

MONTEREY COLLEGE OF LAW

TORTS

MID-TERM EXAMINATION

FALL 2019

Professors J. Martin

Instructions:

There are three (3) questions in this examination.

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

TORTS -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION ONE

Concerned with the dangers of texting while driving, the California legislature recently enacted the following section of the Motor Vehicle Code:

"No person shall operate a motor vehicle upon a public street while using a mobile telephone to send or receive a text message while such vehicle is in motion."

After the above-referenced code section was enacted, DOUG was driving along a busy California public street while texting on his cell phone. DOUG lost control of his car which left the street and hit a DATA ELECTRICAL COMPANY (DATA) utility pole. The pole crashed to the ground and sent sparks flying everywhere. One of those sparks touched a newspaper and caused the newspaper to catch on fire. The burning newspaper was blown down the street and it landed on PAULA's roof. The roof caught fire and PAULA's house burned to the ground.

At the time of DOUG's accident, there was an advancement in technology which made it possible to string electrical wires so they would not spark if downed. DATA decided to maintain the old style of stringing electrical wires, which is the same style employed by the other utility companies. Therefore, DATA did not adopt the advanced style under the belief that it would raise customer rates significantly, and because it wasn't widely adopted by the industry. There were published studies that showed when companies adopted the new system, it vastly increased their safety and reliability ratings.

- DISCUSS: 1. PAULA vs DOUG in Negligence
 2. PAULA vs DATA in Negligence

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TORTS -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION TWO

PAUL and DAVE were college roommates and have remained friends afterwards, with DAVE becoming a wealthy lawyer living in Carmel and PAUL owning a struggling restaurant and living in Seaside. They occasionally socialize and DAVE has often visited PAUL's restaurant. PAUL has often visited DAVE's beautiful Carmel home and knows the location of DAVE's hidden front door key.

PAUL has been thinking of borrowing money from DAVE to expand his restaurant. One day, DAVE is eating at PAUL's restaurant and DAVE invites PAUL to come to his house on the following Sunday, at 10:00 a.m., to watch televised football. PAUL accepts and intends to ask DAVE for a loan when are watching football.

On the following Sunday morning, PAUL arrives at DAVE's house at 8:30 a.m. and rings the doorbell several times. DAVE is not present because he is buying groceries to eat during the televised football game. PAUL locates DAVE's hidden front door key and lets himself into DAVE's house. Once inside, PAUL goes to DAVE's den to turn on the television. Filled with energy and enthusiasm, PAUL begins to strike a heavy punching bag that is hanging in DAVE's den.

Unknown to PAUL, the chain that holds the heavy punching bag is only fastened to the wooden roof rafters with a few nails. DAVE hammered in the nails only a week before and did not consult with a carpenter or contractor. When PAUL is striking the bag, the force of the punches causes the nails to come out of the wood. The punching bag falls, lands on PAUL's foot, and crushes it.

DUSCUSS: PAUL vs. DAVE, including DAVE's defenses

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TORTS -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION THREE

DHARMA is the 70-year old leader of The Way -- a Carmel-based religion that professes love and peace. That religion requires its followers to give all of their personal possessions to the temple that DHARMA has built and the altar of The Way temple is adorned with many donated precious metals and gems.

PAULA is an idealistic follower of The Way religion but she also desires to promote another organization that seeks to save the six-toed blue salamander. To fund her support of the salamander organization, PAULA decides to retrieve a diamond necklace she previously donated to The Way temple, which is now hanging on the temple's altar.

The next night, PAULA sneaks into The Way temple through an open window and tiptoes in the dark towards the temple's altar where the diamond necklace hangs. Just as PAULA touches the necklace, the lights go on and DHARMA rushes towards her while raising his metal cane. "I'll bash your head, you little thief," says DHARMA as he swings the cane.

PAULA dodges the first swing of DHARMA's cane but is struck on the head when DHARMA swings a second time. PAULA falls to the floor. "Don't move or I'll hit you again", says DHARMA as he raises the cane again. PAULA remains on the floor while DHARMA calls the police.

Each party now wishes to commence civil litigation against the other.

- DISCUSS: 1. PAULA vs. DHARMA
 2. DHARMA vs. PAULA

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TORTS -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION ONE -- MODEL ANSWER

PAULA vs. DOUG in Negligence

Because DOUG used his phone to text while driving along a "busy" street, then lost control of his car so that PAULA suffered property loss, he may be liable in Negligence.

1. Did DOUG owe PAULA a **duty**?
 - A. A duty may be imposed on DOUG to drive safely because of a general duty imposed on all motorists to avoid an unreasonable risk of harm.
 - (1) Operating a motor vehicle is a "risk activity" and all drivers are required to carry out that activity in a safe and responsible manner.
 - B. A duty to drive safely may be imposed by the Calif. Vehicle Code referenced in the facts, a section that forbids the use of a cell phone to text while driving.
2. Did DOUG **breach** a duty owed to PAULA?
 - A. DOUG's texting while driving may indicate fault because it is behavior that does not conform to the Reasonable Person standard -- a RPP would not engage in a distracting activity while driving because it increases the risk of harm to others.
 - B. DOUG's violation of the Calif. Vehicle Code may indicate fault because his acts are contrary to a statute that controls behavior. That violation indicates fault:
 - (1) A statute was in force at the time DOUG was driving and DOUG's behavior violated the statute, on a clear reading of the facts.
 - (2) That statute was likely enacted to avoid motor vehicle accidents and DOUG's "loss of control of his car" is the result that the statute seeks to avoid.
 - (3) PAULA can be said to be in the class of persons the statute protects, namely all others in the community where the statute was in force.
3. Did DOUG's breach of a duty **cause** PAULA's harm?
 - A. As to actual causation, it can be said that "but for" DOUG's loss of control of his car, PAULA would not have suffered her loss. The crash lead to sparks, which lead to a burning paper, which lead to PAULA's property being burned. That chain of events does not seem particularly attenuated, nor delayed, and a but-for analysis seems correct.
 - B. As to proximate causation, it may be argued that the chain of events is not direct. However, the events all seemed to happen within a small area -- the paper merely was "blown down the street" -- and, in that way, the harm is direct, immediate, and within a limited "zone of danger".
 - (1) It may be argued that the outcome was unforeseeable because PAULA was harmed by "fire" and not a "crash". However, the statute does not specify any specific harm and it may be inferred that all harms reasonably associated with a crash are what the statute wants to avoid. In that way, a resulting fire was foreseeable.
 - (2) Another consideration that brings the fire within proximate causation is that it is not delayed in time. The facts indicate that the results followed one another in prompt fashion.
4. After a reading of the facts, there appears to be no **defense** for DOUG, particularly no fault on the part of PAULA that contributed to her harm.
5. A successful action against DOUG based on Negligence seems likely.

PAULA vs DATA in Negligence

Because DATA did not employ certain advancements in technology and because PAULA suffered property loss, PAULA may be able to proceed against DATA in Negligence.

1. Did DATA owe PAULA a **duty**?

- A. It may be argued that DATA is bound to operate its utility company in a reasonable manner and a "reasonably prudent utility company" would minimize the risks of its activities so there was no unreasonable risk of harm.
- B. It may also be argued that DATA is bound to employ cost-effective measures available to the industry to avoid an unreasonable risk of harm. The facts indicate that those measures are available.
- C. It may also be argued that PAULA is within the scope of that duty because the duty of safe operation protects all members of the community and the facts indicate that PAULA is a member of that class. That is, PAULA is within the scope of duty owed.

2. Did DATA **breach** a duty owed to PAULA?

- A. When DATA decided not to employ the newer measures, it chose behavior that did not take advantage of "increased safety & reliability". It may be argued that a reasonably prudent utility company would avoid an unreasonable risk of harm by adopting newer measures.
- B. When DATA did not avail itself of the new measures, it did not employ cost-effective measures to avoid an unreasonable risk of harm. The costs, as indicated in the facts, could have been passed on to consumers and not jeopardized the financial condition of the utility company. Therefore, any burden of abatement was less than the likelihood of harm (downed power poles are not rare) times the gravity of harm (high voltage wires and falling poles can cause serious harms).
- C. While other utility companies have not universally adopted the new measures, that industry custom does not shield DATA. The industry cannot set its own standards of care and DATA can be liable despite any industry-wide custom which avoids newer measures.

3. Did DATA's breach of a duty **cause** PAULA's harm?

- A. As for Actual Causation -- on a "but-for" analysis it can be said that that but for the failure to install the newer measures, PAULA would not have suffered a loss. The facts state that with the new measures, the wires "would not spark if downed". Therefore, the new measures would have protected PAULA.
- B. As for Proximate Causation -- it is noted that the harm to PAULA seems indirect from the crash but it is also noted that PAULA's harm resulted directly from the falling wires.
 - (1) The harm from the "hot" utility wires was direct and immediate, with no intervention or delay in time.
 - (2) The type of harm was entirely foreseeable (fire) and there is no information that the extent of the harm was unforeseeable.

4. Did PAULA's behavior contribute to her own harm and thus provide a **defense**?

- A. The facts do not indicate any behavior on the part of PAULA that would have increased her risk of property loss. No contributory negligence is apparent.

5. A successful action against DATA based on Negligence seems likely.

TORTS -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION TWO -- MODEL ANSWER

PAUL vs. DAVE in Negligence

Because PAUL was injured on DAVE's property, PAUL may have a cause of action against DAVE based on Negligence.

1. Did DAVE owe PAUL a **duty**?

- A. At common law, a property owner owed a high duty to an **Invitee** -- a business entrant -- that involved keeping the property free from all hazards.
 - (1) PAUL may be an Invitee because he intended to ask for a loan when visiting DAVE -- a business purpose. If PAUL is an entrant, a duty was certainly owed to him.
 - a. DAVE would likely object to PAUL's visit being classified as a business meeting because it was merely to meet and watch football and DAVE knew nothing of PAUL's intentions to ask for a loan.
- B. At common law, a property owner owed a general duty to a **Licensee** -- a social guest -- that involved warning the entrant of known hazards.
 - (1) PAUL may be a Licensee because the purpose of the meeting was to watch football and be another social function by two old friends.
 - a. DAVE might object for reasons stated below, that involve PAUL exceeding the scope of the social invitation.
- C. At common law, a property owner owed no duty to a **Trespasser** -- an entrant without permission.
 - (1) PAUL may be a Trespasser because while he was invited to arrive at 10:00 a.m., he arrived 90 minutes early and let himself in without DAVE being present.
 - a. DAVE would likely insist that PAUL's entry without consent exceeded any permission and required no duty of care.
- D. Modernly, Negligence principles would govern and PAUL may be owed a duty of care, which would require a correction of the hazard or a warning of the hazard, if a **reasonably prudent property owner** in DAVE's position would follow that standard of care.
 - (1) PAUL would argue that a RPP would make the premises reasonably safe, or warn, and that PAUL was owed a general duty of care, despite his classification at his time of entry.

2. Did DAVE **breach** any duty owed to PAUL?

- A. DAVE's failure to correct the hazard or warn of the hazard could indicate behavior that was below that of the reasonably prudent property owner.
- B. On a **Hand Formula** analysis, the burden of repair was slight -- either hiring a carpenter to secure the weight, or posting a warning about the hazard. That slight burden is outweighed by the considerations of likelihood (it is reasonably likely that someone will strike the weight) times gravity (the weight is described as a "heavy" punching bag). DAVE's failure to abate the risk indicates breach.

3. Did DAVE's breach of a duty **cause** PAUL's harm?
 - A. **Actual Causation:** D's negligence appears to be the actual cause of P's harm because "but for" D's failure to protect P by repair or warning, P would not have been harmed. That is, the accident would not have happened had D not been negligent.
 - B. **Proximate Causation:** There does not seem the need for a deep proximate cause analysis -- P's injury seems proximately caused by D because the harm was immediate, direct, and without intervention (other than P's act of striking the bag). Further, a weight falling would cause a type and extent of harm (crushing) that was suffered by P. Therefore, the event and harm were entirely foreseeable.

4. Does DAVE have **defenses** available?
 - A. DAVE would likely allege that PAUL engaged in **Contributory Negligence**, a common law doctrine that forbid a Plaintiff from recovering if his/her own negligence was a contributing cause to the harm.
 - (1) DAVE would argue that PAUL acted rashly by entering his house without permission and striking the heavy punching bag without regard for his own safety.
 - a. The facts state that PAUL struck the bag with "energy and enthusiasm", prior to any check of the premises.
 - B. While DAVE would like to insist that PAUL engaged in an **Assumption of Risk** activity, the common law doctrine requires a knowing assumption and the facts do not indicate that PAUL understood the hazard. Therefore, that defense would not apply.

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TORTS -- FALL SEMESTER MIDTERM EXAM, 2019
QUESTION THREE -- MODEL ANSWER

PAULA vs. DHARMA

1. BATTERY -- When PAULA was struck by DHARMA's cane, her physical integrity was invaded and she will argue that a Battery resulted.
 - A. PAULA will contend that DHARMA did an act with intent and the volitional nature of the act is shown by DHARMA "rushing" towards her, raising his cane, and saying "I'll bash your head...".
 - B. PAULA will contend that the swinging of DHARMA's cane caused contact with her person and that the contact was both harmful & offensive to a person of reasonable dignity. The blow seemed to cause PAULA to fall to the floor which would qualify it as a harmful contact.
 - C. DHARMA will likely use the defense of Defense of Property which allows some measure of force to defend both real and personal property.
 - (1) PAULA will contend that DHARMA's application of force was too great and therefore abused the privilege.
 - a. DHARMA used a weapon (his metal cane) with hostility ("I'll bash your head...")
 - b. DHARMA did not use words first, nor employ gentle hands. He immediately employed violence.
2. ASSAULT -- When PAULA was aware that DHARMA was swinging his cane, she "dodged" the first swing and she will argue that an Assault resulted.
 - A. PAULA will contend that DHARMA did an act with intent and the volitional nature of the act is again shown by his deliberate actions and words.
 - B. PAULA will contend that DHARMA's behavior caused her to be apprehensive of harmful or offensive contact with her person. Her apprehension is shown by her dodging the first swing to avoid the blow. She can say that any reasonable person would be apprehensive of being struck by a cane being swung by a man, no matter how old he is.
 - C. DHARMA will likely again offer the defense of Defense of Property.
 - (1) PAULA will again argue the privilege was abused by excess force. The universal rule is that deadly force, or force likely to create Serious Bodily Injury, cannot be used to defend property. Swinging a metal cane at a person's head is very likely excessive and in violation of that rule.
3. FALSE IMPRISONMENT -- When PAULA was lying on the floor, DHARMA commanded that she remain in place and she will argue that False Imprisonment resulted.
 - A. PAULA will contend that DHARMA did an act with intent and the volitional nature of his act, as well as his intent, is shown by his words, "Don't move or I'll hit you again".
 - B. PAULA will also contend that DHARMA's threat caused her to be confined within fixed boundaries, namely forbidden to move and/or get off the floor. She

- would argue that a reasonable person would comply because, even if DHARMA was 70-years old, he possessed a weapon and seemed irate.
- C. DHARMA will likely again offer the defense of Defense of Property, or even the Shopkeeper's Privilege.
- (1) PAULA will again argue that DHARMA's amount of force was unnecessary (a weapon aimed at a person's head) and therefore an abuse of the privilege of Defense of Property. The defense only allows measured force that must be preceded by a spoken order.
 - (2) PAULA will also argue that a Shopkeeper's Privilege would be misplaced because The Way temple is not a retail enterprise. DHARMA might argue that the privilege could apply to a religious organization but he would again have a problem excusing his application of force.

DHARMA vs. PAULA

1. TRESPASS TO LAND -- When PAULA entered The Way Temple, she may have invaded another's dominion over real property and be responsible for a Trespass to Land.
 - A. DHARMA will contend that PAULA did an act that was intentional, shown by her entry into The Way temple "through an open window" and at night.
 - B. DHARMA will contend that PAULA's actions caused entry to his land, namely The Way temple.
 - (1) PAULA may offer that The Way temple is not DHARMA's sovereign property and that she has a right to enter the temple. She is a "follower" of The Way and had been a donor of valuable property. That defense may remove the element of Trespass to Land that involves the property "of another".

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VERY VERY GOOD 😊

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Paula v Doug in Negligence

Negligence is behavior that falls below a reasonable standard of care that amounts to a breach of a duty owed to another party, resulting in personal injury or property damage. To establish the prima facie case for negligence, the plaintiff must prove by a preponderance of doubt that there was a duty owed to her, that the defendant's conduct amounted to a breach of that duty, and that the defendant's conduct was the actual and proximate cause of harm.

GOOD

Did Doug owe a duty to Paula?

Paula will argue that all drivers have a duty to maintain control of their vehicles when driving, with the purpose of preventing harm to others on or nearby the road. Because Doug is driving, he will have this duty. Because Paula's home is near the road, she will be owed that duty.

REGS. IMPOSED DUTY

WHAT ABOUT A DUTY IMPOSED BY STATUTE?

Doug will argue that this situation however, is similar to Palsgraf, where a party's duty only extends to foreseeable plaintiffs, and the harm must be of a foreseeable type, severity, and manner. In this case, fire damage is of foreseeable type. The duty does protect against the severity of burning. However, the fire is not created in a foreseeable manner. Because of this, there is a question of whether Doug owed a duty to Paula.

Did Doug Breach that Duty?

Paula will argue that Doug breached his duty to maintain control of his vehicle when driving.

Using the reasonable person test, paula may argue that a reasonably prudent person would know to pay full attention to the road, especially when driving along a busy public street. Because Doug's voluntary conduct causes him to be distracted, it is unreasonable act that amounts to a breach of duty.

Paula may also argue that Doug breached his duty when driving his vehicle in violation of a statute. In California, there is a statute in the Motor Vehicle Code prohibiting texting and driving. If Paula can prove that the statute applies to her case, she will be able to argue negligence per se. The statute is meant to protect all persons and property near the road. Doug will argue that the statute is meant to prevent harm caused directly by a car accident. Paula will argue that the statute be interpreted to include both direct and indirect harms resulting from a car accident.

Paula may also argue the hand formula, which states that if the burden to provide safety is less than the product of severity and probability of that harm occurring due to negligence, then there may be a breach of duty. Here the burden to provide safety is simply to turn off ones phone. The severity of the harm is as high as death. The probability of harm is also substantial. Because this act of turning off the phone requires nominal effort, there is likely evidence of a breach of duty under the hand formula.

Causation

To establish causation, the plaintiff must show that the defendant's conduct was the actual and proximate cause of harm.

Paula can prove actual cause under the but for theory. But for Doug's conduct, the utility pole would not have fallen down, creating the fire which burned down her house.

Paula will argue that proximate cause can be supported because there was no intentional third party intervention. She will argue that negligence of a third party always be

foreseeable, meaning the utility company's conduct does not amount to a superseding intervening cause. However, Doug will argue that there are other unforeseeable events that break the causal chain, under the theory of remoteness. The probability of a newspaper being at the exact place and time to catch on fire, coupled by a sudden draft to sweep the burning newspaper onto Paula's roof is entirely unforeseeable, thus breaking the causal chain.

Damages

Paula's home is her property. This is valid injury to support a claim for negligence.

Paula vs DATA in negligence

Did DATA owe a duty to Paula?

DATA has a duty to ensure the safety of its utility lines. This duty of safety is owed not only to those who purchase their services, but to all the public in vicinity of its utility pole network. Because Paula resides near one of DATA's poles, she is owed this duty.

Did DATA breach that duty?

Paula will argue the hand formula supports a breach of duty. The burden of switching to the advanced style costs a "significant" sum of money. However, the fact that it also "vastly" increases their safety, implies that the probability of harm without them is also significant. The severity of a utility line fire can be as high as death. Furthermore, the fact that DATA considered that they could mitigate that cost by raising customer rates would in theory lessen the financial burden. Therefore, Paula may succeed in showing a breach of duty through the hand formula.

Paula will also argue that custom is not a valid defense to breach of a duty. Even though the advanced lines were not widely adopted by the industry, they are published studies indicating that they vastly increase safety and therefore should be utilized.

Causation

Paula can prove actual cause by using the substantial factor theory. The but for theory may be inadequate because even if DATA were not negligent, there is still some chance that a the fire would have occurred. However, DATA's conduct was a substantial factor in causing the fire that burned her house down.

Paula can show proximate cause because a fire is a foreseeable outcome based on DATA's use of utility lines that were prone to sparking when downed.

Damages

Paula's home is her property. This is valid injury to support a claim for negligence.

END OF EXAM

ANOTHER OF
YOUR PAPERS THAT
IS WELL ORGANIZED,
NICELY ANALYZED,
& THOROUGHLY
ANALYZED.
- NICE
SMILE

2)

Negligence

Negligence is behavior that falls below a reasonable standard of care that amounts to a breach of a duty owed to another party, resulting in personal injury or property damage. To establish the prima facie case for negligence, the plaintiff must prove by a preponderance of doubt that there was a duty owed to him, that the defendant's conduct amounted to a breach of that duty, and that the defendant's conduct was the actual and proximate cause of harm.

Did Dave owe a duty to Paul?

Dave is a homeowner, and owes a varying level of duty depending on his relationship to Paul to protect him from injury. An invitee is a guest that is on the property with the intent to conduct business. A licensee is a social guest. A trespasser is an uninvited person. While Paul may have had the intent to ask Dave for a loan, which may constitute "business", the status of a person is defined only by the intent of the homeowner. Therefore, Paul is a licensee, because Dave only intended to invited him over to watch TV. A invitee is owed a duty to inspect the premises, repair and warn of any known or unknown foreseeable hazards. A licensee is owed a duty to repair or warn of any known concealed and visible hazards on the property. A trespasser is only owed a duty to prevent injury due to known, visible hazards. Dave may argue that because Paul had unauthorized use of key to enter, that he should be considered a trespasser. Normally, even though Paul arrived early, he would still considered a licensee. The court will likely find that Dave owed a duty to Paul as a licensee.

SO FAR,
TYPICAL
ANALYSIS

Additionally, there may be a separate duty owed based on the special relationship between Dave and Paul as long term friends or "social partners". This generally creates an implied duty to rescue if one is in danger, but may not apply to preventing unforeseeable injuries.

Did Dave breach that duty?

Paul may argue that a duty was breached under the reasonably prudent person theory. Paul would argue that a reasonably prudent person would know that only using "a few nails" to secure a heavy punching bag would create a serious and substantial risk of it falling and causing injury. Therefore, this would be considered a known danger, and it was Dave's duty to either repair or warn Paul in a timely manner.

Under the hand formula, a breach of duty can be inferred if the burden to ensure safety is less than the product of the severity and probability of the anticipated damages. The burden of ensuring safety would be to consult a carpenter or contractor. The severity of the damage is a crushed foot. The probability of a punching bag falling if not properly secured is substantial. The cost of a consultation is a fraction of the price of medical bills for a foot fracture. Furthermore, the facts state that Dave is a wealthy lawyer, which further lowers the apparent burden of the cost of a consultation. Therefore, there is likely a breach of duty under the hand formula. Geezy!

Dave may argue that the installation of the punching bag using nails is customary. Dave would therefore not have reason to suspect a risk or initiate a repair and could not have breached any duty to Paul as a licensee.

If Dave raises this argument, Paul can refute this by referencing res ipsa loquitur. Res ipsa means that whenever negligence cannot be proven with physical evidence, it can be inferred if the act does not normally happen in the absence of negligence, and that the defendant is the only reasonable party who could be responsible for the negligent act.

Punching bags do not normally fall under the force of a punch. The bag is in Dave's home. Therefore, Dave may be found liable under res ipsa loquitor.

Did Dave's conduct Cause Paul's injury?

To establish causation, the plaintiff must show that the defendant's conduct was the actual and proximate cause of harm.

Paul can argue that Dave's conduct caused his harm using the But For test. But for Dave's irresponsible hanging of the bag and lack of warning provided, Paul would have not been hurt or would have been aware of the risk and avoided punching the bag in the first place.

Paul can argue that Dave's conduct was the proximate cause by showing that there were no third party intervening forces, and that the nature of the duty Dave owed him, the type, severity, and manner of injury were intended to be prevented.

PLUS, THE HARM
WAS DIRECT +
IMMEDIATE

Damages

The crushed foot amounts to personal injury, which satisfies the element of negligence.

Defense of Trespass

Dave will argue that Paul exceeded the bounds of his invitation. Dave will argue that he expressly only gave Paul consent to watch TV while at his house, and that entry to the den and the access to the punching bag was not intended. While maybe it is foreseeable that a licensee have implied access to the bathroom or any room in between the entry and the room where the TV is located, if Dave can argue that Paul was a trespasser at the time of the injury, he can use this to lower his duty owed to Paul.



END OF EXAM

which clearly is a harmful and offensive contact. Nothing in our fact pattern shows that Paula consented to the act.

It is likely that Paula can raise a claim for the tort of Battery vs. Dharma.

FALSE IMPRISONMENT BY DHARMA

The intentional tort of false imprisonment consists of the defendant committing an act, with intent, causing confinement within defined boundaries, without consent or privilege. The confinement can be for any period of time, however short or long.

Here, after catching Paula trying to take the necklace and hitting her with her metal cane, Dharma told her: "Don't move or I'll hit you again." That threat likely made Paula remain on the floor of the temple. Dharma by threatening to hit Paula again, committed the act with intent that confined Paula inside the boundaries of the Temple. Nothing in our fact pattern shows that Paula consented to staying there.

It is likely that Paula can raise a claim for the tort of False imprisonment vs. Dharma.

It is likely that Dharma might raise a defense of property defense.

DHARMA VS. PAULA

TRESPASS TO LAND BY PAULA

The intentional tort of Trespass to land consists of the defendant committing an act, with intent, that causes entry to land (includes above and below), without consent or privilege.

Here, Paula decided to sneak in to the Temple through an open window. The facts show that she acted without consent when Dharma the leader of the Temple caught her in the act.

It is likely that Dharma can raise a claim for the tort of Trespass to chattel vs Paula.

TRESPASS TO CHATTEL BY PAULA

The intentional tort of Trespass to Chattel consists of the defendant committing an act, with intent, that materially alters the value of the chattel, without consent or privilege.

Here, Paula committed the act of entering the temple, with intent of taking a diamond necklace she had previously donated. The facts show that her act was done without consent or privilege. However, the fact pattern shows that Paula made it as far as touching the necklace when she was caught in the act by Dharma. It is unlikely that the touching of the necklace would result in diminishing the material value of the necklace.

It is unlikely that Dharma can raise a claim of Trespass to chattel vs. Paula.

It is likely that Paula might raise a necessity defense since her actions were intended to seek to save the six-toed blue salamander.

END OF EXAM
