

SAN LUIS OBISPO COLLEGE OF LAW

TORTS

MIDTERM EXAMINATION

FALL 2022

PROF. R. ALLEN

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

QUESTION 1

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

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

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

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

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QUESTION 2

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

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

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

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

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QUESTION 3

Connor and Nate were high school students that agreed to fight after school on Friday. Unbeknownst to Connor, Nate was a Black Belt in Brazilian jiu jitsu. When they met at the appointed hour, Nate immediately took Connor to the ground, mounted him, and then broke his right arm with a perfectly executed arm bar.

Connor went to the emergency room of the local hospital. Because of an outbreak of Co-vid, Connor was quickly evaluated in the parking lot of the hospital. Connor was told by the harried ER doctor that he had a slight fracture, to keep his arm immobile until Monday, and then see his primary physician for further treatment. He was also given some over-the counter pain relievers.

Connor suffered with extreme pain throughout the weekend. The right humerus fracture was compound, and part of the bone cut into the tissue. During the weekend the tissue became infected and then gangrenous. By the time Connor reached his primary physician, he was told the arm had to be amputated.

After the amputation and recovery, Connor comes to you for advice. He wants to know if he can sue Nate or the physician and the hospital for his lost right arm.

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TORTS ANSWER OUTLINE

FALL 2022

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QUESTION 1

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

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

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

Issue	Rule	Analysis	Concl'n	Points Allotted
Status (2 points)	Invitee Licensee Trespasser (2 points)	Harry should be considered a licensee. The store has a Duty of Reasonable Care (2 points)	(1 pt)	/7
Intentional Torts by Harry				
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or	took razors for a few minutes; damage unintentional (2 points)	(1 pt)	/7

	diminution of value (2 points)			
Conversion (2 points)	Willful, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points)	took razors for a few minutes; damage likely irreparable, but not intentional (2 points)	(1 pt)	/7
Intentional Torts by Dude and Bart				
False Imprisonment (2 points)	Intent to confine or restrain with no defense (2 points)	Forced back to store; Forced into "office"; Taken to floor (2 points)	(1 pt)	/7
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	Confronted; forced back to store; Forced into "office"; Taken to floor (2 points)	(1 pt)	/7
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or	Harry likely apprehensive being taken back to store and toward "office"; apprehensive	(1 pt)	/7

	offensive touching (2 points)	in advance of battery (2 points)		
IIED (2 points)	Intentional reckless, extreme and outrageous conduct that causes severe emotional distress, direct or indirect victim (2 points)	Difficult to assess: perhaps Dude and Bart are justified; no discussion re emotional distress as a result, distress caused by claustrophobia (2 points)	(1 pt)	/7
Damages (2 points)	General Special Punitive (6 points)	Pain and suffering from TBI; scared; Present and future medical expenses likely; lost wages, if working; reprehensible conduct to be punished? (6 points)	(1 pt)	/15
Defenses	Shopkeepers Privilege	Harry had taken razors; reasonable believe in need to stop; detained for reasonable period of time?		/7
Total points possible				/71

TORTS QUESTION 2

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

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

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

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

Issue	Rule	Analysis	Concl'n	Points Allotted
Lance's Cause of Action				
Negligence (2 points)	Over-arching Negligence elements (2 points)			/4
Duty (2 points)	All foreseeable plaintiffs (2 points)	Driving, so all other drivers and cyclists (2 points)	(1 pt)	/7
SOC (2 points)	RPP Statute (4 points)	Driving speed limit; fully in the proper lane	(1 pt)	/9

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

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

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QUESTION 3

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Connor went to the emergency room of the local hospital. Because of an outbreak of Co-vid, Connor was quickly evaluated in the parking lot of the hospital. Connor was told by the harried ER doctor that he had a slight fracture, to keep his arm immobile until Monday, and then see his primary physician for further treatment. He was also given some over-the counter pain relievers.

Connor suffered with extreme pain throughout the weekend. The right humerus fracture was compound, and part of the bone cut into the tissue. During the weekend the tissue became infected and then gangrenous. By the time Connor reached his primary physician, he was told the arm had to be amputated.

After the amputation and recovery, Connor comes to you for advice. He wants to know if he can sue Nate or the physician and the hospital for his lost right arm.

Issue	Rule	Analysis	Concl'n	Points Allotted
Connor v. Nate				
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	Taken to the ground, mounted, right arm broken (2 points)	(1 pt)	/7

Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	Taken to the ground, mounted, right arm broken (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)	Intentionally broke arm; not really extreme and outrageous because a fairly common occurrence for high school boys (2 points)	(1 pt)	/7
Connor v. Physician and hospital				
Vicarious Liability of hospital (2 points)	VL for acts of employees or IC with apparent or implied authority (2 points)	No facts re issue (2 pts)	(1 pt)	/7
Negligence (2 points)	Over-arching statement (2 points)			/4
Duty (2 points)	All foreseeable plaintiffs; special relationship (2 points)	Physician and hospital has duty, but not required to accept all patients. (2 points)	(1 pt)	/7
SOC (2 points)	RPP (2 points)		(1 pt)	/5

Breach (2 points)	<u>Blyth; Carroll</u> <u>Towing; Hand</u> Balance Test (2 points)	Failed to provide care to arm, but balanced against pandemic event and probability of serious injury? (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For; Substantial factor (2 points)	But for Nate; lack of treatment a contributing factor (2 points)	(1 pt)	/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (4 points)	Nate was cause of broken arm; medical intervention is reasonably foreseeable (4 points)	(1 pt)	/11
Damages to Connor	General; Special; Punitive (2 points)	Pain and suffering; loss of enjoyment of life; medical costs; earnings?; future medical? (2 points)	(1 pt)	/7
Defenses for Nate	Consent to fight: majority v. minority jurisdictions;	Connor agreed to fight Nate after school, but did not know he was a	(1 pt)	/7

	effective consent? (2 points)	Black Belt in jui jitsu (2 points)		
Defenses for physician and hospital	CN Comp Neg AOR	Connor agreed to fight; Connor did not seek treatment during weekend when in pain		/11
Total points possible				/94

1)

Legal Status of Harry inside the store. Harry, a FOOD 4 US Shopper has an invitee status. Shopkeeper/customer is a special relationship that establishes a duty from the Shopkeeper to all invitees of his business. Generally an invitee is someone who is on location for business. That can mean either that someone is in a public place of business, or a delivery driver or repairman is in a private home on business. Here, because Harry is shopping, he is an invitee. FOOD 4 US has a duty to warn of all known hazards and to seek out unknown hazards. This duty does not extend in certain non-public areas of the store, nor after business hours.

Intentional Torts of Dude and Bart. Dude and Bart, FOOD 4 US security guards *could* be found liable for the following intentional torts.

False Imprisonment. False imprisonment is the willful and intentional confining of another without privilege and with no means of escape. Here, when Dude and Bart apprehended Harry for the unpurchased items in his possession, they first "demand that Harry return to the store", and after Harry offers the razors to them, Dude and Bart "insist that Harry enter a small 'office'." The office is small and with no windows to attempt escape, however the facts do not suggest Harry ever entered the office, in fact, he refused. Such a demand, by Dude and Bart without force or compliance does not meet the prima facie elements of False Imprisonment. *However*, when Dude and Bart forcibly take Harry to the ground after Harry attempts to leave their presence, this conduct may qualify as False Imprisonment.

Assault and Battery. Assault is the willful and intentional, or with knowledge to a substantial certainty that either was a failed attempt to make harmful contact, or an attempt to create apprehension of immediate harm (with no defense). Battery is the willful and intentional, or with knowledge to a substantial certainty that the conduct will cause

harmful or offensive touching (with no defense). When Harry refused to go with Dude and Bart and attempted to leave, Dude and Bart took him down. As a result, Harry hit his head on the tile floor and suffered a traumatic brain injury. Because it is likely that Harry experienced fear and apprehension from Dude and Bart's conduct, Dude and Bart are likely liable for assault. The intent required for Battery is single intent, meaning that the conduct, but not the result be intentional. Here, it is likely that Dude and Bart harmfully and offensively made contact with Harry, but even if that hadn't, their *causing* Harry to hit the tile floor satisfies the Battery elements.

Intentional Infliction of Emotional Distress. Intentional Infliction of Emotional Distress ("IIED") is the willful and intentional, extreme outrageous conduct that causes emotional distress. Both Bart and Dude's actions were willful and intentional. A qualification of extreme outrageous conduct comes into play when we consider the extent of Bart and Dude's privilege to apprehend a potential shoplifter. While right of claim permits a party to reclaim their rightful property, the use of physical force against another in your pursuit is not permissible. Depending on how they "took Harry to the ground", liability may attach if their contact with Harry is established to be extreme and outrageous. The facts also suggest that Harry suffered from claustrophobia and became anxious upon the demand to remain confined in a small windowless office. The facts do not set forth how Harry was feeling after the events, but it is likely, if he can make a showing that he was impacted emotionally, that he may bring a claim for IIED.

Intentional Torts of Harry

Trespass to Chattel. Trespass to chattel is the willful and intentional interference with another's chattel, causing harm. Here, although the facts are silent as to whether Harry intended to steal the razors when he put them in his pocket. Trespass to chattel is dual

intent in nature and requires both the conduct and the result be intentional. If Harry intended to steal the razors (chattel), he certainly interfered with FOOD 4 US's possession. As such it could likely be established by a preponderance of evidence that Harry is liable for trespass to chattel.

6 Conversion. Conversion is the willful and intentional interference with another's chattel, causing harm so substantial that it essentially equates to a total loss. As discussed above, many prima facie elements have been discussed and likely met. Because Harry landed on the razors, breaking many of them, it is also likely that he is liable for conversion of at least the broken razors.

Trespass. is the willful and intentional entry direct or indirect entry upon the land of another without permission. As discussed above, all facts support Harry's entry as an Invitee, and not as a trespassor.

Damages.

7 ✓ Special. Special damages refer to the any economic loss suffered, i.e. the cost of the razors could be attributable to Harry. Any lost income as a result of Harry's TBI, and any medical expenses for his injuries should be explored as well.

✓ General. General damages include pain and suffering and loss of enjoyment of life (i.e. hedonic damages). Because Harry may not live or behave as he used to, he should explore damages for pain and suffering (provided he is conscious to experience pain and suffering).

7 ✓ Punitive not likely. Punitive damages are awarded in cases of reckless or intentional conduct and are not meant to make the plaintiff whole, It could be requested due to the nature of Harry's injury, but without a showing that Dude and Bart intended him to hit his head or harm him in some way, I think it is unlikely.

Defenses. Unfortunately, Harry does not have many available Defenses to his torts of trespass to chattel and conversion. But Bart and Harry will likely explore a defense of privilege.

Privilege. Privilege means that the actor's conduct was permitted due to some status.

Shopkeeper's privilege should be considered here. When a shopkeeper reasonably suspects that someone has stolen, they are privileged to reasonable hold them for a reasonable time until law enforcement arrive. Although some facts suggest that shopkeeper's privilege may be asserted, it is likely not a successful defense because, as previously discussed, Bart and Dude went beyond ~~they~~ scope when they physically harmed Harry after he offered to give the merchandise back. Further, Harry was claustrophobic; and all plaintiffs must be taken as they are, (e.g. eggshell). s.p.

As such, Harry, Dude and Bart are all likely culpable for all the respective torts discussed.

END OF EXAM

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Issue	Rule	Analysis	Concl'n	Points Allotted
Status (2 points)	Invitee Licensee Trespasser (2 points)	Harry should be considered an invitee. The store has a Duty of Reasonable Care (2 points)	(1 pt)	6/7
Intentional Torts by Harry				
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points)	took razors for a few minutes; damage unintentional (2 points)	(1 pt)	7/7
Conversion (2 points)	Willful, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points)	took razors for a few minutes; damage likely irreparable, but not intentional (2 points)	(1 pt)	6/7

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

Damages (2 points)	General Special Punitive (6 points)	Pain and suffering from TBI; scared; Present and future medical expenses likely; lost wages, if working; reprehensible conduct to be punished? (6 points)	(1 pt)	14/15
Defenses	Shopkeepers Privilege	Harry had taken razors; reasonable believe in need to stop; detained for reasonable period of time and reasonable force?		7/7
Total points possible				68/71

1. Excellent analysis of the two stages of detention.
2. The hypothetical tells you that Harry had a pre-existing claustrophobia. That should be included in the analysis of his subjective state of apprehension.
3. Single intent versus dual intent is a jurisdictional issue. The hypothetical did not place you in a particular jurisdiction for purposes of intent.
4. "Severe" emotional distress is the level of harm necessary.
5. A complete rule would include the notion of diminution of value. For instance, "Willful and intentional interference with the personal property of possessor causing damage or diminution of value." We can often infer intent from action. Here, Harry took the razors out of the store. That may imply intent, but the fact that he paid for all other items implies that he had no intent to theft the razors. However, the key fact on this issue is that he knew why they had stopped him.
6. Again, you correctly focus on the intent issue, but fail to artfully formulate same. Did Harry intend to cause substantial interference or damage to the razors or was it an accident? Does it matter?

7. Under State Farm v. Campbell, the main focus is reprehensibility of the actions of defendant. The conduct of Bart and Dude does not seem to be of a nature and character that society would want to set it apart for special loathing. There was an intent to act, but no intent to harm. So . . . I agree with you.

Overall, excellent work!

Score: 96%

2)

Negligence:

To prove a cause of action for negligence, the following elements are necessary: 1.) Duty; 2.) Standard of Care; 3.) Breach; and 4.) Causation

Duty The duty of the defendant to the plaintiff is shown through one of four ways: 1.) reasonably foreseeable plaintiff as established in *Palsgraf*; 2.) defendant created the peril; 3.) the defendant attempted a rescue; or 4.) through special relationship

Here, the driver, Greg, owed a duty to anyone on the road, whether another driver, a bicyclist, or a pedestrian, as they would all be foreseeable plaintiff's within his "zone of danger."

Standard of Care is established in one of three ways: 1.) act as a reasonably prudent person would under the same or similar circumstances; 2.) through industry standards or custom; or 3.) as established by statute.

Here, Greg's standard of care would be to act as a reasonably prudent driver. From the facts, it seems that Greg was acting as a reasonably prudent person by not speeding or weaving out of his lane.

Breach - Because there is no obvious breach of duty on Greg's part, Lance and Greg would most likely to prove negligence through Res Ipsa Loquitur (RIL). This requires three elements: 1.) But for an act of negligence, the injury could not have occurred; 2.) the Defendant was in exclusive control of the instrument that likely caused the injury; and 3.) the plaintiff is not at fault.

Here, we seem to have a classic application of RIL. Lance crashed when Greg passed him, and so it seems that Greg's negligence could be the only cause of the crash. Additionally, there was unexplained damage to Lance's side mirror, strengthening the conclusion that Greg was the cause. Greg was the only one in the truck and was the driver, so he meets the second element as well. The third element, that Lance was not the cause of the injury, seems to be the only potential weak link. However, there is no evidence that Lance did anything to cause his crash and since Floyd was so close behind him, we can infer that Floyd would have seen a mistake on Lance's part.

Causation is shown through both actual (factual) causation and proximate (legal) causation.

Actual cause can be proved with the "but for" test. But for Greg's actions, Lance would not be injured.

Proximate cause is a liability limiting device, ensuring that a defendant isn't unfairly held liable when there are unforeseeable intervening actions that break the chain of causation. Here, unless other evidence comes to light, like that Lance hit a rock or got a flat tire, Greg is both the actual and proximate cause of Lance's fall.

Defenses available in a negligence cause of action are contributory negligence, comparative negligence, and assumption of risk. In contributory negligence jurisdictions, the plaintiff is barred from collecting damages if he is found to be at all contributorily negligent. There are a couple of exceptions to this rule, such as when the defendant has the last clear chance to avoid the accident, or if the plaintiff is a minor. California, where this accident took place, is a pure comparative negligence jurisdiction which means that the plaintiff can collect damages in whatever proportion the defendant is liable even if the plaintiff is found to have been negligent as well. However, in this case we don't have any facts to tell us that Lance was negligent. Lance did assume some risk in riding along

LOVR, but being hit by a driver could be considered beyond the scope of that assumed risk.

Damages

Lance could sue for both general and special damages. General damages are for non-

economic damages like pain and suffering, loss of enjoyment (cycling). Special damages would include medical costs and loss of wages. Punitive damages are designed to punish especially reckless and wanton actions and would not apply here.

Negligent Infliction of Emotional Distress (NEID)

A direct party can bring an action of NEID if he was in the "zone of danger," and was directly threatened physically or emotionally. Here, Floyd was directly behind Lance when he was hit by Greg's truck so it seems that he was in danger as well. Some jurisdictions allow emotional harm only, and some require physical manifestation of the emotional harm. Here, Floyd was so distraught that he was unable to assist Lance, and he threw up. Both could be considered physical manifestations. His distress at the scene and his continued nightmares are the emotional damages.

If for some reason Floyd's claim as a first party was denied by the court, he could consider a claim as a secondary party. However, under *Thing v La Chusa*, the plaintiff must be closely related to the direct victim and Floyd and Lance are not related. However, if he could argue that their relationship goes beyond that of cycling buddies and is exceptionally close, he does meet the other two conditions. He was present at the scene

Damages Floyd could sue for, and his distress requires pain and suffering and interest necessary therapy.

Conclusion

Both Lance and Floyd could pursue claims against Greg.

END OF EXAM

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Issue	Rule	Analysis	Concl'n	Points Allotted
Lance's Cause of Action				
Negligence (2 points)	Over-arching Negligence elements (2 points)			3/4
Duty (2 points)	All foreseeable plaintiffs (2 points)	Driving, so all other drivers and cyclists (2 points)	(1 pt)	7/7
SOC (2 points)	RPP Statute (4 points)	Driving speed limit; fully in the proper lane (2 points)	(1 pt)	9/9
Breach (2 points)	<u>Blyth</u> ; <u>Carroll Towing</u> ; Hand Balance Test (2 points)	Reasonable person move away from cyclist; Burden of moving away from cyclist against possible risk to cyclist (2 points)	(1 pt)	2/7
Res Ipsa Loquitor (2 points)	Prosser: Injury does not occur in the absence of negligence; defendant control of the instrumentality; Plaintiff blameless (2 points)	Experienced cyclist not likely to fall down; D driving truck; P was in the proper bike lane (2 points)	(1 pt)	7/7

Actual Causation (2 points)	But For (2 points)	No Actual Cause facts (2 points)	(1 pt)	7/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	No Proximate Cause facts (2 points)	(1 pt)	7/7
Damages (2 points)	General; Special; Punitive? (6 points)	Pain and suffering from injury; emotional distress; loss of enjoyment; wages; medical expenses (past and future); punitive damages for reprehensible conduct? (2 points)	(1 pt)	9/11
Extra Credit: Defenses (2-5 points)				4
Floyd's Cause of Action				
NIED - Indirect Victim (2 points)	<u>Amaya/Engler</u> , <u>Dillon v. Legg</u> or <u>Thing v. LaChusa</u> elements (2 points)	Floyd has physical manifestations, present and contemporaneous observer, but is not a close "relative" (2 points)	(1 pt)	7/7

Conclusion		Yes or no negligence by Greg (1 point)		1/1
Total points possible				63/67

1. Your negligence BARF is not complete. [5] Damages and [6] no defense.
2. You are correct that we need to use RIL to establish causation. RIL is the application of circumstantial evidence to establish the causal facts. Here, we know that Greg stayed in his lane and that he was going the speed limit. Neither of those suggest causation. We also know that Lance wobbled then fell into the berm. This could be circumstantial evidence of being hit by the rearview or from the wind slipstream. Finally, that there was damage with an unknown cause on Greg's side rearview mirror is additional circumstantial evidence that Greg hit Lance, even if inadvertently.

Remember also that the plaintiff maintains the burden of proof for the prima facie case. So, Lance has to show Greg caused his injury. Once the PF is established, then the burden would shift to the defendant to show he was not causal.

3. Use the facts: in the general damages you are told Lance developed a phobia, had a broken arm and concussion. That sounds like pain and suffering and emotional distress. You are also told he cannot pay for his medical bills because he has a minimum wage job. This goes to his special damages recovery.

Excellent effort.

Score: 94

3)

Connor v. Nate

Connor could have grounds to sue Nate for the intentional Torts of Assault, Battery, and Intentional Infliction of Emotional Distress.

Assault

Assault is a willful and intentional act done with knowledge to a substantial certainty that the act will cause harmful or offensive touching of another, or will create apprehension of harmful or offensive touching.

The assault experienced by Connor could be determined at the moment Nate rushed at Connor with the intent of bringing him to the ground and causing him to submit in defeat during the fight. While the fact pattern is not clear as to how Nate approached Connor at the beginning of the fight, nor does the fact pattern describe Connor's fighting experience, one could infer that a person seeing a trained martial artist approaching with the intent to do damage would cause apprehension of harmful touching that will soon occur.

Battery

Battery is a willful and intentional act that causes harmful or offensive touching of another.

The Battery occurred when Nate took Connor to the ground, mounted him, and broke Connor's arm. Nate intended to lay hands on Connor and did so with the help of his martial arts training.

Intentional Infliction of Emotional Distress

One could argue that the manner in which Nate immobilized Connor could have caused Connor emotional distress. Being mounted is a humiliating method of being attacked, and in that moment of helplessness with Nate on top of him, Connor may have experienced serious emotional trauma.

Defenses

A Defense Nate may utilize in order to avoid Tortious liability is that two consenting combatants in a fight cannot be liable for the other's intentional Torts, if this is a minority jurisdiction. Since they both were willing participants, they both assumed the risks involved. If this is a majority jurisdiction, this defense may not be as effective for Nate.

While the fact pattern does not articulate any specific laws or statutes against fighting, in many places, fighting and physical confrontations are not permitted by statute. If such a law existed in this jurisdiction, Nate may not be liable for hi intentional Torts committed against Connor and Connor may not be able to recover.

Connor's case against Nate is tenuous at best, dependent on the type of jurisdiction the fight took place in. While Nate committed the intentional Torts of Assault, Battery, and IIED against Connor, Nate's consent defenses and the governing laws against fighting may preclude him from being held liable for Connor's injuries.

Connor v. Physician and Hospital

Connor would have a case for Negligence against the Hospital and its physician that tended to Connor.

Negligence

Negligence is a Tort that occurs when one acts or fails to act in a manner that violates one's duty of care to another, and a harm is caused as a result. The elements of Negligence include Duty of Care, Standard of Care, Breach, Causation, Damages, and Defenses.

Duty of Care

A Duty of Care is owed to the Reasonably Foreseeable Plaintiff, when one acts as a rescuer for another, when one causes the peril experienced by another, and when a special relationship exists between the parties.

The Physician and the Hospital had a duty of care to Connor in that they both served as a rescuer, and took steps to ensure Connor was not harmed any further from his injuries. Connor was in their care, and therefore they had a duty to ensure he was not harmed any more than he was when he entered their care.

Vicarious Liability

Because the Physician who initially saw Connor was employed by the Hospital, the Hospital would be held vicariously liable in conjunction with the Physician for the Physician's Negligence. The Physician was operating within the scope of his employment at the Hospital, therefore the Physician's Negligence would attach to the Hospital.

Standard of Care

A Standard of Care is determined by the Reasonably Prudent Person Standard, any customs or standards of a relevant industry, and any applicable statutes or regulations.

The Physician and the Hospital both had a Standard of Care for Connor based on the Reasonably Prudent Person Standard, accentuated by customs and norms that exist in the

Medical Industry. Connor was rushed to the hospital and the Physician who first saw him hurried through the examination, failed to x-ray or scan the injured arm in order to properly diagnose the injury, and failed to provide the standard level of medical attention and care that is expected when someone is sent to the hospital with a serious injury such as a broken limb.

Breach

A Breach occurs when one acts in a manner that a reasonably prudent person would not act, or fails to act in a manner that a reasonably prudent person would act, in a similar situation. One's Breach of one's Duty of Care to another is illustrated by Learned Hand's formula: $B < PL$. Where B is the cost of taking precautions to avoid a harm occurring, P is the probability of such harm occurring, and L is the cost incurred if the harm is committed.

The Physician and the Hospital breached their Duty of Care to Connor when they failed to properly treat and examine his injuries upon arrival. The cost of a more thorough examination to determine the extent of Connor's injuries was the additional time it would have taken in order to recognize the true problem with Connor's arm. The probability of worse harm occurring due to the lack of care was significant, and the harm itself for lack of adequate medical attention was severe - the needed amputation of his entire arm as a result of complications that could have been avoided if the Physician and Hospital had exhibited due care.

Causation

Causation can be broken up into two facets - Actual (or Factual) Cause and Proximate Cause.

-Actual Cause

The Actual Cause of Connor's injury was his fight with Nate. But for Connor's fight with Nate, Connor's arm would not have been broken. However, the Actual Cause of the amputation could be attributed to the Physician and Hospital's negligent examination. But for the failure of the hospital and the physician to properly examine Connor's injuries, his injuries would not have complicated.

✓ -Proximate Cause

Proximate Cause is determined by the Defendant's actions, attenuated by time, space, and other events that occurred. There are both reasonably foreseeable and unforeseeable acts that can impact the proximate cause of an injury.

3. The Physician and the Hospital failed to properly examine Connor's injuries, which could constitute medical malpractice. Medical malpractice is considered a reasonably foreseeable act, therefore establishing their failure to properly examine Connor as the proximate cause of his arm amputation.

✓ *Damages*

✓ -Pecuniary Damages

Pecuniary (or Special) Damages are Damages where the value is calculated and are financial in nature. Such Damages include loss of income, loss of future earnings, current and future medical expenses, care-taking/living expenses.

The fact pattern does not indicate whether Connor was employed at the time of this injury. Given that he was in High School, he may have been working a job of some sort, but not all High School students are employed. However, the amputation of his arm would certainly prohibit Connor from working in many different fields, seriously limiting his options for work throughout the rest of his life. Connor could be entitled to damages

for loss of those future earnings, albeit it would be difficult to determine what that earning potential would be as his employment status is not known. Losing an arm could allow Connor to recover for future medical expenses and living expenses accrued due to his condition.

✓ -Non-Pecuniary Damages

Non-Pecuniary (or General) Damages are Damages where the value is not as clear and quantifiable as those that are directly measured by money value. Such damages include loss of enjoyment of life, pain and suffering, and emotional distress.

Connor could be awarded damages for loss of enjoyment of life as he suddenly cannot use one of his arms. Missing an arm greatly hinders one's ability to live a normal life. The loss of that arm could contribute to a great deal of emotional distress for Connor, which is a type of Damage award as well. Connor could also be awarded damages for pain and suffering, as he suffered serious pain after his hospital visit where the Physician failed to properly determine the scope of his injuries.

4. >

Defenses

✓ -Contributory Negligence

The Physician and the Hospital could argue that Connor was responsible for his own injuries, given that Connor consented to and participated in a fight with another classmate. That fight was the root cause of Connor's injury, making Connor contributorily negligent and responsible for his own worsening injuries.

✓ -Comparative Negligence

If it is determined that Connor was in part at fault and partially responsible for his own injuries, the Physician and the Hospital may still be considered at fault, only to a different extent. Comparative Negligence would establish a percentage at fault Connor, the Hospital, and the Physician were in regards to Connor's amputated arm, and depending on the proportion, Connor may recover from the Hospital and Physician to some extent.

✓ -Assumption of the Risk

It could be difficult to assert an Assumption of the Risk defense against liability for Connor's injuries. While Connor could be seen as having assumed the risk of injury when he consented to fight Nate, Connor did not assume the risk of being a victim of medical malpractice when he was rushed to the hospital for his injuries.

Connor's case against the Physician and the Hospital may be successful, due to the hospital being vicariously liable for its employee, the Physician, who committed medical malpractice by failing to thoroughly examine Connor's injuries. The Physician and the Hospital had a duty of care to prevent further injury to Connor, and that Duty was breached by the Negligence of the Physician, who could be seen as the actual and proximate cause of Connor's amputated arm.

END OF EXAM

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Issue	Rule	Analysis	Concl'n	Points Allotted
Connor v. Nate				
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	Taken to the ground, mounted, right arm broken (2 points)	(1 pt)	7/7
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	Taken to the ground, mounted, right arm broken (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)	Intentionally broke arm; not really extreme and outrageous because a fairly common occurrence for high school boys (2 points)	(1 pt)	6/7
Connor v. Physician and hospital				
Vicarious Liability of hospital (2 points)	VL for acts of employees or IC with apparent or implied authority (2 points)	No facts re issue (2 pts)	(1 pt)	6/7

Negligence of physician and hospital (2 points)	Over-arching statement (2 points)			4/4
Duty (2 points)	All foreseeable plaintiffs; special relationship (2 points)	Physician and hospital has duty, but not required to accept all patients. (2 points)	(1 pt)	7/7
SOC (2 points)	RPP (2 points)		(1 pt)	5/5
Breach (2 points)	<u>Blyth; Carroll Towing; Hand Balance Test</u> (2 points)	Failed to provide care to arm, but balanced against pandemic event and probability of serious injury? (2 points)	(1 pt)	7/7
Actual Causation (2 points)	But For; Substantial factor (2 points)	But for Nate; lack of treatment a contributing factor (2 points)	(1 pt)	7/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (4 points)	Nate was cause of broken arm; medical intervention is reasonably foreseeable (4 points)	(1 pt)	10/11

Damages to Connor	General; Special; Punitive (2 points)	Pain and suffering; loss of enjoyment of life; medical costs; earnings?; future medical? (2 points)	(1 pt)	6/7
Defenses for Nate	Consent to fight: majority v. minority jurisdictions; effective consent? (2 points)	Connor agreed to fight Nate after school, but did not know he was a Black Belt in jui jitsu (2 points)	(1 pt)	7/7
Defenses for physician and hospital (2 points)	CN Comp Neg AOR (4 points)	Connor agreed to fight; Connor did not seek treatment during weekend when in pain (4 points)	(1 pt)	9/11
Total points possible				88/94

1. Excellent discussion of majority and minority views.
2. The hypothetical does not indicate whether the physician is an employee or an independent contractor. However, an employer can be liable for the acts of an IC under certain circumstances; for example, where the employer holds itself out as having control of the IC or where the victim reasonably believes that the IC is an employee (apparent or implied authority.)
3. Because the medical malpractice of an intervening rescuer is reasonably foreseeable, Nate's liability is not cut off for the ultimate harm to Conner.
4. Nate's conduct was intentional. As a result, a discussion of punitive damages would be appropriate. Was breaking the right arm in an arm bar maneuver "reprehensible?" If it might be extreme and outrageous then it might also be subject to punishment.
5. Overall: amazingly good.

Score: 94