

KERN COUNTY COLLEGE OF LAW

TORTS

FINAL EXAMINATION

SPRING 2020

Professor Brandon Martin

Instructions: There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

Question #1

In the mountains of West Virginia, Lonerock Coal Company was strip mining Ray's Mountain. They had already removed all trees from the top of the mountain. On a Monday morning, at 8:00 am, workers for the company began blowing off the topsoil and rock layers with dynamite to get to the coal. This process was in violation of federal law.

As a result of the exploding dynamite, a boulder weighing several tons rolled down the mountain. The boulder reached speeds up to 80 miles per hour. At the bottom of the mountain, the boulder bounced over the steeple of a church and landed on top of a single-wide trailer. Inside the trailer were two boys, Tommy (8) and his little brother Billy (5). Both boys died instantly.

At the time of the incident, the boys' mother, Wendy, was working at the local all-nite truck-stop and restaurant. She discovered her dead children when she returned home at the end of her shift.

Lonerock has refused to accept any liability. They contend the boys' mother knew of the mining operation and was Contributorily Negligent for leaving her children unattended. They also contend, if any liability should possibly exist, that the value of the boys' lives were nugatory because they were unemployed, ill-educated, and not likely to amount to anything in the future.

Wendy comes to you for advice. Explain to her the various legal issues implicated herein.

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Question #2

Susan doesn't like Patricia. So, she pays a hacker to install programs on Patricia's computer that log keystrokes and capture a constant low-res, but legible screen recording and upload it to a server Susan checks from time to time.

One day Susan learns through the spyware that in a Zoom conference call, Patricia told another person, Billy, that she likes to sneak out at night and break into churches, cemeteries, concert halls, and factories. She likes to be in places that are empty and lonely, but where people's lives and emotions still resound somehow.

Patricia wrestles with what she should do. She asks one of her friends, "Hey don't tell anyone, but Patricia is addicted to breaking and entering. She's a terrible criminal who likes to invade people's private places. This is something she sneaks out and does regularly."

Patricia wants to get more evidence she'd be comfortable sharing with the police, so she waits in her car across the street with a camera pointed at the room Susan spends her nights in – waiting for Susan to leave at night and be picked up by the camera's infrared sensor. Patricia never leaves, but the camera picks up the heat imprint of two bodies in the room that night. Susan notes that Patricia's husband is out of state on business for two weeks.

A week later, Susan posts on the town's large Facebook group – which she serves as a local celebrity admin for with over 30,000 members – the infrared photos of Patricia with the explanation: "Patricia pretends to be pious, but she's not. She picks locks and spends her nights with her secret midnight companion when her husband isn't around." Over 5,000 people react to the post. Patricia receives plenty of weird looks from women around town – a mixture of contempt, disapproval, and envy.

Patricia goes to your office and tells you that she can't sleep at night because of the shame and confusion. She tells you that she isn't pious, but that she's never picked a lock in her life. She does confess to you that she plays role playing games on Zoom at night and one of her characters does enjoy breaking into buildings like churches and factories and exploring them at night. She also tells you that seven years-ago she did have an affair with an old flame from high school who visited

her while her husband was out of town. The only person who sleeps with her these days when her husband is not around, though, is her young daughter who is sometimes afraid of the dark.

Patricia is a stay-at-home Mom who does not earn an income of her own, but who values her reputation.

Patricia is not interested in pursuing a criminal prosecution, but seeks your legal advice as to how she might recover for damages in civil court.

What tort claims could Patricia bring, if any, against Susan? What defenses, if any, could Susan raise?

Discuss.

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Question #3

The Governor wants to push a tort reform bill based on the New Zealand system through the California legislature.

The proposal eliminates *all* tort actions arising from personal injuries including medical malpractice claims and product liability actions. The injured are compensated administratively through a giant state-run insurance fund. You may wish to read more about such a concept in your casebook.

The California draft legislation, which was authored by Professor Sugarman, also includes awards for defamation actions as well as traditional personal injury actions.

Since you've been recently elected as the student union representative of the Kern County College of Law, the governor asks for your opinion on whether (a) this proposal would work in California and (b) should defamation actions be included. As always, the Governor likes to hear the pros and cons and different perspectives.

Discuss.

1)

The Estate of Tommy and Billy v. Lonerock

Strict Liability

There is a strict liability for abnormally dangerous activities. An activity is abnormally dangerous if the activity creates a high degree of risk or serious harm.

Lonerock is strictly liable for injuries of all foreseeable plaintiff's, including Tommy and Billy. Lonerock was engaged in abnormally dangerous activity by using dynamite explosives.

Defense: Assumption of Risk

The plaintiff may be denied recovery if he assumed the risk of damages where he knew of the risk and voluntarily consented despite the risk.

Tommy and Billy did not assume the risk nor did they consent when they were merely just inside of their home.

Conclusion- Strict Liability

Lonerock will be strictly liable to Tommy and Billy for their injuries.

Negligence

A prima facie case for negligence consists of duty, breach of that duty, causation, and damages.

Duty of Care

The defendant owes a duty of care to all foreseeable plaintiffs. Under the majority view, Cardozo, foreseeable plaintiffs are those who are within the zone of danger. Under the minority view, Andrews, a duty is owed to all.

Standard of Care

Absent a special relationship, the standard of care for this duty is one of reasonableness. All people are entrusted to act as the reasonable and prudent person would in the same or similar circumstances.

Heightened Standard of Care

People entrusted with a heightened standard of care are liable for even slight negligence. Mining companies that use explosives have a heightened standard of care to perform reasonable inspections to discover latent dangerous conditions and warn of them. Therefore, this is the standard of care applicable to Tommy and Billy.

Breach

A person breaches the duty of care when they fail to act as a reasonably prudent person would in similar circumstances.

Here, Lonerock has a duty to act as a reasonable prudent mining company. Lonerock was aware that their use of dynamite could injure people, yet chose to use it anyway, even knowing that the use of dynamite was against federal law. Lonerock's failure to do anything to mitigate the risk likely falls below the standard of care.

Res Ipsa Loquitur

The type of accident ordinarily does not occur in the absence of negligence.

Lonerock will argue that using explosives does not usually result in this outcome but for someone acting negligently.

Negligence Per Se

A violation of an applicable statute satisfies the element of duty and breach when the statute is intended to protect this class of person from this type of harm.

Lonerock may also be found to be in breach since there is a statute related to the use of explosives in this area. Since such a statute's purpose would likely be to protect the local people from injury, its violation would establish Lonerock's negligence per se.

Causation

Causation must be both and actual

Actual Causation

A plaintiff must show that but for the explosion that existed at the time Lonerock detonated the explosives, they would not have been injured. Tommy and Billy were just at home and would not have been killed but for the boulder crushing their home. The boulder is the actual cause of their deaths.

Proximate Causation

Lonerock is liable for all harmful results that are reasonably foreseeable.

Defenses

All of the defenses to negligence require some degree of fault on the part of the plaintiff. Here, plaintiffs were innocent bystanders. Lonerock will have no defense.

Damages

A plaintiff must prove damages in the form of physical injury. Here, the two boys were killed by the boulder crushing them in their home.

Conclusion- Negligence

Lonerock would be held liable for negligence.

Damages

A plaintiff must prove damages in the form of physical injury. Here, the two boys were killed by the boulder crushing them in their home.

Conclusion- Negligence

Lonerock should be held liable for negligence.

Assault

Assault requires that the defendant intentionally caused reasonable apprehension of imminent harmful or offensive touching with the plaintiff's person.

Lonerock did not have the intent to assault the children, nor were the children aware of the imminent harm.

Lonerock should not be liable for the tort of assault.

Battery

The intentional tort of battery requires that the defendant intentionally caused an immediate harmful or offensive touching of the plaintiff's person.

Lonerock did not have the intent to physically harm or offensively touch the children. However, detonating the explosives was intentional, so there was a transfer of intent, and the resulting boulder falling on the children's home. Although the boys did not apprehend immediate harm, awareness is not necessary for battery.

Lonerock should be liable for the tort of battery.

Wendy v. Lonerock

Negligence

A prima facie case for negligence consists of duty, breach of that duty, causation, and damages.

Duty of Care

See supra.

Standard of Care

Absent a special relationship, the standard of care for this duty is one of reasonableness. All people are entrusted to act as the reasonable and prudent person would in the same or similar circumstances.

Hightened Standard of Care

People entrusted with a hightened standard of care are liable for even slight negligence. Mining companies that use explosives have a hightened standard of care to perform reasonable inspections to discover latent dangerous conditions and warn of them. Therefore, this is the standard of care applicable to Wendy.

Breach

A person breaches the duty of care when they fail to act as a reasonably prudent person would in similar circumstances.

Here, Lonerock has a duty to act as a reasonable prudent mining company. Lonerock was aware that they use of dynamite could injure people, yet chose to use it anyway, even knowing that the use of dynamite was against federal law. Lonerocks failure to do anything to mitigate the risk likely falls below the standard of care.

Negligence Per Se

See supra.

Causation

Must be both the actual and proximate cause.

Actual Causation

Wendy can show that but for Lonerock detonating the explosives, the boulder would not have fallen on her single-wide trailer home.

Proximate Causation

Lonerock is liable for all harmful results that are reasonably foreseeable. The results of using explosives and causing damage is reasonably foreseeable.

Damages

Actual damages to the plaintiff. Here, Wendy's single-wide trailer home was demolished by the boulder falling on it.

Negligent Infliction of Emotional Distress

Defendant is liable for NIED when the defendant engages in negligent conduct that causes the plaintiff to suffer serious emotional distress.

Wendy arriving home to see her home destroyed along with her town young children killed is extremely emotionally distressing. Lonerock will argue that because Wendy was not in the zone of danger when the boulder falling occurred, they should not be held liable for NIED.

Lonerock will not be liable for NIED.

Defenses

All of the defenses to negligence require some degree of fault on the part of the plaintiff. Lonerock is asserting that Wendy be found partly liable for negligence. Wendy leaving her children home in the middle of the night may be considered negligent, but her children were ages 8 and 5, and in some jurisdictions there are no age requirements as to when children can be left home alone in the safety of their own homes. A precocious 8 year old would be able to seek help if needed and therefore responsible enough to be left alone. The facts do not say how often she came home during her shift to check on them sleeping. But regardless, Wendy is not negligent for leaving her children unattended while she worked.

Contributory Negligence

In jurisdictions that follow the comparative negligence theory, the plaintiff's own negligence may limit recovery if her own negligence contributed to her injuries. Liability is divided between plaintiff and defendant in proportion to fault.

Conclusion- Negligence

Lonerock should be held entirely liable for negligence. Wendy should not be held contributorily negligent.

Strict Liability

There is a strict liability for abnormally dangerous activities. An activity is abnormally dangerous if the activity creates a high degree of risk or serious harm.

Lonerock is strictly liable for injuries of all foreseeable plaintiff's, including Wendy. Lonerock was engaged in abnormally dangerous activity by using dynamite explosives.

Defense- Assumption of Risk

The plaintiff may be declined recovery if she assumed the risk of damage where she knew of the risk and voluntarily consented despite the risk.

Wendy was aware that mining was occurring near her home, but she did not consent to the mining or the use of explosives in the vicinity of her single-wide trailer home, nor did she assume the risk.

Conclusion- Strict Liability

Lonerock will be strictly liable to Wendy.

Intentional infliction of Emotional Distress

Intentional infliction of emotional distress, is the intentional or reckless infliction of severe emotional or mental distress caused by the defendant's extreme and outrageous conduct.

Lonerock acted with reckless disregard of the high probability emotional distress could occur. Therefore, Lonerock should be held liable for IIED.

Trespass to Land

Trespass to land is the physical invasion of the land of another. Placing or projecting an object upon the land without permission is considered a trespass. Since Wendy did not give Lonerock permission to enter her land, they would be liable for trespass.

Trespass to Chattel

Defendant intentionally interferes with the plaintiff's right to possession of personal property without plaintiff's consent, causing damages.

Wendy's single-wide trailer was interfered with because Lonerock sent that boulder falling from the mountain and onto her home.

Lonerock would be responsible to pay damages to repair the home and for the loss of use of her home while it is repaired or replaced.

Conversion

Is substantial interference with the chattel.

The interference with Wendy's home was substantial since it was completely destroyed. Damages will be assessed as market value for the home.

END OF EXAM

2)

Patricia v. Susan

Patricia has multiple claims of defamation and invasion of privacy against Susan, they will be addressed by tort.

1. INVASION OF PRIVACY

Issue 1. Did Susan invade Patricia's privacy when she installed programs on Patricia's computer?

R: There are four privacy torts: (1) intrusion into seclusion (2) appropriation of identity or likeness (3) public disclosure of private facts and (4) portrayal in a false light. Here, it is likely that intrusion into seclusion will apply, which is interfering with another person's seclusion in a way that would be highly offensive to a reasonable person. Seclusion refers to the plaintiff's right to physical solitude or to the privacy of personal affairs or concerns.

A: Susan hired a hacker to install programs on Patricia's computer that captures a constant low-res, but legible screen recording and uploads it to a server. Susan has access to all of Patricia's interactions. A person has a reasonable expectation of privacy in many of their personal belongings, namely their computer. A person's computer can contain many things that are personal and intimate. Some people have their phones, ipads, and computers all connected. There could be many personal and private notes, pictures, videos, conversations, etc. on someone's computer. If Patricia knew Susan had this access it is likely that she would see it as highly offensive.

C: Susan will likely be found liable for intrusion into seclusion for hiring someone to hack Patricia's computer.

Issue 2: Is Susan liable when she pointed the camera at Patricia's room?

R: Intrusion into seclusion. See rule supra.

A: Susan waited outside of Susan's house with a camera pointed in the room she spends the night in. Again, this is a place where Patricia would have a reasonable (and heightened) expectation of privacy. This is where she sleeps, dresses, and stores personal belongings. If Patricia knew Susan or anyone was pointing a camera at her room she would likely find it highly offensive.

The defense to intrusion into seclusion is consent, which is highly unlikely in this case.

C: Susan will likely be found liable for intrusion into seclusion for taking infrared photos of Patricia in her room.

Issue 3: Is Susan liable for Portraying Patricia in false light?

R: Portrayal in False light in the widespread dissemination of inaccurate information done in a way that would be highly offensive to a reasonable person.

A: Susan posted the information she gained from the computer hacking and the photo taking on a Facebook group to over 30,000 people. The statements that she posted is inaccurate information because Patricia can prove that she only plays a character in a zoom game that does the criminal acts she was speaking of. She also stated The Facebook post will likely be regarded as highly offensive, over 5,000 people reacted to it already. It could gain more exposure, you never know what will go viral on Facebook. Patricia is already being seen differently, getting stares and weird looks from other women.

Susan will likely try and assert the defense of qualified privilege. She will say that her statements were in the public interest and that people needed to know about the criminal activity of Patricia. This defense will likely fail because we are told early on in the fact pattern that Susan does not like Patricia. Patricia's sex life is not of public concern since she has been established as a private person. The criminal allegations could have been dealt with in an actual investigation if Susan was really worried about the good of the public, which is what she claimed when she spied on Patricia and got the photos.

C: Susan will likely be liable for portrayal in false light.

Issue 4: Is Susan liable for public disclosure of private facts?

R: Public disclosure of private facts is widespread dissemination of accurate information that would be normally confidential done in a way that would be highly offensive to a reasonable person. This privacy tort requires publicity, not just publication to a few people.

A: It has already been stated that the statements Susan posted about Patricia were false. She admits to having had 1 affair but that was seven years ago. Susan published the statement referring to Patricia's life right now and accused her of spending multiple nights with a secret midnight lover. This is the only statement that Susan could assert is true, however, it would then fall under this privacy tort. The statement was made to a group that had over 30,000 people, not just a few people. This tort is not actionable if the publication is newsworthy. The statements about Patricia's life are

not newsworthy. If Susan was really worried that she was committing criminal acts, and that she wanted to get more evidence before going to the police, she could have gone to them much earlier. Susan did not have a right to install computer hacking software, and then spy on Patricia to make her statement newsworthy.

C: Susan will likely not be liable for public disclosure of private facts, because the statements she made were false. If she wanted to use truth as a defense to portrayal in a false light, then she would face liability for disclosure of private facts. Either way, Susan is liable for invasion of privacy.

2. DEFAMATION

There are two instances of defamation in the present case.

Issue 1: Did Susan make a defamatory statement when she told her friend about the conversation she overheard?

R: Defamation will be broken down into four elements for this case: (1) false and defamatory statement (2) of and concerning the plaintiff (3) published to a third party that (4) results in damages to a person's reputation. A defamatory statement is one that implies information about the plaintiff that a reasonable person would believe to be true (mere name calling isn't enough). To be of and concerning the plaintiff, the statement must be reasonably understood to refer to the plaintiff in the action. The publication need not be to the public at large, a single third party will suffice.

Historically, slander was a defamation in spoken, rather than written form. Today, a defamatory message not preserved in permanent form is classified as slander. A plaintiff has to prove they suffered special damages, unless it's slander per se. Slander per se is a type of slander regarded as so harmful that it was presumed that the plaintiff suffered damage from the very fact of its utterance (business or profession, loathe-some disease, criminal activity, unchastity).

A: Here, the statement Patricia made to her friend will be categorized as slander per se. The statement she made was "Patricia is addicted to breaking and entering. She's a terrible criminal who likes to invade people's private places. This is something she sneaks out and does regularly." We find out later in the fact pattern that (1) the statement is false and defamatory, because Patricia doesn't actually break into places at night, she plays a character on zoom that likes to do these things. (2) The statement was of and concerning Patricia because Susan directly referred to her by name. (3) It was published to a third party by her Susan telling her friend. (4) This statement did in fact harm Patricia's reputation (in conjunction with the second defamatory statement that will be

discussed later). The statement Susan made is slander per se because it accuses Patricia of criminal activity, and she actually refers to her as "a terrible criminal."

C: Susan's statement to her friend will likely be considered slander per se.

Issue 2: Did Susan make a defamatory statement when she posted on the town's Facebook group?

R: See defamation rule supra. Historically, libel was a written form of defamation. Today, a defamatory statement in any relatively permanent form is libel (sound recording, picture, etc.) The plaintiff does not need to prove special damages and general damages are presumed unless it's libel *per quod*. Libel *per quod* is when it's not apparent on the face of the communication that it is defamatory, a plaintiff must plead and establish extrinsic facts to establish the libel was defamatory and that it referred to the plaintiff.

A2: The Facebook post that Susan made will likely be categorized as libel. She posted infrared photos with the statement: "Patricia pretends to be pious but she's not. She picks locks and spends her nights with her secret midnight companion when her husband isn't around." (1) The statement is indeed false, Patricia already has evidence to prove she doesn't pick locks and only did that in role play. She also only spends the night with her daughter when her husband is gone. She admits to having had 1 affair but that was seven years ago. Susan published the statement referring to Patricia's life right now and accused her of spending multiple nights with a secret midnight lover. (2) Again, Susan refers to Patricia directly by name in the Facebook post. (3) The post was published to a group of 30,000 people in the town and over 5,000 people reacted to it. (4) The statement on the Facebook post harmed Patricia's reputation. She received many weird looks from women around town - a mixture of contempt, disapproval, and envy. Patricia values her reputation very much.

C2: Susan's statement she made on the Facebook group will likely be considered libel.

Issue 3: Is Patricia a public or private person?

R: Public persons and private persons have different obligations in a defamation case. A private person is someone who does not fall into the category of public officials (judge, mayor, legislator, etc.) or public figure (pervasive notoriety, thrust into public controversy, etc.) Under *New York Times v. Sullivan*, a public person in a public matter must show actual malice and falsity. Actual malice is knowledge or reckless disregard of the falsity of the statement. A private person must prove falsity and fault amounting to at least negligence - the defendant should have known. But if malice exists, damages are presumed and punitive damages are allowed. If the subject matter is of public

concern, the plaintiff must prove the statement was made with actual malice in order to have damages presumed or to recover punitive damages.

A: Patricia will likely assert that she is a private person. She is a stay at home mom who does not fall into the category of public official or public figure. Therefore, she must prove falsity and fault amounting to at least negligence. (1) Patricia could prove the statement Susan made to her friend was false by showing evidence of the game she plays on zoom. If there is in fact a character she plays that breaks into buildings and churches, she can prove she only said those things during the role playing. She can also ask other players to confirm that she plays this character in the zoom game. She also only needs to prove fault amounting to at least negligence. First of all, Susan illegally obtained the information about Patricia and she could have easily taken a step to finding out the truth before telling someone else. (2)

C: Patricia will likely be qualified as a private person.

DEFENSES TO DEFAMATION

Issue 4: Does Susan have a defense to the defamatory statements she made about Patricia?

R: The defenses to defamation are (1) consent (2) truth (3) absolute privilege (4) qualified privilege.

It's already been concluded that the statements were not true and Patricia did not consent to them. Absolute privilege is a defense to certain statements (judicial and legislative proceedings, between spouses) and qualified privilege (communication that appears reasonably necessary to protect or advance the defendant's own interests, or in the interest of the public.)

A: Susan will likely try and assert the defense of qualified privilege. She will say that her statements were in the public interest and that people needed to know about the criminal activity of Patricia. This defense will likely fail because we are told early on in the fact pattern that Susan does not like Patricia. Patricia's sex life is not of public concern since she has been established as a private person. The criminal allegations could have been dealt with in an actual investigation if Susan was really worried about the good of the public, which is what she claimed when she spied on Patricia and got the photos.

C:

1. Susan will likely be liable for defamation, slander *per se*, for the statement she said to her friend about Patricia.

2. Susan will likely be liable for defamation, libel, for the Facebook post.

CONCLUSION - ALL

Susan will likely be liable for intrusion into seclusion for installing the computer hacking system and taking infrared photos. She will likely be liable for portrayal in a false light for the Facebook post she made about Patricia. She will also likely be liable for defamation, both slander *per se* and libel, in which damages do not need to be proven.

END OF EXAM

3)

a) Whether this proposal would work in California

Eliminating all tort actions arising from personal injuries including medical malpractice claims and product liability actions, while the injured are compensated through a state-run insurance fund, would create huge problems. Here are the pros and cons.

Increase in injuries

If people realized that they could get compensated through an insurance fund without having to find and hire an attorney, pay the fees, and go to court, then there could potentially be people out there hurting themselves just so they can get compensated a good sum of money.

Protects those who can't afford attorney's or the litigation process

A pro to this proposal would be that those who are unable to afford an attorney or the litigation process would no longer have to suffer. Before this proposal a lot of them endure personal injuries but pay out of pocket due to lack of income. These people also can't afford an attorney to represent them in the matter. With this proposal, these people would have no more stress or worry and would be easily compensated through the insurance fund.

Increases fraud

A con of this proposal is that it would increase fraud. People would seek to get compensated through the insurance fund without a real injury. They would not have to prove their injury and the insurance fund would compensate them for deceiving them. However, people already do this with automobile accidents, so some may not think this to be a big deal.

The insurance fund could run out

Another con about this proposal is that the insurance fund could run out. This could be due to so many people lying about their injury to get compensated for a fake injury as addressed above, or simply due to no more personal injury cases being litigated. If the insurance fund runs out, they will attempt to take more money out of our taxes which is another con. It is specifically unfair to the people who don't deceive or lie about their injuries to the insurance fund. Upping their taxes would be a detriment.

What source will this insurance fund come from?

Another con is that the source of this insurance fund will most likely come from all of us. Nobody wants their taxes to be raised. However, the opposing side may argue a slight raise in taxes is better than paying a huge sum of money for a personal injury.

Hurts attorney's, their businesses, and the courts

Another con is that this proposal could detrimentally hurt attorney's, their businesses, and the courts. With the elimination of all tort actions arising from personal injuries including medical malpractice claims and product liability actions, and with the injured being compensated through an insurance fund instead, this takes away a lot of business from the lawyers, their businesses, and the courts. With such a lack of business, these business may have to face layoffs. The opposing side may argue that the elimination is only for medical malpractice and product liability personal injuries. However, for some lawyers, this is the only business they bring in. Due to the Covid 19 crisis, many have seen first handedly how the law firms and courts have been affected with lack of business.

Conveniency

Conveniency would be a pro to the proposal. Through this proposal, the whole litigation process would be eliminated. This would be convenient to all the victims of personal injury. Without having to get a lawyer, pay for costs, or go to court, and with automatically getting compensated for their injury, there would be a lot less worry of the victims.

Issues in the medical field

A material con about this proposal would have to do with the medical field. If there is were no more tort actions arising from medical malpractice personal injuries, then it could be argued that people in the medical profession are less inclined to follow protocol. They may be less inclined to follow protocol because they know that a tort case won't arise if they commit medical malpractice. This could cause some serious injuries and damages.

Issues with products

Parallel to the medical field analysis, another con with the proposal is that manufacturers of products are going to be less inclined to make a safety inspection of their products and to give adequate warnings on/with their products. If all tort actions involving personal injuries due to product liability are eliminated, then these manufacturers will know that there will be no tort action able to be started

against them on this matter, and thus, these manufacturers could become careless in manufacturing these products. Such carelessness could lead to many victims becoming injured from said products. Some could even become seriously injured and never have the same life again.

Due to the overpowering of cons over the pros, I believe that this proposal would not work in California. I think the proposal is a bad idea.

b) Should defamation actions be included

Defamation actions should not be included.

Pros for Defamation Actions to be Included

If defamation actions were to be included, then the process for recovering damages from a defamation actions would be much more simple. The inclusion of defamation actions would also eliminate the costs of hiring lawyers and litigation costs.

Cons for Defamation Actions to be Included

Most of the cons for defamation actions mimic the cons I presented for the entire proposal.

Increases fraud

A con of this proposal is that it would increase fraud. People would seek to get compensated through the insurance fund without a real cause of defamation. They would not have to prove their defamation and the insurance fund would compensate them for deceiving them. However, people already do this with automobile accidents, so some may not think this to be a big deal.

The insurance fund could run out

Another con about this proposal is that the insurance fund could run out. This could be due to so many people lying about their injury to get compensated for fake defamatory accusations as addressed above, or simply due to no more defamation cases being litigated. If the insurance fund runs out, they will attempt to take more money out of our taxes which is another con. It is specifically unfair to the people who don't deceive or lie about their injuries to the insurance fund. Upping their taxes would be a detriment.

What source will this insurance fund come from?

Another con is that the source of this insurance fund will most likely come from all of us. Nobody wants their taxes to be raised. However, the opposing side may argue a slight raise in taxes is better than paying a huge sum of money to the courts and lawyers for a defamatory action.

Hurts attorney's, their businesses, and the courts

Another con is that this proposal could detrimentally hurt attorney's, their businesses, and the courts. With the elimination of all tort actions arising from defamation actions, and with the injured being compensated through an insurance fund instead, this takes away a lot of business from the lawyers, their businesses, and the courts. With such a lack of business, these business may have to face layoffs. The opposing side may argue that the elimination is just defamatory actions. However, for some lawyers, this is the only business they bring in. Due to the Covid 19 crisis, many have seen first handedly how the law firms and courts have been affected with lack of business.

Increase in Defamation

If defamation cases are no longer a tort action, then there would probably be an increase in defamation since the perpetrators realize that they will not get sued if they produce defamatory statements about another. This would simply create a huge problem.

For those reasons, defamation actions should not be included.

END OF EXAM