

MONTEREY COLLEGE OF LAW
HYBRID
TORTS SEC. 2
MIDTERM EXAMINATION
FALL 2022
PROF. L. HOLDER

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

QUESTION 1

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

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

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

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

QUESTION 2

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

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

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

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

QUESTION 3

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

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

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

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

TORTS ANSWER OUTLINE

FALL 2022

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

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

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

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TORTS QUESTION 2

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

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

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

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

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

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

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

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

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

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

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

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

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

Excellent

1)

1. Legal Status of Harry while in the store *Good*

Invitee

An invitee is owed a higher duty of care than that owed under the reasonable person standard. An invitee is someone that is present on site for the benefit of the owner or for a mutual benefit. *Good*

Here Harry, was shopping at a local grocery store. Harry was there as an invitee as he was there for the benefit of the business (to purchase items). *Discussion re trying to steal item - A person loses her status as an invitee if he exceeds the scope of the invitation— Reversion to licensee, perhaps even trespasser, status.*

2. Harry v. Dude and Bart

False Imprisonment

The intentional tort of false imprisonment occurs when a defendant

- (a) causes or is a substantial factor in bringing about
- (b) the confinement and restraint of the the plaintiff
- (c) to a bounded area
- (d) with specific or general intent

Good rule statement!

Causation

Causation is met when a defendant's act or something that occurs as a result of the defendant's act is the legal cause of the result that gives rise to legal action

Here Bart and Dude attempted to place Harry into a small office with no windows. *Good*
 Harry was never placed in the office therefore there is only intent to place Harry in the *Good*

office. Causation would have been met only if Bart and Dude would have successfully placed Harry in the office.

Confinement

Confinement is met when a defendant uses physical barriers, force, threatens the use of force, or invalidly asserts legal authority to detain to take someone to an area they do not want to be in or prevent the person from leaving the area. *Good*

Here Bart and Dude attempted to place Harry in a small office. The office itself would be a physical barrier. As they were unsuccessful in placing Harry in the office confinement

did not occur. *Confinement includes restraint; restraint includes threats of force, false arrests, and failure to provide a means of escape - "When Harry tried to leave, Dude and Bart forcibly took Harry to the ground." Would this be restraint?*

Bounded area

A bounded area is an area with determined boundaries from which a plaintiff cannot reasonably escape.

Again, Bart and Dude were unsuccessful in their attempt to place Harry in the small office. Had they been successful and prevented Harry from reasonably leaving the space Harry would have been in a bounded area.

For an area to be "bounded," the plaintiff's freedom of movement in all directions must be limited. Any argument here?

Intent

Intent is met when a defendant

(a) acts with intent to produce the intended consequence (specific intent)

(b) acts knowing the act is substantially certain to produce the consequence (general intent) *EXCELLENT!*

Here Bart and Dude had the intent to confine Harry to the office but they were unsuccessful. Had they successfully placed Harry in the office intent would have been met. *because? "they insisted Harry enter a small "office."*

Harry would not be successful in a tort of false imprisonment against Bart and Dude

Battery

The intentional tort of battery occurs when a defendant

- (a) causes or is a substantial factor in bringing about
- (b) harmful or offensive contact
- (c) to the person of another
- (d) with intent to cause harmful or offensive contact
- (e) without consent

Good

Causation

Causation is met when a defendant's act or something that occurs as a result of the defendant's act is the legal cause of the result that gives rise to legal action. Good

Here Dude and Bart's act of taking Harry to the ground is the legal cause of the result giving rise to legal action. Harry's resulting traumatic brain injury is the result of Dude and Bart's actions that rises to legal action. Therefore, the element of causation is met. Good

Harmful or Offensive Contact

Harmful contact is contact that cause pain, disfigurement of injury to the plaintiff. Good

Offensive contact is contact that violates the reasonable personal dignity of another.

Here the act of taking Harry to the ground caused injury. Harry, suffered a traumatic brain injury as a result of Bart and Dude's act. Harry's injury meets the definition of harmful contact Right

To the person of another

Right - but can get more specific with facts:
Dude and Bart made contact with a person, Harry.

To the person of another would be the defendant making contact with the plaintiff or something attached to the plaintiff. Here contact was made with a person, Harry.

Intent

Intent is met when a defendant can use "Supra" or above.

- (a) acts with intent to produce the intended consequence (specific intent)
- (b) acts knowing the act is substantially certain to produce the consequence (general intent)

Here Dude and Bart intended to force Harry to the ground. Their intent to forcibly take Harry to the ground was successful. Dude and Bart may argue they did not have the intent to cause Harry's traumatic brain injury. Harry will argue their act of taking him to the ground was certain to produce injury. Because the act is substantially certain to produce injury the element of intent is met. Good

Damages:

Special Damages are available to a plaintiff that suffers quantifiable harm. Special damages are available for medical expenses and lost wages. Due to the resulting traumatic brain injury Harry will likely be successful in recovering special damages. General damages are available for items without a monetary value such as pain and suffering. Here Harry is likely to win General damages. Punitive damages are available if a defendant acts with recklessness or malice. If it is found Dude and Bart acted in a reckless manner or with malice Harry may be able to also receive compensation under punitive damages. Good.

Defense: Consent

A defendant will not be found liable of battery if they have the consent of the plaintiff to

the otherwise tortious act. Consent is considered valid when objectively manifested by expression (written or spoken word), implied by conduct, or legal authority *Right*

Here Bart and Dude did not have consent to forcibly take Harry to the ground. *Because Harry wanted to leave . . . ?*
Therefore, they would be unsuccessful in using a consent defense.

Here all elements for the tort of Battery are met. Harry would be successful in proving that Dude and Bart committed the tort of Battery. *Good!*

Defense: Acting in employment capacity

Bart and Dude could argue they were acting under their employment capacity with FOOD 4 US. If successful the liability for Harry's injuries would shift from Bard and Dude to FOOD 4 US. *Rather, Food 4 US can be added as an additional tortfeasor along with Bard and Dude.*

Shopkeeper's Privilege

All the elements for false imprisonment were not met in the analysis. However, if all the elements had been met for false imprisonment Bart and Dude could raise Shopkeeper's Privilege as defense to the intentional tort of false imprisonment. Shopkeeper's Privilege allows shopkeepers to detain patrons found stealing for a reasonable amount of time while allowing law enforcement to arrive.

- (1) There must be a reasonable belief as to the fact of theft;
- (2) The detention must be conducted in a reasonable manner and only nondeadly force can be used; and
- (3) The detention must be only for a reasonable period of time and only for the purpose of making an investigation.

- Demonstrates superior understanding of most material
Need to break out definitions of elements
- 2) Organization can still improve - evaluate torts and defenses separately; conclude after
Lance v. Greg each element and tort.

Negligence consists of:

1. Duty to P to conform to the reasonable person conduct to prevent unjustifiable risk of harm to P.
2. Breach of duty is when the Def falls below that standard of care required to P
3. Causation is when the breach is the factual cause (but for the breach, injury wouldn't have occurred) and the Proximate cause (foreseeable that breach would result in injury to P and no superseding/intervening forces) and
4. Damages-P sustained actual damage/injury

Good

1) Duty

Here, Greg has a duty as a vehicle driver to be aware of the road and make precautions to ensure he doesn't injure others. He has a duty to follow the rules of the road which he did by driving at the posted speed of 55 mph. He must perform as a reasonable person would do in his circumstance as a person driving past a person riding in the bike lane. He has a duty to Lance to ensure he takes safety measures to not hit him while driving past and to share the road with him. Lance as a bicyclist on the road has a duty to stay in his lane and to ensure he doesn't make any hazards for other cars driving past him. Lance as an experienced and proficient cyclist has a high duty to ensure his own safety and to follow the rules of the road. GOOD!!

Greg also has a duty to Floyd to not hit him as he is also a cyclist on the road. Right

2) Breach

Here, although Greg was driving the posted speed limit of 55 mph, the reasonable person usually slows down to pass a cyclist on the road. It is common knowledge that death or SBI is highly likely if the biker went into your lane or the driver of the car accidentally went into their lane. Thus, the RPS would slow down if safe instead of going the same speed and move as far away as possible from the biker to go around him if safely possible. Here, Greg states that he felt confident that he could stay in his lane and assumed the risk that he could stay in his lane and Lance in his without injury. The RP would think this is reckless to stay at the same speed to drive around a biker who is so close to you and is without any protection like a car would have.

Conclude element: Greg breached his duty to Lance.

3) Causation

Here, Greg was the factual cause of Lance's injuries since but for Greg driving past Lance on the road, his mirror wouldn't have hit Lance to make him fall and wouldn't have suffered the injuries. Here, Greg is also the Legal/Proximate cause of Lance's injuries since it is highly foreseeable that Greg driving past a cyclist going the speed limit of 55 mph without moving as far to the opposite side of the road as safely possible could cause him to hit a cyclist and ^{Good} cause injury. There was no supervening forces that caused Lance's injuries. Greg was the sole cause of Lance falling from hitting him with his mirror when driving past. *Good analysis. Conclude element.*

4) Damages

Here, Lance sustained actual damages having his right arm broken and suffered a concussion. He was so injured he couldn't work at his manual job. He was unable to pay his hospital bills and now has a phobia of road cycling.

Conclude element.
CONCLUDE TORT

Floyd v. Greg

IIED:*This conflated IIED and NIED*

is the intentional extreme and outrageous conduct of def that causes P to suffer severe emotional distress. Traditionally only bystanders in the zone of danger who feared for their life and sustained emotional distress could recover damages. However, modernly P do not need to be in the zone of danger as long as they are closely related to the victim, they watched the event happen/was present at the scene, and experienced severe emotional distress that a disinterested person wouldn't have. Most states have also taken out the requirement of physical harm due to the distress. A bystander who is not related to the victim (stranger) outside of the zone of danger cannot recover damages.

Except for the first sentence. good.

Here, Floyd is a friend of Lance's not related like a family member. Greg will argue that Floyd cannot recover since he is not closely related to Lance, that friends is not close enough to be able to recover damages. However, Lance will argue that he should recover damages since he is reasonably foreseeable victim that would suffer IIED from seeing his friend crash and sustain injury since he was present at the scene and was in the zone of danger since he was directly riding behind him. Lance can argue that he sustained physical harm by vomiting due to the distress of seeing his friend being injured. That he still suffers since he has nightmare about the incident. Greg will argue that Lance cannot recover even as a bystander in the zone of danger since even though he was in the zone of danger, he did not fear for his life/safety only distraught about Lance.

Good

Zone of danger and physical symptoms from the distress only requirements

Thus, if the court finds that Lance and Floyd are closely related enough, then he can recover damages for IIED. *NIED*

this is kind of floating out here without analysis . . .

Here, since Greg was in the zone of danger since he suffered great bodily harm such as a broken arm and concussion and now claims he has a phobia of road cycling due to the incident, he can recover damages. He feared for his life and now cannot enjoy road cycling which he enjoyed since he was a proficient and experienced cyclist.

Defenses:

Contributory Negligence: *Good*

Jurisdictions that allow contributory negligence bars recovery for P when the P negligently contributes to their injury.

Here, Harry will argue that he was contributorily negligent since he had the duty to move to the far side of the road as well. That the reasonable cyclist wouldn't go riding on a road that is 55 mph since it is dangerous and if they do then they would take more *Good* precautions like riding far from the car or even pausing to move to the side where it is safe so a car can pass you by. Lance will argue that he is not contributorily negligent since he followed the rules by staying in his bike lane but it depends on what the RP would do in this situation.

Thus, if the court decides Lance is contributorily negligent, he will be barred from recovery.

Pure Comparative negligence:

Jurisdictions that allow pure comparative negligence does not bar recovery when P negligently contributes to their injury. Instead their damages are reduced proportionately by the percent of negligence they contributed no matter the % of damages that they contributed.

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that is 55 mph since it is dangerous and if they do then they would take more precautions like riding far from the car or even pausing to move to the side where it is safe so a car can pass you by. Lance will argue that he is not contributorily negligent since he followed the rules by staying in his bike lane but it depends on what the RP would do in this situation.

Good

Thus, if the court decides Lance is comparatively negligent, his damages will be reduced by the amount of negligence he contributed to his injury.

Partial Comparative negligence:

Jurisdictions that allow pure comparative negligence does not bar recovery when P negligently contributes to their injury. Instead their damages are reduced proportionately by the percent of negligence they contributed depending on the % of damages that they contributed. If it is over 50% then they are barred from recovery.

Right

Here, Harry will argue that he was contributorily negligent since he had the duty to move to the far side of the road as well. That the reasonable cyclist wouldn't go riding on a road that is 55 mph since it is dangerous and if they do then they would take more precautions like riding far from the car or even pausing to move to the side where it is safe so a car can pass you by. Lance will argue that he is not contributorily negligent since he followed the rules by staying in his bike lane but it depends on what the RP would do in this situation.

Thus, if the court decides Lance is comparatively negligent, his damages will be reduced by the amount of negligence he contributed to his injury. If it is 50%, then he will be barred from recovery.

Assumption of the Risk:

In jurisdictions that allow Assumption of risk, if P knows of risk and continues to do it they are barred from recovery. *Need elements**

Here, Harry can argue that Lance assumed the risk of biking on a 55 mph road and should of known of the high dangers of SBI and death that could occur since he is an experienced/proficient cyclist. ^{Good} He will argue that Lance knew he could be injured by a car very easily and was highly foreseeable especially on a high speed road of 55 mph. ^{Right} Yet, he still continued to ride his bike on the road while knowing he could be injured so he should be barred from recovery. *Good reasoning*

* the plaintiff must have known of the risk and voluntarily assumed it.
It is irrelevant that plaintiff's choice is unreasonable.

Knowledge of Risk

Plaintiff must have known of the risk. Knowledge may be implied where the risk is one that the average person would clearly appreciate

3)

DISCUSSED ALL MAJOR AND MOST MINOR ISSUES
LARGELY COMPLETE AND ACCURATE RULES
WELL DONE

CONNOR V. NATE

Negligence

In order to establish the prima facie case for negligence, the plaintiff will have to show that the defendant owed him a duty, that the duty was breached, that the breach of that duty was the actual and proximate cause of the damage, and that the plaintiff sustained damage.

Duty

Duty is maintaining a standard of care for others that prevents an unreasonable risk of harm to them. This duty is either owed to those foreseeable parties within the "zone of danger" as the majority held in Palsgraf, or to any person, regardless of whether they fall within the zone of danger, as the minority holds from Andrew's dissent in that case. Certain parties can have a heightened sense of duty to others if they specialize in a field where they are expected to care of parties, such as doctors and hospitals, and people with Black Belt in Brazilian jiu jitsu. Here, unbeknownst to Connor, Nate has such a speciality, as he holds a Black Belt in Brazilian jiu jitsu. Nate has a duty to Connor make him aware of this fact before engaging in a fight with him and not to use this speciality to cause unnecessary harm to others. GOOD

Nate owes a duty to Connor.

Breach

A breach occurs when someone falls below the standard of care necessary to prevent the unreasonable risk of harm to others. Here, as Nate has a heightened standard of care resulting from his status as a black belt. He owes a duty to make Connor aware of this before going into a fight and to not cause an unnecessary or unreasonable amount of

harm to Connor, such as breaking his arm. Nate should not be using the skills he's acquired in a way that would harm people without such speciality and knowledge.

Nate has breached the duty he owes to Connor. YES

Cause

Actual

Someone is the actual cause of damage when, but for their conduct, the damage would not have occurred. Here, but for Nate's perfectly executed arm bar, Connor's arm would not have been broken and would not have become gangrenous and required amputation. *GOOD USE OF FACTS*

Nate is the actual cause of Connor's injury.

Proximate

Proximate cause is legal cause, or the foreseeability that the consequence would occur, granted there are no supervening or superseding events within the chain. Here, after Nate breaks Connor's arm he is taken to the emergency room at the local hospital for treatment. Because of the pandemic, Connor has to be treated outside and is treated by a "harried" ER doctor that is probably overcome with patients and unable to properly treat Connor. As a result, Connor suffers through the weekend and upon being properly inspected by his primary physician, its determined he needs an amputation, which he goes through with.

GOOD Nate could argue that a global pandemic such as covid would be a supervening and superseding event in the causal connection. How could someone foresee that a global pandemic would ravage the local medical industry and cause physicians to provide faulty service? Was there any reason that the arm would have had to be amputated regardless of whether the ER physician provided faulty treatment? Was the ER physician's treatment faulty at all? Nate would likely argue that given the number of occurrences

between the breaking of the arm and the amputation, that he would not be the proximate cause of Connor's lost arm.

Connor would likely argue that misdiagnoses from physicians is a possibility regardless of whether there is a pandemic and regardless of the condition and status of the doctor. He would argue that these events do not constitute a break in the causal chain and that Nate is the proximate cause of him lost arm.

*common intervening forces that are almost always foreseeable:
(1) Subsequent Medical Malpractice
The original tortfeasor is usually liable for the aggravation of plaintiff's condition caused by the malpractice of plaintiff's treating physician.*

Damage

Here, Connor sustains a broken arm and eventually loses his arm altogether. Connor has sustained damage.

Nate will likely be liable to Connor in a negligence case since he broke his arm during a fight.

DEFENSES

Assumption of Risk

Assumption of risk is a defense to negligence that holds that the party who was injured assumed the risk, and therefore the potential injuries, from their actions. Here, Nate would likely argue that Connor consented to the fist fight and assumed any risk that may ensue. Connor could argue that he didn't truly understand the risk associated because he did not know that Nate was a black belt. *GOOD*

Contributory Negligence

Contributory negligence restricts the plaintiff's right to recover damages if they were in any way at fault for the accident. Here, if Connor was found to be contributorily

negligent in causing his own injury by agreeing to the fight, then he would be barred from recovery. Here, Connor does consent to the fist fight which is implied as he participates in the fight. If a trier of fact considered this to be contributing to the injury, then he would be barred from recovery.

Comparative Negligence

There are two types of comparative, pure and impure. Pure comparative negligence allows for the parties to recover in the percentages that they were at fault. Impure comparative negligence awards damages only to those parties who are not at majority of fault. Here, there are no facts to suggest that Nate sustained any damages.

CONNOR V. PHYSICIAN AND HOSPITAL

Negligence

Supra.

Duty

GOOD Supra. Here, Connor has a broken arm and seeks treatment from the ER doctor and the hospital, who owed a heightened duty of care to Connor to treat him properly for his broken arm and not cause further damage. The ER doctor and hospital could have turned Connor away, but since they decided to accept him and treat him in the parking lot, they owed him a duty.

Breach

GOOD Supra. Here, the ER doctor misdiagnoses Connor's compound fracture for a slight fracture and, as a result, provides the wrong treatment for him. Because of this malpractice, the ER doctor and the hospital have breached their duty.

Cause

Actual

Supra. Here, but for the misdiagnoses the bone would not have cut into the tissue, the tissue would not have become infected, and the arm would not need to be amputated. The ER doctor's misdiagnoses is the actual cause of Connor losing his arm. RIGHT

Proximate

Supra. Here, the ER doctor misdiagnoses the broken arm and as a result Connor's arm is amputated after it develops an infection. This seems to be a technical question for a medical expert to determine whether this type of misdiagnoses, specifically calling a compound fracture a slight fracture, and treating it as such, would likely lead to the infection Connor sustains and the ultimate amputation. Barring any extenuating circumstances, it does not appear from that facts that there were any supervening or superseding causes that broke the causal chain from the misdiagnoses to the amputation. If this infection is likely to result, than the ER doctor would be the proximate cause of Connor's amputation. GOOD

The doctor and hospital would argue that the covid pandemic was an extenuating circumstance that would be considered a supervening and superseding cause in the harm suffered by Connor. They could argue that the pandemic and all of its effects, including the impact on the medical industry and staff is an unforeseeable event that would cause a break in the causal chain.

Damage

Supra.

The Physician and Hospital will likely be found negligent for their misdiagnoses

of Connor's arm and resulting amputation.

Joint and Several Liability *GOOD*

Joint and Several Liability allows a party to seek damages from multiple tortfeasors and allow them to seek recovery from each other. Here, Connor would have the ability to sue whichever party he wanted and allow that party to recoup damages from the other parties. The hospital would be the likely party who Connor would seek damages from as they likely carry the deepest pockets and carry malpractice insurance.

END OF EXAM