

MONTEREY COLLEGE OF LAW

TORTS

FINAL EXAMINATION

SPRING 2019

Professor J. Martin

Instructions:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Monterey College of Law
Torts Final Exam -- Spring, 2019 -- Professor Martin
Question One

PETE and DAVE had been friends for many years. They were childhood friends, roommates at summer camp, and college fraternity brothers. They constantly played practical jokes on each other. PETE was very shy with women while DAVE was outgoing and had several girlfriends.

After college, PETE met PAULA, a shy young woman. They fell in love and, when PETE informed DAVE that he wanted to marry PAULA, DAVE said, "Wonderful! I will be your Best Man and make all the arrangements". PETE informed DAVE of the date for the marriage and let DAVE make the wedding ceremony plans. PETE made arrangements for an expensive week-long honeymoon trip to Tahiti.

On the date of the ceremony, a group of PETE's and DAVE's fraternity brothers gathered for the wedding. DAVE introduced the wedding party to Bishop Bob, a long-haired person in priest's clothes who claimed to be speaking Latin, but it actually sounded like gibberish. Bishop Bob conducted the wedding ceremony and declared that PETE and PAULA were married. Following the ceremony, Bishop Bob had several alcoholic drinks and passed out. After that, PAUL and PAULA left for their honeymoon.

One week later, PETE and PAULA returned and were immediately told by a fraternity brother that "Bishop Bob" was actually DAVE's distant cousin, and that he was neither a bishop nor empowered to conduct marriages. The marriage ceremony had been a practical joke and PETE and PAULA were not legally married. The mock ceremony had been filmed and copies of the practical joke film had been sent to other chapters of their fraternity.

Both PETE and PAULA were shocked and humiliated to find out that they had both been tricked.

DISCUSS WHAT CLAIMS AND DEFENSES MIGHT BE RAISED IN:

1. PETE vs. DAVE in Fraud
2. PAULA vs. DAVE in Public Disclosure of Private Facts

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Question Two

BUZZ-CO, a corporation, manufactured the BUZZ-MASTER lawn mower, powered by a gasoline engine that turns a sharpened blade. The blade rotates at 1000 revolutions per minute and is tilted so that it blows the cut grass out of a square opening in the body of the machine. That hole is 4" by 5" in size and has a rim to which a bag can be attached if the user desires to catch the cuttings.

Near the 4" by 5" hole is painted the word "DANGER" in letters one-half inch high. The new mower is received with an attached plastic card with directions on how to start and maintain the machine, plus a warning against putting hands or objects inside the 4" by 5" hole. On the card is also a warning that the user should shut off the engine when the mower is standing, and an advisory not to use the mower on a lawn that is wet.

DRAKE, a Monterey resident, bought a BUZZ-MASTER mower from the Monterey D-MART, a retail store. He did not buy a bag to catch the grass clippings. He took the mower home, then pulled off the plastic card and threw it away. DRAKE used the mower a few times, then hired PETE, a 15-year old neighbor, to mow his lawn with the BUZZ-MASTER. DRAKE gave PETE no other instructions or warnings.

While PETE was mowing DRAKE's lawn, the grass was wet and a piece of metal about one inch thick was lying on the lawn. PETE pushed the running mower to within three feet of the metal object, then walked around the running mower to pick up the metal object. PETE slipped on the wet grass and, as he fell, his hand entered the unguarded 4" by 5" hole and was severely mangled by the rotating blade.

BUZZ-CO has gone bankrupt and is without assets. PETE, through his parents who act as his guardian ad litem, desires to sue DRAKE and the D-MART store.

DISCUSS WHAT CAUSES OF ACTION AND WHAT DEFENSES MIGHT BE
RAISED IN: PETE vs. D-MART

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Question Three

PAUL is a handsome graduate of St. Mary's High School and an Ivy League university. He is a rising political star and is a candidate for the Governor of California, employing the slogan, "Make California an Honest Success".

DARLA is a private citizen who also attended St. Mary's High School and she was a classmate of PAUL. After watching some of PAUL's campaign efforts, she speaks with her local television station and says, "PAUL is not going to make California an honest state because he is not an honest person. In high school, PAUL often cheated on exams. I know that because I helped him cheat, and for that I am sorry." DARLA produces some papers that seem to corroborate her story, but not conclusively.

Thereafter, PAUL's credibility is the topic of some public discussions and his voter approval rating drops. Within two weeks, PAUL is replaced as his political party's candidate. PAUL returns to private life and sues DARLA for Defamation.

DISCUSS WHAT CLAIMS AND WHAT DEFENSES MAY BE RAISED IN:

PAUL vs. DARLA

* * * * *

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Torts Final Exam -- Spring, 2019 -- Professor Martin
Question One -- Model Answer

1. PETE vs. DAVE in Fraud
 - A. Was there a False Representation?
 1. When DAVE said he would "make all the arrangements", he was reassuring PETE but actually beginning a practical joke. DAVE arranged for Bishop Bob, his distant cousin, to appear and pretend to be capable of performing the marriage. That person was not capable of marrying PETE and PAULA and that falsity was integral to the event.
 - B. Was it a statement of Fact?
 1. The statements by DAVE were not opinions or speculations. DAVE made reassurances of facts.
 - C. Were the misstatements Material?
 1. The event was important to PETE because, in this culture, marriage is a big decision. The facts possibly show that the event was important because PETE was shy with women.
 - C. Were the misstatements made with Scienter?
 1. To DAVE, the event was a joke and the false representations were made while knowing they were false.
 2. The motive was to "lure" PETE into falling for a joke so PETE intended to induce PETE into relying on the misrepresentations.
 - D. Did the misstatements Induce Justifiable Reliance?
 1. DAVE strongest defense may be that given DAVE and PETE's history of practical jokes, and given the strange nature of "Bishop Bob" -- long hair, gibberish, and drunkenness -- the circumstances could not reasonably be believed to be true. DAVE would say that PETE and PAULA were not justified in believing that they were actually married.
 - E. Did the misstatements Cause Actual Damages?
 1. There is no dollar amount of actual damages, but the week-long honeymoon trip is described as "expensive", and was money spent in reliance on DAVE misrepresentations.
 2. DAVE might argue that PETE and PAULA did not "lose" any money on the expensive honeymoon. They got what they paid for -- a week in Tahiti -- and there are no actual damages.
 3. DAVE might also argue that he did not profit from any misrepresentation but that is not an element of the tort.

2. PAULA vs. DAVE in Public Disclosure of Private Embarrassing Facts
 - A. Was Publicity given to others?
 1. Because the sham-ceremony was filmed and copies sent to other fraternity chapters, it is very likely that many other fraternity brothers watched. Therefore, there was the spreading of the information beyond just one or two other individuals.

- B. Did the publicity Disclose Private Facts?
1. DAVE would argue that the "wedding" was a public event -- similar to a party -- and that what transpired was not private. PAULA may argue the contrary, namely, that her marriage was supposed to be significant and even holy, and that it was meant to be a "private" event, not meant to be a joke.
 2. DAVE would argue that the "wedding" was not a "fact", rather it was a fun event that did not reflect PAULA's private issues or secrets. PAULA may argue that by making her the point of a joke, it was similar to a private issue.
- C. Was the disclosure Offensive or Embarrassing to reasonable members of the community?
1. A joke marriage where both bride and groom are fooled might be very embarrassing, especially to a "shy" couple, and the community might think that they participated in mocking marriage, which might cast them as doing something offensive.
- D. Was DAVE's participation without the Privilege of Public Interest?
1. Would a joke on a young couple about their marriage be the sort of event that the public would have "interest" in? Without a doubt, there would be a large number of watchers of the wedding video on social media, but does that indicate the sort of interest that activates the privilege?
 2. Any interest would be in watching a couple be fooled, rather than any public "concern" for a matter of public discussion.

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Question Two -- Model Answer

PETE vs. D-MART in Strict Products Liability

- A. Due to PETE being severely injured by a product, he may elect to sue the seller of that product in SPL, a 20th Century cause of action developed to protect consumers from personal injury due to defective products.
- B. Seller?
1. The tort allows an action against both the manufacturer and any retail seller engaged in the business of selling that product. The facts identify D-MART as a "retail store", clearly a vendor engaged in business and not an occasional seller.
- C. Product?
1. The facts also clearly identify the BUZZ-MASTER as a mechanical product, not a service, and within the protection of the SPL law.
- D. Caused?
1. SPL tort law requires Plaintiff to prove that the product caused the physical injury. Actual Causation is clear by the facts that describe PETE being immediately and directly harmed in a manner consistent with a blade rotating at high speed. Proximate Causation is met because it is foreseeable that a 15-year old boy would use the product to mow a lawn; that is, PETE is a foreseeable plaintiff for both duty and causation.
- E. Defective?
1. PETE may allege that the mower is of unsafe design and that the danger is inherent in all mowers of that type.
 - a. The 4" by 5" hole should have had a guard when not covered by a grass-catching bag.
 - b. The half-inch letters spelling "DANGER" are not sufficiently prominent.
 - c. Using the "Alternative Design" test, the mower should have had an automatic turn-off device ("kill switch") so the mower could not remain running when not in use.
 - d. Using the "Consumer Expectation" test, the mower did not perform as safely as an ordinary consumer would expect. Further, the benefits of the mower's design do not outweigh the risk of danger from such design.
 2. PETE may allege that the mower lacks adequate warnings and, in that way, has an informational defect.
 - a. As mentioned above, the half-inch letters are insufficient.
 - b. The plastic card with warnings was too easily detached to be discarded.
 - c. The original purchaser, DRAKE, was not an effective intermediary.
- F. Defenses?
1. D-MART will likely allege misuse because PETE mowed the grass when it was wet and left the mower running.

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Question Three -- Model Answer

PAUL vs. DARLA in Defamation

A. Publication?

1. When DARLA speaks with a television station, her story is spread to several thousands of viewers and the defamatory matter is certainly heard by a 3rd party.

B. of Defamatory Material?

1. To question the integrity of a person -- especially one who holds himself up as a leader in honesty -- would be a significant challenge to the person.
2. A claim of dishonesty would likely hold PAUL up to "hatred, contempt, and ridicule" and, as well, make reasonable community members shun and avoid him.

C. to a 3rd Party who...

1. Understands that it applies to Plaintiff? Here, PAUL is a well-known person and is identified by name. DARLA's words clearly apply to PAUL.
2. Perceives the the statements as Defamatory? As mentioned above, the point of DARLA's words -- PAUL's penchant for dishonesty -- would make reasonable community members contemptuous of PAUL.

D. Causing Damages?

1. The causal effect of DARLA's words are indicated by the swift reactions described in the facts, namely, that his credibility is discussed by the public and that his party backing is lost within two weeks.
2. As for damages, PAUL is not a merchant who can show the loss of customers but he can describe the loss of an opportunity -- an expectation of a political position -- that could have actual value. Is that the type of damage that the tort requires?
 - a. If, however, DARLA's words were considered *Slander Per Se* in that they disparaged PAUL's professional capability, actual damages might not be necessary.

E. Without Privilege?

1. While the papers that DARLA produced may indicate the truth of her statements, she does not seem to have that defense conclusively.
2. DARLA may assert a common law privilege known as Qualified Privilege, whereby she spoke out of a civil duty, to inform voters who certainly have an interest in hearing those matters as part of public discussion.
3. DARLA will certainly assert the constitutional privilege, articulated in NY Times, that a Public Official cannot recover for defamation unless there is a showing of Actual Malice.
 - a. It has been held that candidates also assume the status of Public Officials.
 - b. Even if PAUL is not seen as a Public Official, he would certainly be seen as a Public Figure who would also be required to show Actual Malice.
 - (1) DARLA does not appear to have published maliciously, as her story is not a patent lie, nor published recklessly as she was percipient to the acts.

okay - you
HAVE TURNED INTO
A GOOD WIFE!
- I LIKE YOU!
- ALTERNATION LAW
- YOU KNOW THE LAW
- ADEQUATE ANALYSIS
★

1)

PETE v. DAVE

I
LIKE
THIS
INTRO
😊

Fraud - Was Dave's promise to make all of the arrangement for Pete and Paula's wedding ceremony a misrepresentation that led to Pete being damaged?

Fraud occurs when an individual commits an act that is a representation of a material fact which is made with scienter, a state of mind that is a lie or reckless disregard for the truth, for which the plaintiff justifiably relies upon and which causes actual damages and is done without privilege.

(1)

Representation of Material Fact - Was Dave's statement that he would make all of the arrangements for the wedding ceremony a representation of a material fact?

Here, Dave expressly stated that he would make all of the arrangements for Pete's wedding ceremony. it can be inferred that Pete understood Dave's representation as material because he did indeed allow Dave to make the wedding ceremony plans. There is no indication that Pete participated in the arrangement of the wedding ceremony in any capacity.

The court will likely find that Dave's representation to Pete about making arrangement for his wedding was a material fact.

(2)

Scienter, a state of mind that is a lie or reckless disregard for the truth - Was Dave's representation to Pete that he would make the arrangements for the ceremony a lie?

Here, there are no facts indicating Dave's state of mind at the time he made the representation to Pete that he would make all arrangements for his wedding ceremony to Paula. However, Dave and Pete had a long history of friendship in which the two would constantly play practical jokes on each other. Pete may argue that Dave always intended to play a joke on him and that when Dave made the representation, he lied and said what he needed in order to be able to play another joke. Dave may argue that at the time he made the representation he did not yet know that he would turn his offer into a practical joke. Because of Pete's limited history of relationships and experience with women, Pete may argue that Dave likely immediately knew he would play a joke. Perhaps Dave did not know exactly what he would do but knew he would do something so when he made the representation his statement was a reckless disregard for the truth.

The court will likely find that Dave did possess scienter when he represented to Pete that he would make proper arrangements for his wedding.

(2)

A Justifiable Reliance Upon the Representation - Did Pete justifiably rely upon Dave's representation that he would make arrangements for a proper wedding ceremony?

Here, when Dave promised he would take care of all arrangements for the wedding ceremony Pete provided him with the date of the wedding. This shows that Pete interpreted Dave's offer as truthful. There are no other facts indicating that Pete made any attempts to assist or make alternative plans for a wedding ceremony. It can be inferred that he believed Dave would fulfill his promise and arrange a proper wedding for him and Paula. Additionally, there facts show that this was Pete and Paula's only wedding and only planned honeymoon trip. Thus, Pete justifiably relied upon his

WAS IT REASONABLE TO RELY ON BISHOP BOB?
→ LONG HAIR
→ ALCOHOL
→ GIBBERISH

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☹️

childhood friend; Pete believed that his friend who knew about him limited relationship history would do right by him.

The court will likely find that Pete justifiably relied upon Dave's statement that he would arrange a proper ceremony.

(4)

Causation - Was Dave's representation that he would arrange a wedding ceremony the cause of Pete's actual damages?

Here, if the court finds that Pete suffered actual damages then they may find that they were the actual and proximate result of Dave's representation to Pete. Pete made no other arrangements for a wedding and justifiably relied upon Dave. As a result he suffered the embarrassment of a mock wedding and any actual damages suffered would have been a direct result of Dave's representation.

The court will likely find that if actual damages are suffered by Pete, they would have been caused by Dave.

IS THIS
ALLEGED
AS DAMAGES
UNDER
MAD 2

(5) Actual Damages - Did Pete suffer actual damages as a result of Dave's representation?

Here, Pete was shocked and humiliated to find out he had been tricked by Dave. If these are the only damages that Pete claims occurred as a result of Dave's misrepresentation then a court may not find that he suffered actual damages.

However, the facts do not indicate who paid for the wedding ceremony and expensive honeymoon trip to Tahiti. If Dave made the arrangements but Pete paid for the costs then the money spent on the mock ceremony would be actual damages, financial

ok

damages, suffered by Pete. If Dave covered the cost of the mock wedding and expensive trip to Tahiti, then Pete's person expenses in preparation of the wedding and money spent during the honeymoon could be claimed as actual damages suffered.

The court may find that Pete suffered actual damages as a result of the misrepresentation but Pete may be entitled to only nominal damages.

6

Without Privilege - Did Dave have a privilege to make a misrepresentation to Pete?

Here, Dave and Pete have a long history of friendship and constantly playing practical jokes on each other. Dave may argue in his defense that it was reasonably foreseeable that he would play another joke on Dave and that because of the long history of mutual practical jokes, he was privileged in attempting to trick his friend once more. Dave would argue that the privilege to play practical jokes did not extend to serious matters. Since there are no facts indicating the history of jokes played and during what circumstances or events, the court may need additional information before making this determination.

Based on the facts stated, the court may find that Dave did have a privilege to make a misrepresentation to Pete based on their prior history.

The court may find that Dave made a misrepresentation to Pete which caused him to suffer actual damages and thus Dave may be found liable for fraud.

PAULA v. DAVE

Disclosure of Private Facts - Did Dave disclose a private fact about Paula when he sent copies of the video of the mock ceremony to other chapters of the fraternity?

When an individual commits an act which causes publicity to another which discloses private facts about another, which is highly offensive to community notions of decency, and is done without consent or privilege, that individual may be liable for an intentional disclosure of private facts.

Act Causing Publicity to Another

Here, Dave had Paula and Pete's mock ceremony recorded and deliberately distributed it to other chapters of his fraternity. Dave's actions directly caused what occurred to Paula to be known and become widespread to others. Dave sending the video to various other fraternity chapters constituted a dissemination of the information for which Dave was a direct and actual cause of.

If the court finds that sending the video of the mock wedding was a disclosure of a private fact, then court will likely find that Dave's act caused it to be publicized to another.

Disclosure of private facts of another

Here, Paula married Pete in a wedding ceremony consisting of various members of Pete's fraternity brothers and a faux bishop. The wedding was not private and thus it was public knowledge that Paula was marrying Pete. It is likely that Pete had engaged other fraternity brother's in his practical joke and thus they were aware that the wedding was actually a mockery. In fact, upon Paula's return from the honeymoon, it was another fraternity brother who informed her the wedding was fake - not Dave. It

SOME WOULD SAY OTHERWISE

can be inferred that when Dave disseminated the video recording, it was not a private fact that Paula got married or that the wedding was a joke.

The court will likely find that although Dave did further disclose the fact that Paula was not actually married, it was not a private fact when he did so.

Highly offensive to community notions of decency

Here, the facts indicate Paula was a shy young woman and was shocked and humiliated to learn that she did not actually get married and later went on a honeymoon. This type of joke would be highly offense to the reasonable person. Generally, community tends to give value to the sanctity of marriage and would find it indecent that someone would take opportunity of a sacred event to play a practical joke.

The court would likely agree that using a wedding ceremony to play a joke would be highly offensive to community notions of decency.

Done without consent or privilege

→ priv. of "PUBLIC INTEREST" ?

Here, Paula was not friends with Dave until she met him through Pete. Paula and Pete did not grow up together or have a long established history of friendship and practical jokes. The court would not find it persuasive if Dave attempted to argue that Paula consented to sharing her traumatic experience with others. Nor would it be right to claim that Dave had privilege the privilege to share facts about Paula.

The court will not likely find that Dave acted with Paula's consent or had the privilege to act in this manner.

The court will not likely find Dave liable for public disclosure of private facts about Paula because the disclosure made to his fraternity brothers was not of a private fact.

END OF EXAM

2)



Prof. Martin

NICELY ORGANIZED
(THIS PAGE WAS SO EASY TO READ & UNDERSTAND)

Question 2

BECAUSE

~~When~~ Pete's hand was severely mangled by the rotating blade of the Buzz-Master lawn mower, sold by D-Mart (a retail store), Pete may have an action of Strict Products Liability against D-Mart.

One who is in the business of selling a certain type of product that has a defect (that is unreasonably dangerous) that, without substantial change or modification, causes physical harm (not economic harm) to a user may be held liable under the Strict Liabilities Tort. } ok

Strict Products Liability

Issue: Was D-Mart a seller who was in the business of selling the type of product represented by Buzz-Master?

Analysis: From the facts, D-Mart is a retail store in Monterey. Retail stores typically sell household goods and other products. Generally, they sell similar type of products. For example clothing stores are retail stores that sell clothing. Convenience stores sell convenient items for the home and everyday life. The fact that D-Mart sold the Buzz-Master makes it reasonable to believe that the sold other items like lawn mower and associated equipment. So, it is a fair appraisal that D-Mart is the seller of products like the Buzz-Master.

Issue: Was there a substantial change to the Buzz-Master?

Analysis: From the facts, we learn that Drake (the original owner of the Buzz-Master) did not make any modifications to the lawn mower itself. He did not buy the attached bag to catch the grass clippings from the 4 by 5 ~~inch~~ hole where grass escapes. However, this appears to be an option and not a modification to the machine. The closest action that Drake took was to remove the attached plastic warning card. While this contained important warning information that addresses the dangers of putting hands inside the 4 by 5 hole, and to shut off the engine when the mower is standing, and not to use it when the grass is wet, it does not appear to effect the operation of the machine. For substantial modification, it does not appear the machine was modified with respect to function. See discussion below on Informational Defect.

Issue: Was there a physical damage to a user without privity?

Analysis: It is clear from the facts that Pete a user (without privity who was not the original purchaser of the lawn mower) was injured by the machine. The more pertinent question is, was there a defect?

Defect

Issue: Did the Buzz-Master have a defect which would make it unreasonably dangerous to a user?

Manufacturing Defect

Analysis: Defects may be caused from manufacturing processes. They usually occur to a small percentage of items (e.g., 1 out of 100). The defect of this nature presents a problem when it is of the type that typically results in an unreasonably dangerous outcome or event

that creates physical harm. Here, we are not told that there was a manufacturing defect. The defect appears to be associated with Design and Information.

Design Defects

Design Defects occur to all of the product items in question manufactured due to the design selected by the manufacturer. When considering Design Defects, we must consider the following:

Negligence Test: Did the manufacturer have a duty of safety that they breached causing damages to the user. Here, we would consider if Buzz-Co (and D-Mart through their selling status) should have been aware of a safety design flaw that would be unreasonably dangerous to users. The fact that the hole that Pete's hand went into is 4 by 5 inches brings into question whether the seller and manufacturer should have considered this an overly challenged design and had duty to modify the design to protect users. There are not a lot of facts to help with analysis here. However, more pertinent considerations are below.

Consumer Expectation Test: Here, does the user have a reasonable expectation that the equipment will perform reasonably and under foreseeable use. Since the blower bag was optional, it is reasonable that a user would not buy the bag, making the whole accessible and potentially dangerous. The fact that the warning card was attached to the machine and easily removable seems reasonable that a user would remove it after taking it home. This would be important to a seller when considering a risk of injury and danger to a user. Also, it is reasonable to believe a user would use the mower when the grass is wet. Lawns get moist in the morning from dew and sprinklers create water that may stand on the grass for a length of time. The water could create a situation where a user falls and injures themselves as Pete did. (see more facts on this below).

Benefit-Risk Balancing: Here, we consider if the seller and manufacturer balanced the benefit of correcting defects to reduce risk, and at the same time not overly make the machine cumbersome for reasonable use or too costly to purchase and operate. It seems reasonable that manufacturer and the seller (D-Mart) could have had the plastic warning card more permanently affixed or created a flap that closes the blower hole if the bag was not attached while in operation; allowing grass to escape while still covered slightly by a flexible flap (alternative design options below). The improved modifications and options that D-Mart could have considered after Buzz-Co went bankrupt (either by recalling the item; having it modified; discontinued sales) could have been considerations to improve safety.

Alternative Design: Here the plaintiff could offer a reasonable alternative design that could have mitigated the risk of injury (see examples above).

Information Defects

Informational Defects occur when the seller (or manufacturer) has a duty to warn but failed to do so. We consider the extent of the information provided, whether it should be direct or through an intermediary, and the limits to how much information is reasonable to communicate the risks to users.

Analysis / Conclusion: From the facts, it seems reasonably clear that a significant flaw in informational warnings was to have the plastic warning card detachable. When Drake removed the card, the direction on how to use the machine, the warning against putting hands in the blower hole, and that users should shut off the engine when mowing, and not to use the mower when the lawn was wet were discarded and unavailable to other users that could reasonably be expected to face these dangers when in future use. There is a good claim that the seller extensively provided warnings on the card, but the extent of the information was lost when it was discarded. No other information of the type on the card

was found on the mower. There was a half inch warning with the words "DANGER" near the whole. However, this warning information does not describe the specifics as to the extent of danger that was on the card. The card could be considered a "direct" warning to the user, however, there was a flaw in the communication of that warning as the card was easily detachable. Using a totality of circumstances evaluation, it is reasonable for a claim of information defect against the seller, making a good case for Pete's physical harm.

Defenses

Comparative Negligence (User's own lack of reasonable care reduces recovery)

A defense that D-Mart has is that their was comparative negligence. Pete's own lack of reasonable care should reduce his recovery. Pete should have foresaw the dangers of walking around the mower when it was still on and trying to remove the metal object while the grass was still wet. Pete will claim that a reasonable user would have taken similar action under similar operational conditions and this should have been foreseeable by D-Mart.

Misuse (Unforeseeable by Seller; Unreasonable by User)

D-Mart will say that it was unforeseeable that a user would remove the warning card and that those actions were unreasonable by the user (Drake). However, Pete was a valid user who falls under the protection of this tort. Pete did not remove the card. Pete will claim that it should have been foreseeable by D-mart that someone would remove the warning and the a reasonable user may not be fully aware of the dangers, but reasonably operate the mower in the way that he did.

Assumption of Risk (User Voluntarily; Knowingly; Disregard Known Facts)

Here, D-Mart will claim that Pete assumed the risk. He voluntarily, knowingly, disregarded the known facts, resulting in his injury. However, Pete will say that once the card was removed, there were no known facts and that D-Mart had a duty to ensure his safety by mitigating the risk and provide a warning that was more durable so that it was communicated to him for his protection.

Under the totality of the circumstances described above Pete has a good cause of action against D-Mart for his injuries under Strict Products Liability.

END OF EXAM

3)

PAUL V. DARLA

- your debarization is excellent
 - you also understand the law and have appropriate analysis
 - good work!



DEFAMATION

PUBLICATION

2. (publication) can be to a single person

A publication is the broad dissemination of information via oral statements, writings, or recordings.

Here, plaintiff will argue that appearing on a local television show which is viewed by the community to make her statements was a publication by nature. The interview was an oral statement (slander) which was distributed to a broad range of individuals.

The court will likely conclude there was a publication

DEFAMATORY MATERIAL

Defamatory material is information regarding the plaintiff that will cause him to be defamed. A person is defamed when they would be held in hatred, contempt, or ridicule by members of their community or society. Further, if the material causes people to avoid associating with the person, it was defamatory.

Here, plaintiff will argue that Darla said he cheated on high school exams when his slogan for office was based on honesty. He will assert that due to the statement, he was held in contempt as a "cheater" and that shortly thereafter his voter approval rating dropped and he was replaced by another candidate. He will assert that he was avoided as a political candidate due to Darla's statement.

The court will likely conclude the material was defamatory.

THIRD PARTY

A third-party is any additional person who is being made aware of the defamatory material who is not protected (such as members of the same corporation or individuals who must know of the information).

Here, the statement was made on the local television station which distributes information to the community. Anyone who viewed the television broadcast would be a third-party.

PERCEIVES MATERIAL AS DEFAMATORY - The third-party must actual perceive the material as defamatory.

Here, plaintiff will argue that calling someone a cheater is always defamatory material likely to hold the accused in hatred, contempt, or ridicule. He will argue that the individuals who saw the interview believed it was defamatory as he suffered a drop in his voter approval shortly after.

The court will likely conclude that the public perceived the communication as defamatory. ✓

UNDERSTANDS THAT MATERIAL IS ABOUT PLAINTIFF - The third-party must understand that the defamatory material directly pertained to the plaintiff.

Here, Darla mentioned Paul by first name only but also referred to his campaign and campaign slogan indirectly. Paul will argue that each person who saw that broadcast would likely know that it pertained to him and his campaign. He will also assert that the publication was made to the local station in which Paul was a local and more people would know of him, therefore understanding Darla was speaking about him.

The court will likely conclude that third-parties understood the material pertained to the plaintiff. ✓

~~The court will likely conclude that~~

CAUSATION

Causation is found to be present when the defendant is the proximate and legal cause of the harm. In order to determine if there was a causal component, the court will look to the "but for" test; The plaintiff's harm would not have occurred but for the defendant's conduct.

Here,

The court will likely conclude Darla's statement caused damages to Paul. ✓

DAMAGES

The defendant must have suffered actual damages in response to the defamation unless the defamation was libel, in which damages can be inferred. If the defamation was slander, the damages must be proven unless it falls into the category of slander per se. Slander per se damages are also inferred if the defamatory material was in regards to loathsome diseases, criminal history, unchaste acts, or regarding the persons trade or profession.

Here, there is no evidence that the defamation was slander per se, therefore under the rules of slander, plaintiff must prove damages. Plaintiff will assert that his voter approval rating dropped and he was replaced as his political parties candidate in the governor race within two weeks of the statement being made.

The court will likely conclude Paul suffered damages. ✓

WITHOUT CONSENT OR PRIVILEGE

The defendant will be liable for damages unless the defamatory material was published with a consent or privilege. Available defenses include the common law defenses of truth, consent, conditional privilege, absolute

privilege, and fair comment and the constitutional defenses of public officials and public figures.

Here, Darla will assert several common law and constitutional defenses.

The court will likely conclude that the statement was made with consent or privilege.

DEFENSES TO DEFAMATION

COMMON LAW - TRUTH

Truth is an absolute privilege to defamation.

Here, Darla will assert that she provided papers that corroborated her story that Paul cheated on exams in high school. Although the facts show the papers did tend to corroborate her story but did not conclusively prove the truth in her statements, Darla will assert that she had first hand knowledge of Paul's cheating and using the papers as evidence show that she was indeed telling the truth.

Here, the court may find that truth is a defense to defamation.

CONSTITUTIONAL - PUBLIC OFFICIAL (New York Times v. Sullivan)

Citizens have a privilege to make statements regarding government agents or public officials who are elected into office with the purpose of serving public interests. In order to recover for defamation, the statements made must have been that of public concern and made with actual malice.

Here, the information provided by Darla was in regard to a public official who was running for elected office, but not yet elected. As he was not an elected official, the plaintiff will assert that this defense is not applicable

The court will likely conclude the constitutional defense of public interest is not applicable.

CONSTITUTIONAL - PUBLIC FIGURE (Curtis Publishing v. Butts)

Citizens have a privilege to make statements regarding public figures who are a matter of public interest. In order to recover for defamation, the statements made must have been that of public interest and made with actual malice.

Here, the plaintiff was a candidate for Governor of California and therefore was in the public eye. He had placed himself in the public eye by running for office and running a campaign for said office. As he was in the public eye, Darla will argue that Paul was a public figure. She will also assert that her statement was a matter of public interest because voters should be interested in facts that show the character of individuals they are considering voting for. Darla will also assert that there was no actual malice involved in her statements and there is no evidence that there was malice. Paul will likely assert that she acted with malice but there are no facts available that backup this assertion.

The court will likely conclude that the constitutional defense of public figure applies.

The court will likely conclude that Darla is not liable for defamation and Paul cannot recover.

END OF EXAM
