.
 2. L&J v. D for IIED. Transferred intent does not apply to IIED as to Lisa.
 3. D v. J for trespass to chattels for breaking the dog's leg. Defense of self/others/property.
 4. N v. L&J for trespassing. Defense of necessity. Damages for dug up Monstera plant.
- L&J v. N for false imprisonment. No defense. Not required to prove actual damages

QUESTION 2 (NASA 1)

Issues outline: 50 points per defendant.

Jason sued Tent King and NASA in negligence for his injuries.

J v. Tent King: Negligence.

1. RIL / NPS for violating the sand-bag ordinance.

Defenses: assumption of risk / comparative-contrib negligence (J saw a tent below over the day before).

J v. Nasa: Negligence.

2. Premises liability – licensee (social guest) standard of care. Duty to warn of dangerous conditions – was electronic sign at gate adequate?

Vicarious liability for Tent King's torts? Not liable for Independent Contractor unless inherently dangerous activities.

Negligent supervision, unqualified and incompetent contractor.

Defenses: same as Tent King - assumption of risk / comparative-contrib negligence (J saw a tent below over the day before).

QUESTION 3 (NASA 2)

Issues outline: 50 points per defendant.

Lisa v. Tent King for NIED.

1. General rule: “zone of danger” & physical symptoms
2. Close relative, present at scene, perceived the event – physical symptoms not required

Lisa v. PARAGOV for Negligence

1. Duty of care to Lisa (riding along with Jason)?
2. Wind gust proximate cause of injury? Intervening / superseding cause?
3. Defenses:
 - a. Express assumption of risk: Effect of document assuming risk of any injury – valid when only one provider / emergency situation? Valid as to Lisa rather than Jason?
 - b. Implied assumption of risk – riding in emergency vehicle that will race to hospital

1)

Question 1: What intentional torts and defenses are possible in this hypo?

Lisa and Jason against Dan

Assault

An intentional act on the part of the defendant creating reasonable apprehension of imminent harmful or offensive contact with the plaintiff's person, causation. +

Transferred Intent:

The defendant intends to commit a tort against a person and instead commits a different tort against that person, or the same tort against a different person, or a different tort against a different person.

Analysis:

Intent: The defendant acts with the purpose of producing a consequence or acts knowing the consequence is substantially certain to result.

Dan purposefully sicced his dog, Comet, on Jason. Therefore Dan committed an intentional act.

Causation: is shown when the result is caused by the defendant's act or an act the defendant set in motion.

Dan's act of siccing Comet on Jason caused Jason and Lisa to fear for imminent harmful or offensive contact as they were sobbing and weak, furious, and had to trespass into a neighbor's yard believing they needed to do so for their safety. Therefore Dan's act was the cause of the assault.

Reasonable Apprehension:

Apprehension is the expectation that something was about to happen. When Jason and Lisa saw Comet coming towards them they were terrified. Therefore there was reasonable apprehension.

Imminent:

Immediate. The dog was coming at Jason and Lisa right then not at some point in the future, therefore this element is met.

Harmful or Offensive:

Harmful means capable of causing injury, pain or disfigurement. Offensive means an act a reasonable person would be offended by. This is a pit bull which is a breed known for being able to cause harm that was charging towards Jason and Lisa. Therefore the harmful element has been met. It could be said that having someone sic their dog on you would also be really quite offensive. No reasonable person would do that.

Transferred Intent: (see above) Intent can transfer when the defendant intends to commit a tort against one person but commits it against another. While Dan has a history of siccing Comet on men, he ended up siccing the dog on Lisa on accident. He could try to say that the dog had never bitten anyone before and he apologized for siccing Comet on Lisa, but this is not an acceptable argument because Lisa clearly met the elements for assault as evidenced by analysis above and intent transfers.

Damages

Damages can be general or special or punitive. There was not physical damage to Jason or Lisa but they could possibly pursue special damages flowing from the tort of pain and suffering and there could likely be a case to be made for punitive damages because Dan seemed to have done this with malice

Defenses: There are no defenses that Dan can claim

Conclusion: Dan will be liable for assault of Lisa and Jason. Perfect.

Battery

An intentional act on the part of the defendant that creates harmful or offensive contact with the plaintiff's person, causation.

There was not contact in this case and due to time analysis has been limited to ruling it out because contact to a person or something attached to the person was not present. Perfect

Intentional Infliction of Emotional Distress

An act amounting to extreme and outrageous conduct on the part of the defendant to intentionally or recklessly inflict extreme emotional distress, causation.

An act amounting to extreme and outrageous conduct

Dan siccing his dog Comet could be considered extreme and outrageous because it is outside the bounds of what a reasonable person would consider appropriate to do in the situation. It is simply outrageous to do this so this element has been met.

Intent (supra)

Dan intentionally sicced Comet therefore he committed an intentional act.

Exception: Transferred intent does not apply to IIED. No intent against Lisa.

Causation (supra)

Lisa and Jason were sobbing, felt weak, furious, red in the face and shaking but for Dan siccing Comet on them this emotional distress would not have happened.

Reckless: B < PL

While this is an OR element Dan could also be considered to have committed a reckless

act because the the risk of siccing a dog on someone even if he didn't think the dog would bite because it never has before does not negate the effect it could have on Lisa and Jason. Dogs can be dangerous animals.

Inflicting Extreme Emotional Distress

Extreme emotional distress can be evidenced by the fact Lisa and Jason were sobbing, felt weak, furious, red in the face and shaking. Dan might try to argue that it wasn't that bad but it is more likely than not this element has been met.

Damages: Lisa and Jason can receive award for damages due to extreme emotional distress.

Defenses: None

Conclusion: Dan will be liable for IIED to Lisa and Jason and they can pursue damages for extreme emotional distress. Very good.

Dan against Jason

Trespass to Chattels/Conversion

TC: An intentional interference with the possessor's personal property which causes dispossession, damage, or diminution in value.

Conversion: An intentional interference with the possessor's personal property which causes destruction or severe interference with the dominion or control of the possessor or owner of the property.

Intent: Supra

Jason intentionally struck Comet with his walking stick therefore this element has been

met.

Causation: Supra

But for Jason striking Comet with his walking stick Comet would not have had a broken leg. This element has been met

Possessor's Personal Property

A pet is considered personal property therefore Jason did interfere with Dan's personal property

Damage

Comet sustained a broken leg from where Jason had hit him therefore damage was sustained. Dan could pursue general damages in the form of vet bills to repair Comet's leg

Defenses:

Self-Defense/Defense of Another / Defense of Property (Toby)

A claim of self defense is the defendant believed he needed to act in self-defense to protect him (or another) from imminent danger

The defendant must use reasonable force in protect himself (or another) in defending against the immediate danger.

Imminent:

Happening immediately. The dog was charging towards Jason, Toby and Lisa therefore Jason was acting to avoid an imminent not future act.

Danger

Capable of producing bodily harm or offensive contact or even deadly harm or harm capable of great bodily injury. This is the case because a dog, a pit bull was charging towards Jason Lisa and Toby that qualifies as danger.

Reasonable Force

The force that would be used must be what a reasonable person would use when faced with a similar circumstance. While Dan might state that breaking the dog's leg is excessive Jason could state that a full grown pit bull was charging, barking, and snarling towards him and that he used the force available in the moment to protect himself, Lisa and Toby. Therefore Jason used reasonable force.

Of another

Person

Lisa and Toby were another and Jason was protecting them as well as himself

Property

Conclusion: Because Jason was using self-defense to protect himself, Lisa, and Toby from Comet's attack it is unlikely Dan will be able to recover in a suit of trespass to chattels.

Very good.

Ned Against Lisa and Jason

Trespass to Property

An intentional act of physical invasion by the defendant of the possessor's personal property, causation.

Intent (supra)

Jason and Lisa going into the yard intentionally this element has been met

Causation (supra)

But for Jason and Lisa going into the yard (that was clearly marked No Trespassing)

trespass to property would not have happened.

Physical Invasion:

Invasion by a tangible object. Jason and Lisa and Toby are tangible objects so they meet the element of physical invasion.

Damages: just trespassing is enough to be awarded damages however nominal, however, Toby dug up a rare white variegated Monstera in the flower bed while they were there. Technically I could argue this was Trespass to Chattels/Conversion but I don't have time so I'm sticking it in the Trespass to property analysis. **This is all that is necessary.**

Defenses: Necessity

Necessity happens in the event of an emergency in which it is necessary to do something that generally could be a trespass in order to avoid the greater harm.

Qualified if it is private necessity

The trespasser is responsible for paying for damages.

Event of an emergency can be proven because Comet was charging Jason, Lisa, and Toby and they had nowhere safe to go but Ned's yard. Standing in a yard that is fenced in order to avoid being attacked meets the element of avoiding the greater harm. Even though Ned had the yard clearly marked with no trespassing due to the emergency the defense of necessity can apply. **+**

Private necessity

Not public, a party of individuals. JLT count as a private party of individuals

Qualified:

This means that JLT would be responsible for any damages that happened due to their

needing to trespass. While JLT took refuge in the yard to avoid being attacked by Comet Toby dug up and destroyed a Monstera so they will need to pay for damages. +

Conclusion: Because JLT can claim necessity they will not be held liable for trespass to property but will have to pay for damages for the Monstera that Toby destroyed while in the yard. Excellent

Lisa and Jason against Ned

False Imprisonment:

Rule:

An intentional act on the part of the defendant that confines or restrains plaintiff to a bounded area, causation.

Intent: (supra)

Ned intentionally stood at the gate of his fence yard which blocked Jason and Lisa from exiting. This element has been met

Causation: (supra)

But for Ned refusing to allow Lisa and Jason to leave unless they gave the contact information they would not have been falsely imprisoned.

Confines or restrains:

Can be by word or action in this case Ned is standing in front of the gate, has grabbed their dog by the collar and refusing to let them leave a fenced in area. Therefore Ned is confining them.

Bounded Area:

Confinement in all directions. Ned confined them in a bounded area because they were in his fenced in yard and unable to move freely.

Damages:

While there aren't many damages here in the way of specific or general there could still be negligible damages awarded for the FI. It doesn't appear Ned was acting with malice so punitive damages wouldn't apply.

Defenses:

Shopkeepers Defense:

Reasonable confinement

Reasonable time

Under reasonable suspicion of shoplifting

No deadly force.

Due to time I'm not analyzing each element because Ned is not a shopkeeper and Jason and Lisa are not shoplifting so this defense doesn't fly.

Conclusion: Ned will be held liable for false imprisonment of Jason and Lisa (but probably not Toby cause he is a dog) and could be liable for general damages for pain and suffering.

Excellent essay.

2)

Jason V. Tent King

To establish a prima facie case of negligence four elements must be proven: Duty, Breach, Causation, Damages.

Duty: The existence of a duty on the part of the defendant conform to a specific standard of conduct to protect the plaintiff from unreasonable risk of injury.

Breach: The breach of that duty in that the conduct fell below the standard

Causation: The breach was the actual (factual) and proximate (legal) cause of the injury.

Damages: The plaintiff sustained damages to their person or property.

Duty

To Whom does Tent King owe a duty of care?

Rule:

Cardozo (majority rule) foreseeable plaintiffs, not ones outside the zone of danger, Andrews (minority rule) anyone

Analysis:

Going with the majority rule Jason would be a foreseeable plaintiff because Tent King was hired to set up tents for a NASA family day at KSC and Jason is an employee who would attend. Tent King owes a duty of care to Jason.

What is the Standard of Care:

The general standard of care is that of a reasonably prudent person. A reasonably prudent person would have ensured that the tents were properly secured. A reasonably prudent person would not want the tents flying around and injuring folks in a wind storm. Therefore Tent King did not meet the RPP standard of care.

Special Standard of Care:

Professionals: professionals are required to conform their conduct to a standard of care that is what a member in good standing would do who is also a member of the professional class. While we usually think of doctors and such as part of the professionals, TK could also be held to a higher standard of care because they assumedly possess higher training and skill than a general person who would put up a tent. So Tent King could be held to that special standard of care.

Negligence Per Se

Negligence Per Se is a standard that is set by statute. In order for NPS to come into play the plaintiff must be part of a class of people the statute is designed to protect and the harm that the plaintiff suffered must be that which the statute has been designed to protect from.

In this case there is an ordinance requiring all tent poles to be weighed down with two 50 pound bags however Tent King only used two 40 Pound bags. In this case the reason for the statute is because of hurricane risk and potential for property damage. However, the damage to Jason was of a personal injury nature. The statute does not appear to be designed to recognize him as a class of individuals to protect because it mentions property damage and hurricane risk and the harm the statute is meant to protect from appears to be property damage. So NPS would not be able to be claimed here as a standard and a breach of that standard of care. +

Breach:

There are three ways to prove breach: Negligence Per Se, Res Ipsa Loquitur, and the Learned Hand formula of $B < PL$. In this case the best option to choose would be the Hand formula (NPS was already ruled out above and RIL isn't a good fit (discussed in next hypo). The burden of properly securing the tent is slight compared to the risk of harm and magnitude of harm that Jason sustained by a flying tent pole. TK has breached their duty of care.

Causation:

The breach must be actual (the factual cause) and proximate (legal cause) of the injury in order to prove causation.

Actual Cause can be proven three ways: the But For Test, the Substantial Factor test and Unascertainable Causes.

The but for test is the best option here because we can tie the following to the situation: The injury to the plaintiff would not have happened but for the action of the defendant. In this case the injuries to Jason would not have happened but for TK neglecting to properly secure the tent down which caused the steel pole to fly at Jason and injure him severely. Therefore the breach was the actual cause of Jason's Injuries.

Proximate Cause is the legal cause and it looks at the liability of the defendant. The test to apply here is the Reasonably Foreseeable Cause test.

Reasonable would be that a reasonable person would know that short of any intervening events happening it would be reasonable to foresee the injury. In this case, we know that there was a lot of wind at the Family Day, not only on Saturday but also on Friday when the tent had already blown over. It would be reasonable to foresee that if the tent blew over that the poles and other equipment that make up the tent would be moving around and could cause damage. Because the pole flying through the air in the event of a wind gust was reasonably foreseeable the proximate cause can be established and TK will be liable for the injury.

Damages: Damages can be general, special or punitive. In this case Jason sustained damages to his face, nose, orbital bone, teeth, and was rendered unconscious. He could pursue for general damages for lost wages due to recover and medical bills. He could also recover special damages flowing from the tort of pain and suffering. If malice was determined to be a factor he could recover punitive damages.

Defenses:

Assumption of Risk. This is a defense that can apply if the plaintiff knowingly assumed the risk either through express or implied consent. While Jason watched the tent being blowing around on Friday and laughed with some other engineers, he also watched Tent King right the tent and all appeared "ready" for Saturday. There is nothing in the fact pattern that implies that Jason assumed the Risk of being severely injured while hanging out at the tent relaxing, eating, and spending time there on Family Day. This is not a valid Defense

If a Defendant can be proven to be Contributorily Negligent they can be barred from recovery. But there is nothing in the fact pattern that would lead us to think Jason was contributorily negligent by relaxing in the tent on family day. He didn't go kick the poles over or try to move the tent. This is not a valid defense.

Comparative Negligence can be both pure and impure meaning if Jason was found to be comparatively negligent his award for damages could be reduced proportionally (pure) or if his conduct was as much or more of a contributing factor he could be barred from recovery. Nothing in the fact pattern implies he was negligent.

Conclusion: Because no valid defenses exist, Jason can pursue a case against Tent King and recover damages for medical bills, lost wages, and pain and suffering. Most likely he will not recover punitive damages however.

Jason V. NASA

To establish a prima facie case of negligence four elements must be proven: Duty, Breach, Causation, Damages.

You can use supra.

Duty: The existence of a duty on the part of the defendant conform to a specific standard of conduct to protect the plaintiff from unreasonable risk of injury.

Breach: The breach of that duty in that the conduct fell below the standard

Causation: The breach was the actual (factual) and proximate (legal) cause of the injury.

Damages: The plaintiff sustained damages to their person or property.

Vicarious Liability/Respondeat Superior

Independent Contractor?

An employer is vicariously liable for the negligence of their employees. NASA hired Tent King to set up huge event tents for "Family Day." Because NASA was Tent King's employer they can be found liable for TK's negligence which was established in the hypo above. They can be pursued by Jason as joint tortfeasors if both can be proven to be negligent so while NASA is vicariously liable already let's run through the elements of negligence for NASA to see what their duty of care was to Jason, if it was breached, if they were the actual and legal cause of the breach and if there are damages.

In general, a principal will not be vicariously liable for tortious acts of her agent if the latter is an independent contractor. Two broad exceptions exist, however:

Duty

- (i) The independent contractor is engaged in inherently dangerous activities, e.g., excavating next to a public sidewalk, blasting.
- (ii) The duty, because of public policy considerations, is simply nondelegable, e.g., the duty of a business to keep its premises safe for customers.

To Whom does NASA owe a duty of care?

Rule:

Cardozo (majority rule) foreseeable plaintiffs, not ones outside the zone of danger,
Andrews (minority rule) anyone

Analysis:

Going with the majority rule, Jason would be a foreseeable plaintiff because NASA is putting on a "Family Day" at KSC and Jason is an employee who would attend. NASA owes a duty of care to Jason.

What is the Standard of Care:

The general standard of care is that of a reasonably prudent person. A reasonably prudent person would have ensured that they had hired quality people to do a job. A reasonably prudent person would not want the tents flying around and injuring folks in a wind storm. However, we know that Tent King didn't follow the statute in securing the tents with 50 pound weights so perhaps a case could be made that NASA didn't hold themselves to the proper standard of care when they hired Tent King.

Landowner: NASA is a land owner and therefore has a specific standard of care based on the type of people who are on the land. There are three general classes: trespassers, licensee, and invitees.

Trespassers are those plaintiffs who are on the land without consent express or implied. Jason was an employee of NASA so he had consent to be there and therefore was not a trespasser.

Licenseses are social guests that are on land closed to the public and not to confer economic benefit. The standard of care is for the landowner to have a duty to make safe known dangerous conditions on the land. However, Jason really doesn't fit this category because while it's a "Family Day" the land is open to the public and he is an employee which means he provides economic benefit to NASA.

Invitees are individuals who are on the land that is open to the public and to confer economic benefit. The duty of the landowner to an invitee is to exercise reasonable care to prevent injury, a duty to inspect and a duty to make safe dangerous conditions. In this case, NASA is open to the public and Jason is an employee, NASA gets economic benefit from Jason so They have a duty of care to Jason that rises to the duty of care

that should be paid to an invitee. There was nothing about Jason's behavior that implied that he exceeded his status as an Invitee (he didn't trespass or go places NASA had ruled off limits that day).

Breach: Was there a breach in the duty of care. There are three ways to prove breach: Negligence Per Se, Res Ipsa Loquitur, and the Learned Hand formula of $B < PL$. The best one to use here is the Learned Hand Formula. NASA had a duty to exercise reasonable care, to inspect, and to make safe. There is nothing in the fact pattern that states that inspections happened on Friday or on Saturday when these large tents were being utilized in windy conditions. In fact we know they knew it was windy because there were signs stating "Caution Gusty Wind" and there was a Statute that required 50 pound weight bags to mitigate against hurricanes and property damage. If NASA had inspected the tents properly no doubt they would have discovered the lighter weight sand bags. And it wouldn't have been that difficult the burden would not have been that great to inspect and make sure the tents were secure when compared to the risk and magnitude of the injury sustained by Jason. So NASA breached their duty of care.

Causation:

The breach must be actual (the factual cause) and proximate (legal cause) of the injury in order to prove causation.

Actual Cause can be proven three ways: the But For Test, the Substantial Factor test and Unascertainable Causes.

The but for test is the best option here because we can the following to the situation: The injury to the plaintiff would not have happened but for the action of the defendant. In this case the injuries to Jason would not have happened but for TK neglecting to properly secure the tent down which caused the steel pole to fly at Jason and injure him severely. And it is likely that had NASA properly inspected the installation of the tent it might have been discovered that TK hadn't properly secured the tent. Therefore the

breach was the actual cause of Jason's Injuries.

Proximate Cause is the legal cause and it looks at the liability of the defendant. The test to apply here is the Reasonably Foreseeable Cause test.

Reasonable would be that a reasonable person would know that short of any intervening events happening it would be reasonable to foresee the injury. In this case, we know that there was a lot of wind at the Family Day, not only on Saturday but also on Friday when the tent had already blown over. It would be reasonable to foresee that if the tent blew over that the poles and other equipment that make up the tent would be moving around and could cause damage. Because the pole flying through the air in the event of a wind gust was reasonably foreseeable the proximate cause can be established and NASA will be liable for the injury.

Damages: Damages can be general, special or punitive. In this case Jason sustained damages to his face, nose, orbital bone, teeth, and was rendered unconscious. He could pursue for general damages for lost wages due to recover and medical bills. He could also recover special damages flowing from the tort of pain and suffering. If malice was determined to be a factor he could recover punitive damages.

Defenses:

Assumption of Risk. This is a defense that can apply if the plaintiff knowingly assumed the risk either through express or implied consent. While Jason watched the tent being blowing around on Friday and laughed with some other engineers, he also watched Tent King right the tent and all appeared "ready" for Saturday. There is nothing in the fact pattern that implies that Jason assumed the Risk of being severely injured while hanging out at the tent relaxing, eating, and spending time there on Family Day. This is not a valid Defense

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contributorily negligent by relaxing in the tent on family day. He didn't go kick the poles over or try to move the tent. This is not a valid defense.

Comparative Negligence can be both pure and impure meaning if Jason was found to be comparatively negligent his award for damages could be reduced proportionally (pure) or if his conduct was as much or more of a contributing factor he could be barred from recovery. Nothing in the fact pattern implies he was negligent.

Conclusion: Because no valid defenses exist, Jason can pursue a case against NASA and Tent King as joint tortfeasors and recover damages for medical bills, lost wages, and pain and suffering. Most likely he will not recover punitive damages, however.

Excellent essay.

3)

Lisa v. Tent King +

Issue: Can Tent King be held liable for negligent infliction of emotional distress? +

Rule: Negligent infliction of emotional distress- (1) an immediate member of plaintiff's family was involved in a negligent act, (2) the plaintiff was in the "zone of danger" and (3) the plaintiff suffered physical symptoms **Good**

Element 1- An immediate member of plaintiff's family was involved in a negligent act
What was the negligent act? Use facts.

Lisa is the wife of Jason, so they are first degree family members and considered immediate family. This fact should be undisputed.

Element 2- The plaintiff was in the "danger zone" +

Lisa was with Jason under the huge tent sitting at tables and chairs. The danger zone would be under the tent, most likely in visible view of the incident. The facts indicate that Lisa was in the "danger zone" and these facts should not be disputed. **Good**

Element 3- The plaintiff suffered physical symptoms
How was J injured. Use facts.

After seeing Jason's injuries, Lisa vomited into a nearby trash barrel. A physical symptom would be vomiting.

Tent King could try to place blame on the hot dog, chips, ice cream or beer vendor as the cause for the stomach issues Lisa had. +

The facts do not indicate that Lisa had any contributing gastrointestinal indifferences, and this element would most likely be met.

Conclusion: All elements are met, and Tent Kings should be held liable for NIED as to

Lisa. Should mention the Exception: The defendant breaches a duty to a bystander not in the zone of danger who (1) is closely related to the injured person, (2) was present at the scene of the injury, and (3) personally observed or perceived the

Remedies: If Lisa required medical care due to her vomiting, she may be able to recover for medical expenses. If the distress caused her to miss work, she may recover lost wages. However, it is most likely that Lisa would prevail to receive compensation for pain and suffering.

Lisa v. PARAGOV

Issue: Can PARAGOV be held liable for the negligence against Lisa when the ambulance was overturned by wind gust?

Rule: Negligence: (1) duty, (2) breach, (3) causation, (4) Damages

Analysis:

Element 1- Duty- a defendant has a specific standard of care that a reasonable person (or company) of the same or similar circumstances must comply

The paramedics had a duty of care as to the caretaking of injured or sick passengers in their van. The driver of the ambulance would be held to that as a reasonable driver of a vehicle that should not create any unreasonable risk of harm or injury to its passengers. The duty of both the paramedics and driver would be to not cause any unreasonable risk of harm to patients or passengers. +

Element 2- Breach- the defendant breached the standard of care

The facts do not indicate that the paramedics of PARAGOV breached their duty of care because they would be held to a standard that other paramedics would be held to. The driver of the ambulance also did not breach his duty of care because he did not expose the passengers to an unreasonable risk of harm.

Element 3- Causation- the defendant's acts were the actual and proximate cause of injury

The facts indicate that the gust of wind caused the overturning of the ambulance. This gust of wind was the actual and proximate cause of Lisa's concussion. The paramedics nor the driver of the ambulance would have been able to control the gust of wind.

Element 4- Damages- the plaintiff suffered injury or monetary damages to their person or property

Lisa suffered a concussion due to the overturning of the ambulance.

Defenses

Assumption of the Risk- the plaintiff assumed a risk when they engaged in the activity

Lisa was in an area known for the risk of hurricanes, which would inevitably mean high winds. By choosing to live in such an area, Lisa would know that high wind gusts were probable. Lisa also signed a document assuming risk of any injury from PARAGOV's services which would deny her any claim for **any** injury.

Act of God- a force of nature caused the act that resulted in the breach of the duty to the plaintiff

Necessity- The driver could argue that he could have waited until it was safe to drive on the road due to wind. However, with an injured passenger in the vehicle, the risk of waiting to get Jason to the hospital outweighed the risk of outweighing the wind storm. The driver needed to get to safety with an injured passenger requiring more care than the paramedics could offer at KSC.

Multiple-Tortfeasors- PARAGOV would have a strong claim that NASA should be found (at least contributorily) liable for Lisa's injury because they allowed the event to continue even with the strong, hurricane like winds. NASA could have shut down the event and not allowed invitees to the premises.

Good discussion

Counter-Defense

Assumption of the Risk re Signing of Document to Deny Recovery if Injury Occured from PARAGOV's services

Good job spotting this issue!

Lisa did not have a choice in who took she and Jason to the hospital, as KSC had contracted with PARAGOV as the sole provider of medical services allowed on KSC. There was no alternative option, and PARAGOV denied assisting Jason unless Lisa signed the document. So is the waiver valid?

Conclusion: Since Lisa had no other alternative as to who took care of Jason and drove them to the hospital, it is likely that PARAGOV would be found liable for at least part of the negligence that occurred. NASA, having contracted PARAGOV to work on their property, should also be found to be contributorily at fault for Lisa's injuries.

Remedies: Medical expenses (current and future), lost wages

END OF EXAM