

KERN COUNTY COLLEGE OF LAW  
TORTS MIDTERM EXAMINATION  
FALL 2021  
PROF. J. VLAHOS

General Instructions:  
Answer Three (3) Essay Questions  
Total Time Allotted: Three (3) Hours

\*\*\*\*

**TORTS QUESTION 1**

On or about February 13, 2021, at 9:00 in the morning, Javadi was inside of her residence. She lives in the guest house on property owned by her daughter and son-in-law. She was about to turn on the television when she heard a knock on the door. She opened the door. At the door was a very big man, later determined to be Nomar, who pushed her back and entered the residence.

Once he entered the residence, Nomar asked where the bedroom was. Javadi walked ahead of him and showed him the location of the bedroom. Nomar forced her to sit on the bed. Javadi asked the man if he were a robber, and he replied yes, that he wanted money. Javadi said that her money was in her purse, and told him he could open it. She thought if he took the money, he would leave. Nomar took \$250 from her purse and then placed it into his wallet.

After getting a glass of water, Nomar went into a second bedroom. In the second bedroom, Javadi kept money in a purse in a basket under some clothes. According to Javadi, the man took that money, which she estimated was \$4500. Nomar then used an exercise band to tie Javadi's hands together and the cord from an iron to tie her legs together. He then pushed her onto the bed. From that position, she could hear the man drive away in her grandson's 2006 Duramax Chevy Silverado 2500 truck.

Nomar drove the truck for approximately 200 miles. He stopped to put gas into the truck. Nomar did not appreciate that it was a diesel truck. By placing gas into the tank and turning the ignition, Nomar ruined the truck's fuel system and made the truck inoperable.

Javadi comes to you because she wants to file a claim for all the damages she from Intentional Torts she suffered. Please explain what Intentional Torts have been committed against her by Nomar.

\*\*\*\*

**KCCL**

**Torts Midterm Examination**

**Fall 2021**

**Prof. J. Vlahos**

**TORTS QUESTION 2**

On Friday evening Ronan and his best friend Shane decided to go to Murphy's Pub & Bar. It was a busy evening and the bar was packed, people standing shoulder to shoulder.

Cheyenne, who was at Murphy's with some of her girlfriends to celebrate her bachelorette party, was consuming her 5<sup>th</sup> cosmopolitan when she spotted Ronan and Shane. In her drunken state, Cheyenne moved over toward Ronan and began chatting him up, moving close to him, and placing her hands on his shoulders. Ronan, who is in a very happy relationship, turned down Cheyenne's advances. Cheyenne, however, did not want to take "no" for an answer and grabbed Ronan's buttocks. Startled, Ronan pushed Cheyenne away from him.

Upset at being rejected, Cheyenne began yelling at and shoving Ronan, who attempted to back away from Cheyenne. The commotion caught the attention of Bill, the 6'5", 250 lbs bouncer employed by Murphy's Pub & Bar, who approached Ronan and Cheyenne. When he asked what was going on, Cheyenne told Bill that Ronan had groped her and had tried to force himself upon Cheyenne. Ronan vehemently denied Cheyenne's claim, and Shane, who had witnessed the incident and had attempted to separate Cheyenne from Ronan, corroborated Ronan's version of the events. Nonetheless, Bill grabbed Ronan, turned him around forcefully, and put Ronan's hands on his back. He then forced Ronan out of the bar area and into a small office where he ordered him to sit in a chair. When Ronan attempted to leave, Bill motioned for Ronan to sit back down and said, "You ain't going nowhere, buddy," and left the office, leaving the door open behind him.

After speaking with and getting more details from Shane, Cheyenne, and Cheyenne's friends, Bill returned to the office an hour later and told Ronan, who was still sitting in the chair, that the incident appears to be a misunderstanding, and that Ronan was free to leave.

Since the incident, Ronan has been feeling a lot of anxiety in large crowds, and he suffered some bruising as a result of Bill forcefully moving Ronan to the office.

You are Ronan's attorney and are preparing the complaint. Discuss Ronan's possible claims against Cheyenne, Bill, and Murphy's Pub & Bar, as well as the likely outcomes.

\*\*\*

**KCCL**  
**Torts Midterm Examination**  
**Fall 2021**  
**Prof. J. Vlahos**

### **TORTS QUESTION 3**

Pablo is visiting San Francisco to watch his favorite team, Los Doyers, play the San Francisco Giants. Pablo is unfamiliar with the city, but is told by his hotel's concierge that the tram, owned and operated by the City, is the best way to get to the ballpark and back.

Pablo takes the tram toward the ballpark. He cannot understand the map on the wall of the tram car and is unsure at what station to disembark. Seeing an EXIT sign for Candlestick Park on the adjacent highway, Pablo decides to get off the tram at the next station.

When Pablo disembarks the tram, he immediately gets an ominous feeling. He turned to get back on the tram, but its doors closed and it took off leaving him alone on the tram platform. Unsure of where to go, he begins to walk in the general direction of the ballpark. Unbeknownst to Pablo, he is walking in a very bad neighborhood. Before too long, he is surrounded by a gang of six large young men with tattoos, hoodies, and poor hygiene. When they see Pablo's baseball cap, they begin to push and taunt him.

Damian, the leader of the gang, is holding a four-foot-long 2x4 that is imprinted with the words "Welcome to South San Francisco." Damian pushes through the others and lands a horrific blow to the right side of Pablo's head. The others in the gang begin to kick and hit Pablo, too. Pablo awakens in the hospital to learn he has suffered a traumatic brain injury and a burst eardrum, likely from the blow by Damian, and a broken arm and several broken ribs. He is unsure who caused the injuries to his arm and ribs, but assumes the injuries were caused by some of the other members of the gang.

The police ultimately apprehend the six perpetrators. Pablo is able to identify them all.

After release from the hospital, Pablo decides to sue the gang and City for his damages. Discuss.

\*\*\*\*

**KCCL**

**Torts Midterm Examination**

**Fall 2021**

**Prof. J. Vlahos**

Q1 Answer Outline (Ronan Murphy's Pub)

Issue	Rule	Analysis	Concl'n	Points Allotted
Trespass to Land (2 points)	Intentional, willful enter onto real property of another; damage? (2 points)	Nomar pushed Javadi back and entered residence; loss of use (mesne damages?) (2 points)	(1 pt)	/7
False Imprisonment (2 points)	Intent to confine or restrain with no defense (2 points)	<ul style="list-style-type: none"> <li>• Told her to sit</li> <li>• Tied hands and legs together</li> </ul> (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)	Invaded home; told her he would rob her; tied her up, took her money; took her grandson's truck (2 points)	(1 pt)	/7
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points)	* took \$250 * took \$4500 * took truck, not hers, but in possession (2 points)	(1 pt)	/7
Conversion (2 points)	Will, intentional act causing destruction	* took \$250 * took \$4500	(1 pt)	/7

	or substantial interference with dominion and control of owner or possessor (2 points)	* took truck, not hers, but in possession, ruined truck by putting gas into tank (2 points)		
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	<ul style="list-style-type: none"> <li>● Pushed her into home</li> <li>● Pushed her onto bed</li> <li>● Tied her hands with exercise band</li> <li>● Tied her legs with cord</li> </ul> (2 points)	(1 pt)	/7
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	<ul style="list-style-type: none"> <li>● Pushed her into home</li> <li>● Said he would rob her</li> <li>● Pushed her onto bed</li> <li>● Tied her hands with exercise band</li> <li>● Tied her legs with cord</li> </ul> (2 points)	(1 pt)	/7
Damages (2 points)	General Special Punitive (6 points)	Pain and suffering from pushing and tying up; scared; Medical expenses; Truck repairs; Reprehensible conduct to be punished (6 points)	(1 pt)	/15

Total points possible				/64

## TORTS QUESTION 2

### ANSWER OUTLINE

Issue	Rule	Analysis	Concl'n	Points Allotted
<b>Ronan v. Cheyenne</b>				
Assault (2 points)	Willful and intentional act that causes reasonable apprehension of immediate or harmful touching (3 points)	Moved toward him; touchy; flirty; yelling; he backed away (4 points)	(1)	/10
Battery (2 points)	Willful and intentional act that causes harmful or offensive touching (3 points)	Grabbing of buttock; hands on shoulders; shoving (4 points)	(1 pt)	/10
IIED (2 points)	Intentional or reckless, extreme and outrageous act that causes severe emotional distress (3 points)	Sexual harassment/assault > extreme and outrageous Accusing him to groping her Exceeds all bounds of decency tolerated in a civilized society (4 points)	(1 pt)	/10
<b>Ronan v. Bill</b>				
Assault (2 points)	Willful and intentional act that causes reasonable apprehension of immediate or harmful touching (3 points)	Moved Ronan into office > possible physical threat? (4 points)	(1 pt)	/10
Battery (2 points)	Willful and intentional act that	Grabbed Ronan; turned him around	(1 pt)	/10

	causes harmful or offensive touching (3 points)	forcefully; hands on back; forced into office Bruising (4 points)		
False Imprisonment (2 points)	Willful and intentional act that confines/restrains plaintiff to bounded area (3 points)	Bounded area > door remained open, Ronan could leave Physical threat > 6'5", 250lbs bouncer > "you ain't going nowhere buddy," told him to leave > threat to safety, not save to leave (4 points)	(1 pt)	/10
<b>Ronan v. Murphy's Pub</b>				
Vicarious Liability (2 points)	Employer liable for negligent/SL acts of employee committed in course/scope of employment Usually no liability for employee intentional tort unless committed to further interest of employer (2 points)	- Bill acted in his capacity as bouncer while in course and scope - interest of pub to keep the peace, ensure patron safety, remove dangerous individuals from premises (3) points	(1 pt)	/8
<b>Total Possible Points</b>				/68

### TORTS QUESTION 3

Issue	Rule	Analysis	Concl'n	Points Allotted
<b>Pablo v. City</b>				
Negligence (2 points)	Over-arching Negligence elements (2 points)			/4
Duty (2 points)	All foreseeable plaintiffs; Special relationship ( <u>Palsgraf v. LIRR</u> ) (4 points)	Pablo a passenger on the tram (2 points)	(1 pt)	/9
SOC (2 points)	RPP (2 points)		(1 pt)	/5
Breach (2 points)	<u>Blyth; Carroll Towing</u> ; Hand Balance Test (2 points)	Burden less than risk- understandable map (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For; substantial factor; alternative theory ( <u>Summers v. Tice</u> ) (4 points)	But For Map; But for Pablo getting of the tram at the wrong station; But for gang; who caused specific injuries (4 points)	(1 pt)	/11
Proximate Cause (2 points)	Direct Harm or RFH?  Intervening Acts? (2 points)	Harm was caused by criminal act/intentional tort of others (2 points)	(1 pt)	/7
Defenses (2-5 extra points)				

<b>Pablo v. Gang</b>				
Battery (2 points)	Willful and intentional act that causes harmful or offensive touching (3 points)	Damian hit with 2x4; others kicked and hit P (4 points)	(1 pt)	/10
Assault (2 points)	Willful and intentional act that causes reasonable apprehension of immediate or harmful touching (3 points)	Surrounded; pushed; taunted before hit with 2x4 and kicked and hit by others (4 points)	(1 pt)	/10
IIED (2 points)	Intentional or reckless, extreme and outrageous act that causes severe emotional distress (3 points)	No information, but can be reasonably presumed (4 points)	(1 pt)	/10
Damages (2 points)	General; Special Punitive? (2 points)	Head/ears (Damian); leg (unknown); ribs (unknown); Presumption of gang defendants (4 points)	(1 pt)	/9
Total points possible				/82

1)

1)

**What intentional torts have been committed against Javadi (J) by Nomar (N)?**

For an intentional tort to occur, there has to be intent, the act, and causation.

**Assault**

Assault is a volitional act with the intent to cause an imminent apprehension of a battery (bodily harm or offensive contact).

1) Here, it can be argued that Nomar committed an assault prior to pushing Javadi when he entered the residence and before he used an exercise band and cord to tie Javadi's hands and feet together. It is not unreasonable for a woman to apprehend imminent bodily harm or offensive contact when faced with a large man at her front door.

Javadi would argue that an individual in her position reasonably would have felt the imminent apprehension of bodily harm when a large man stood at her door. She also would argue that because he pushed her upon arrival at the residence, she could have ascertained another imminent apprehension of bodily harm or offensive contact by Nomar. Javadi may argue that there was no time allowing for the imminent apprehension of bodily harm or offensive contact because he acted quickly when he arrived at the residence. Javadi may argue for the second assault that he was not causing bodily harm or offensive contact to the plaintiff when he tied her up. Nomar will argue that tying someone up and pushing them on the bed is offensive contact and could be considered harmful contact as well.

2) It is also likely that Nomar assaulted Javadi when he forced her to sit on the bed.

It is likely that Nomar caused Javadi to apprehend imminent harmful or offensive contact when he forced her to sit on the bed. Nomar may argue that she apprehended greater bodily harm had she not complied with his order to sit on the bed. Nomar may argue that he did not intend to cause Javadi to apprehend bodily harm or offensive contact.

Therefore, it is likely Javadi could successfully sue for multiple counts of assault.

**Battery**

---

Battery is the intent to inflict bodily harm or offensive contact on another. Indirect or direct contact is sufficient to meet the requisite elements of a battery. A harmful contact is one that inflicts bodily harm, while an offensive contact is one that would offend a reasonably minded person.

1) Here, Nomar pushed Javadi as a means to enter into her home. By pushing her, Nomar caused both a harmful and offensive contact with Javadi's person. A reasonable person would not only be offended by the act of being pushed, but it is likely that an individual would also have some bodily harm or injury as a result of being pushed.

Javadi would argue that Nomar pushing her back as a means to enter into her residence was not only offensive but harmful. Nomar may argue that he did not intend to cause bodily harm or injury, and was merely trying to get into the residence.

2) It is also possible that Javadi could sue Nomar for battery when he forced her to sit on the bed. While the facts do not specifically state whether Nomar used force or made contact, either directly or indirectly, with Javadi, it is possible that he did in order to force her to sit down. If Nomar made contact with Javadi's person or anything connected to her person, he would be liable for battery as well. Javadi would argue the act of forcing someone to sit against their will is offensive to a reasonable person.

3) Nomar also committed a battery when he used an exercise band to tie Javadi's hands together and the cord from an iron to tie her legs together before pushing her on the bed. This would, on the surface, constitute as an offensive contact, as it would offend a reasonable person to be tied up against their will. It is also likely that Javadi suffered bodily harm as a result of being tied up and then pushed onto a bed.

Javadi will argue that the act of tying her up and then pushing her onto the bed was not only offensive but also harmful contact — it is likely that she suffered some physical injury as a result of the act. Nomar may argue that he did not intend to cause any bodily harm to Javadi's person.

Ultimately, it is likely that Javadi could successfully sue Nomar for multiple counts of battery.

### **False Imprisonment**

False imprisonment is the intent by the actor to confine or restrain another within boundaries fixed by the actor. The boundaries or restraints need not be physical. The plaintiff has to reasonably believe that they cannot escape from the boundaries.

---

1) Here, it can be argued Javadi was falsely imprisoned by Nomar when he forced her to sit on the bed. Javadi was forced to sit on the bed and stay within the bedroom. It is likely that Nomar reasonably believed she could not leave the room, or even get up from the bed, as she was confined to the bedroom. While the fact pattern does not specifically state whether Nomar closed the door, he forced her to sit on the bedroom. Nomar, who was a large man, had control over Javadi and her movements in that moment.

Nomar may argue that there was no physical restraint forcing Javadi to stay in the room. Javadi will more than likely argue that she felt she had no means of escape and was forcibly confined in the bedroom on the bed.

2) It can also be argued that Javadi was falsely imprisoned by Nomar when he used the exercise band and iron cord to tie her up. Nomar forced Javadi to stay in the second bedroom by tying her up and throwing her on the bed, and it's reasonable that Javadi would not be able to escape such conditions.

Nomar will argue that Javadi could undo the ties that bound her. Javadi will argue the opposite, and will more than likely argue that she was unable to maneuver out of the ties to free herself.

*It is likely that Javadi will be able to sue successfully against Nomar for false imprisonment.*

### **Conversion**

Conversion is the intentional interference or damage to another's personal property that results in the defendant being liable for the full value of the chattel. Conversion is a more serious tort than trespass to chattels.

1) Here, Nomar committed conversion when he drove the 2006 Chevy Silverado for approximately 200 miles, stopped to put gas in the tank, ultimately ruining the truck's fuel system and making the truck inoperable. Here, it is likely that Nomar would be responsible for the full value of the chattel, i.e., the cost of the truck. It is also likely that Nomar committed conversion if he intended to keep the truck.

Nomar will more than likely argue that he had no intent to ruin the truck's fuel system and make the truck inoperable. Javadi will argue that Nomar intended to take possession of the truck and did not indicate that he would be returning it.

2) It is likely that Javadi could argue Nomar committed a conversion when he took the \$250 out of her purse and the estimated \$4500 from the second bedroom. It can be argued that Nomar intended to keep that money and would have to be liable for the total amount of money he took from Javadi.

Javadi will likely be successful in suing Nomar for conversion.

### **Trespass to Chattels**

Trespass to chattels is the intentional interference with another's personal property. Trespass to chattels is a less serious tort than conversion.

It may also be argued that Nomar committed trespass to chattels when he drove the Chevy Silverado truck away, and that the tort of conversion occurred once the truck became inoperable. Nomar intended to interfere with Javadi's personal property, the truck, and did so when he got into it and drove away.

Ultimately, it is likely Javadi could successfully sue for trespass to chattels.

### **Trespass to land**

Trespass to property is the intent to enter or propel something onto land. No physical damage is necessary to prove trespass to property, and one does not need to know the land belongs to another to be liable for trespass to property.

Here, it is possible Javadi could argue trespass to property successfully. Javadi's residence was a guest house on property owned by her daughter and son-in-law. Since Nomar entered onto the property, it can be argued that he trespassed. Javadi would not need to prove any damages to the land for her argument for trespass to property to be successful.

It's possible Nomar would argue that he did not intend to trespass as he knocked on the door of Javadi's residence. However, Javadi will argue that even if he did knock, he entered onto the property without consent. Nomar was a trespasser and trespassers are unforeseeable.

Ultimately, Javadi will be successful in suing for trespass to property.

**Javadi will be able to successfully file a claim for assault, battery, false imprisonment, conversion, trespass to chattels and trespass to land.**

100

2)

**Ronan v. Cheyenne:**

**What claims does Ronan have against Cheyenne?**

**Battery:** Defendant (D) commits an intentional harm or offensive touching to Plaintiff (P). D has intent to commit and the contact occurred.

Here, Cheyenne commits a battery against Ronan due to her intentional act of touching Ronan's shoulders, which he thought was offensive due to him being in a relationship and Cheyenne grabbing his buttocks. Her actions were offensive to Ronan. After he responded to her offensive touching she began to shove him which was an intentional harm and offensive touch to Ronan.

Cheyenne committed battery.

**Assault:** D places P in apprehension of injury or harm, must be an act beyond mere words.

Apprehension=knowledge/injury will occur. Must be imminent and reasonable.

Here, although Cheyenne was a woman and Ronan is a man there can still be an argument made that Ronan was in apprehension of harm due to Cheyenne's excessive drinking (5 cosmopolitans) her actions were unpredictable and Ronan must have been in fear of what she could do to him especially after he responded to her offensive touching by shoving her away. She proceeded to yell and shove him, he could have been in fear of her picking up an object and hitting him with it. Ronan's fear was imminent because it was happening in that moment and was very reasonable due to Ronan being assaulted and battered by an unknown drunk woman at the bar.

Cheyenne assaulted Ronan.

**Intentional Infliction of Emotional Distress:** D commits an extreme or outrageous act that creates extreme reasonable emotional distress to P, in a normal, respectable society. Can consist of D knowing P's phobias. Must be beyond offensive words (cussing). Repetitive acts may be sufficient. Fragile class- pregnant women and children.

Here, Cheyenne's actions of walking up to a stranger, touching them offensively, being drunk and screaming could be seen as an outrageous act to the reasonable person. Due to the location of the incident being a bar, it is reasonable to believe there will be a drunk person present, that may not know how to control their alcohol and get out of character. Cheyenne's actions would not be considered outrageous or extreme at a bar, but

really?

would be considered in other locations that would not expect that type of behavior such as work or a fancy 5 star restaurant in Beverly Hills. Ronan did suffer an emotional distress by experiencing anxiety when in large crowds, but Cheyenne's action were not uncommon due to the environment the situation took place at.

Cheyenne is not guilty of committing intentional infliction of emotional distress.

**Self Defense:** Defense to intentional torts. D commits an act that is in response to P's act, but uses reasonable force/matches force that P uses. D commits acts due to fear of being injured by P.

Here, Ronan was approached by a stranger who was drunk and unpredictable. That drunk woman confronted him, assaulted, and battered him and as a response to prevent injury he reacted in self defense and pushed Cheyenne off of him to prevent harm and create distance between them two. The facts do not support Ronan using excessive force to Cheyenne because it did not discuss harm she suffered or her falling to the ground due to the force of the push. Cheyenne used non deadly force and Ronan responded with the same amount of force. Now if Ronana would have responded by cocking back his fist and knocking Cheyenne out, then one might conclude that was deadly force because the intent to cause seriously bodily harm is sufficient. That was not the case here, he pushed her off to prevent injury to himself.

Ronan's self defense is sufficient.

**Ronan v. Bill:**

**What claims does Ronan have against Bill?**

**Battery:** D commits an intentional harm or offensive touching. D has intent to commit and the contact occurred.

Here, Bill committed and intentional harm and offensive touching when he walked up Ronan, grabbed him, turned him around forcefully, and put his hands behind his back. Bill's actions were intentional and he intended to cause harm because a reasonable person would believe grabbing someone, turning them around with force, and shoving their hands behind their back would naturally hurt. Those actions sound familiar to cops arresting people and most of the people getting arrested will complain or cry about the force being used to restrain them. due to Bill being a stranger and not knowing what happened in the situation, but walking up and restraining Ronan would be offensive touching to him and any other reasonable person.

Bill committed battery.

**Assault:** D places P in apprehension of injury or harm, must be an act beyond mere words. Apprehension=knowledge/injury will occur. Must be imminent and reasonable.

Here, the facts highlight Bill was 6'5 and 250 lbs, which means he was a huge man. The facts don't state how tall Ronan is, but a reasonable person can conclude Ronan is smaller and weighs less than Bill, especially since Bill was able to easily restrain Bill and use the force he did. Based on Bill's height and weight a reasonable person would be placed in apprehension of injury, especially since the contact sufficient for battery occurred.

Bill commit an assault against Ronan.

**False Imprisonment:** D restrains/restricts/confines P's movement to a confined area, can use force or the threat of force. P must be aware of their confinement. Reasonable means of escape must not be present. Not reasonable if it is dangerous or disgusting. Damages not required.

Here, Bill used force to physically restrain Ronan, escorted him from the bar area, and into a small office (confined area). Ronan is clearly aware of his restraint to that office and it became apparent when he attempts to stand up and leave, but is motioned to sit by Bill and is told "You ain't going nowhere". When Bill left the room, the door to the office was left open but could Ronan reasonably escape without it being dangerous? Based on him being battered and assaulted by Bill already it was reasonable for him to assume he could not leave based on Bill's actions and words and if he tried to he may walk into a dangerous situation. Bill returned to the office an hour later and informed Ronan that he was free to leave and that he discovered everything was a misunderstanding. Any amount of time is sufficient. Ronan also suffered bruising as a result of being falsely imprisoned.

Bill falsely imprisoned Ronan.

**Intentional infliction of emotional distress:** D commits an extreme or outrageous act that creates extreme reasonable emotional distress to P, in a normal, respectable society. Can consist of D knowing P's phobias. Must be beyond offensive acts (cussing). Repetitive acts may be sufficient. Fragile class - pregnant women and children.

Here, Bill commits a battery and assault towards Ronan which results in damages and false imprisonment. To have intentional infliction of emotional distress the D must create an extreme or outrageous act. Bill is a bouncer at a bar and it is reasonable to suspect he has been in situations where he has had to break up fights, escort drunk and belligerent people off the property, so his act of using force to remove Ronan from the scene to figure out what happened is not an uncommon part of a bouncers job at a bar. Bill's actions would not

---

constitute as extreme or outrageous based on the environment. Although Ronan had a reaction after the incident which consist of having anxiety in large crowds, Bill's actions were not extreme or outrageous.

Bill is not guilty of committing intentional infliction of emotional distress.

**Ronan v. Murphy's Pub & Bar:**

**What claims does Ronan have against Murphy's Pub & Bar:**

**Negligence:**

**Duty:** D owes a duty to act as a reasonably prudent person and must take steps to mitigate harm caused by their consequences. D owes a duty to all foreseeable plaintiffs in the "zone of danger" (Palsgraph). Also owe a duty for special relationships (parent/child or employer/employee) as well as if the D created the emergency, cannot leave P worse off. Children under 5 owe no duty. 6+ must look at their behaviors (subjective), if engaging in adult activity treat like an adult.

Here, the D is Murphy's Bar and it owes a duty to their patrons to mitigate harm cause by their consequences. The bar itself cannot cause harm to people by assaulting them or battering them the the bar does owe a duty based on the special relationship created by their employees due to the employer/employee special relationship. Murphy's is responsible for their employee's actions. A foreseeable plaintiff would be a patron at the bar.

The defendant owes a duty.

**Breach:** P must prove beyond a preponderance of the evidence that D did not live up to their Standard of Care (SOC). SOC means the defendant must act as a reasonably prudent person in the same/similar circumstances. If someone sets themselves out to be more knowledge/have more skills than the average then they are held to a higher SOC.

**Land owner liability:** D may owe a duty to 5 types of trespassers. (1) unknown - no duty (2) known/anticipated - duty to protect from hazards (3) licensee - invited - duty to protect from concealed harm (4) invitee - business relationship - highest duty - protect from all foreseeable harm. (5) children - attractive nuisances - determine if the child would appreciate the risk?

Here, Ronan would be considered as known or anticipated due to the D being a bar it is anticipated they would patrons visit the bar. The duty owed by D to P is to protect them from hazards. Bill did not protect Ronan from a hazard, he actually created a problem for Ronan when he battered, assaulted, and false imprisoned him.

---

**Causation: Cause in fact:** P establishes a link between D and damages. **One D- But, For Test:** But For defendant's actions, P would not have been injured. **2 D's- Substantial Factor Test:** When both defendants are liable because their separate actions would have caused the same result separately, but their actions merged and both liable for the damages. **Un-Attenuated:** Burden shifts to the D due to multiple defendant involves and both committing negligent/harmful acts and the D that caused the damage is unknown. Both defendants must prove their innocence, when one is guilty.

**Proximate Cause:** P proves that D's consequences were foreseeable.

Here, Ronan established the link between his bruising and the actions of Bill when he removed Ronan to the office. But, For Bill's actions of forcefully restraining and moving Ronan, Ronan would not have bruising. Ronan can prove that it is reasonable to suspect damages after someone has used force to restrain someone. Bruising was a foreseeable consequence of Bill using force to restrain Ronan by placing his hands behind his back and walking him to the office. Any pressure to a body part for a period of time especially with force with most likely result in bruising.

Causation is sufficient. Bill proved causation by cause in fact and by proximate cause.

**Damages:** P states the damages they have suffered.

Ronan suffered bruising.

Ronan have not have a valid claim against Bill or Murphy's due to the scope of Bill's job. Bill is a bouncer for a bar and based on his encounters during his daily job he is justified in using force or restraining people to ensure he gets the full story to ensure nobody is committing crimes and not being help accountable for his actions. Bill will be cleared of liability as well as Murphy's due to Bill acting reasonably based on the scope of his job and his encounters during work. Bill reasonably believed Ronan assaulted and sexually harassed Cheyenne, but when he found out the true story he did let Ronan go.

Ronan will have a claim against Cheyenne for assault and battery. Ronan will not have a claim against Bill for assault, battery, and false imprisonment. Ronan will not have a claim against Murphy's Pub and Bar.

100

3)

**1) What claims does Pablo have against the six perpetrators?**

**Intentional Torts**

**Assault**

Assault is a volitional act with the intent to cause an imminent apprehension of a battery (bodily harm or offensive contact). Mere words usually are not enough to constitute an assault.

Here, the gang committed an assault when the perpetrators began surrounding Pablo. Once the perpetrators see Pablo's baseball hat, they begin to taunt and push him. Damien is also holding a 2x4, and begins to push through everyone else toward Pablo. It is reasonable that Pablo would experience an imminent apprehension of a battery as he was surrounded, taunted, pushed and approached by the perpetrators. It is reasonable that he would expect a battery to occur after being surrounded and approached with a 2x4.

Pablo will argue that he imminently apprehended and even feared that he was going to be hit or hurt by this group of people, particularly when he got off the tram and recognized he was in a bad area by himself, not knowing exactly where he is or where to go. The perpetrators may argue that they were acting out of privilege and protecting themselves from Pablo, though this will not survive as they were the aggressors, and Pablo did not have any weapons, nor did he try to attack them.

**Ultimately, Pablo will be able to sue successfully for assault.**

**Battery**

Battery is the intent to inflict bodily harm or offensive contact on another. Indirect or direct contact is sufficient to meet the requisite elements of a battery. A harmful contact is one that inflicts bodily harm, while an offensive contact is one that would offend a reasonably minded person.

Here, Pablo was pushed, hit horrifically on the right side of his head, kicked and hit by the six perpetrators. This was not only an offensive contact but an extremely harmful contact as well — Pablo woke up in the hospital suffering from a TBI, burst eardrum, broken arm and several broken ribs. The injuries were a direct result of the attacks by the perpetrators on Pablo.

The perpetrators may argue that because of Pablo's TBI, he may not remember the incident correctly — they may argue that they were not the ones who assaulted and battered him, and that he was making a mistake as to whom hurt him. Pablo will argue that despite having a TBI he remembered their faces, tattoos, and poor hygiene. Pablo was ultimately able to identify all six perpetrators.

Ultimately, Pablo will be able to successfully sue for battery.

### **False Imprisonment**

False imprisonment is the intent by the actor to confine or restrain another within boundaries fixed by the actor. The boundaries or restraints need not be physical. The plaintiff has to reasonably believe that they cannot escape from the boundaries.

Here, it would be reasonably believed that Pablo would believe he could not escape the boundaries fixed by the actors. Pablo was surrounded by six men who were taunting and pushing him. Damien was also holding a 2x4. Being surrounded and threatened with violence would constitute the boundaries fixed by the actors. Pablo was restrained from moving away from the perpetrators until after their attack.

The perpetrators may argue that they did not falsely imprison Pablo and that he had a means to walk away or walk in a different direction to avoid a confrontation with the perpetrators. Pablo will argue that he did not know where he was and was outnumbered. He will argue that he had no means of escape and was unable to leave the situation.

It is likely that Pablo will be able to sue for false imprisonment.

--

### **2) What claims does Pablo have against the City?**

#### **Negligence**

Negligence occurs when a party, who owes a duty to reasonable victims, breaches that duty and causes some sort of damage. Negligence consists of four elements:

**1. Duty:** Everyone owes a duty to reasonable victims to act as a reasonably prudent person under the same or similar circumstances. A duty is only owed to foreseeable plaintiffs, not to unforeseeable plaintiffs or those not in the zone of danger, per *Palsgraf*. Here, the City owed Pablo,

---

a foreseeable plaintiff, a duty of care, while he was using the tram. The City will argue that their duty started and ended with Pablo getting on and off the tram; the City will argue that it is not their responsibility to ensure passengers get on and off at the right exits. Pablo will argue that there was in fact a duty once he exited the tram — he will argue that the City has to make the usage of the tram a safe experience for those who use it, including when they get off.

**2. Breach of Duty:** A breach occurs when a defendant does not reach the standard of care required for a certain activity. The standard of care is that a person will act as a reasonably prudent person under same or similar circumstances. The reasonable person has no physical characteristics — the reasonable person never acts negligently and always acts reasonably. The "reasonable person" standard is an objective, rigid standard that applies to everyone equally. A breach occurs when someone does not meet the requisite standard of care.

Breach of duty can be measured in three ways:

a. *Res Ipsa Loquitur*: "the thing speaks for itself." But for the defendant's negligence, this would not have happened. The defendant has to be the sole cause of the negligence. The plaintiff cannot contribute to the act's damages.

b. *Negligence per se*: negligence per se occurs when an individual violates a statute that either protects a certain class of people or protects against a certain harm.

c. *Hand formula*: although not applied in courts very often, the hand formula looks at three variables to determine a breach: burden of adequate precaution, probability of the incident occurring and gravity of injury. If the burden is less than the probability multiplied by the gravity of the incident, there is liability. If the burden is greater than the probability multiplied by the gravity of the incident, there is no liability.

Here, Pablo will argue that the City breached its duty to protect reasonably foreseeable plaintiffs when it did not properly or clearly indicate which exits were used for certain stops. Pablo will argue that the City failed to protect foreseeable plaintiffs by not providing security at dangerous stops or even providing warnings to tram users about specific areas. The City will argue that they had a duty to protect foreseeable plaintiffs from foreseeable risks on the tram, but not necessarily after they exited the tram.

*It is likely that the City will prevail.*

**3. Causation:** in order for negligence to be met, there has to be actual cause and proximate cause.

---

a. Actual cause is the but for test: But for the city's negligence in not providing more clear and understandable routes for the tram, Pablo would not have been injured.

b. Proximate cause is the legal cause of the injury. It is a question of foreseeability — was it foreseeable that Pablo would get attacked due to the City's negligence? Here, the City's indirect act did not cause Pablo's injury. Pablo's injury was caused by an intervening event, i.e., the perpetrators attacking Pablo. Pablo will likely argue that because there was actual cause, the city also proximately caused his injury. However, the City will argue that they did not force him to get off on any particular stop. They will argue that a reasonably prudent person under same or similar circumstances would have asked someone before exiting the tram to ensure they were getting off on the right exit. The City will argue that they intervening cause is what caused the injury, not the negligence of the City and their inability to make the tram maps more concise. In response, Pablo will argue that he would not have gotten off on that exit if he wasn't under the assumption that it was the correct stop, per the City's negligence.

It is likely that the proximate cause of the injury is not the City's negligence, but is in fact more likely due to the plaintiff's own negligence. It was not a foreseeable risk that Pablo would be assaulted and battered by a gang of six perpetrators after getting off the tram. The chain of causation broke when Pablo exited the tram. Therefore, it is likely that Pablo will not have a successful negligence claim against the city, because the City's actions were not the proximate (legal) cause of Pablo's injury.

**4. Damages:** damages are required for a negligence claim. However, because it was found that the city was not the proximate (legal) cause of Pablo's injury, he would not be able to recover.

Contributory negligence:

If a plaintiff had even 1 percent responsibility for a negligence claim, they cannot recover damages. Here, in a contributory negligence jurisdiction, it is more likely that Pablo would not recover because he was contributorily negligent. He got off the tram and was not forced to do so by the city. Therefore, Pablo would likely not be able to recover in a contributory negligence jurisdiction.

Comparative fault:

There are two types of comparative fault jurisdictions:

1. Pure comparative fault: even if the plaintiff was negligent, he could recover. Here, even if Pablo was negligent, he would still be able to recover damages against the city.

---

2. Impure comparative fault: If the plaintiff is found to be more than 50% negligent, he cannot recover at all. If a jury were to find Pablo more than 50 percent negligent in his injuries, he would not be able to recover in this jurisdiction.

***Pablo will be able to sue the six perpetrators for assault, battery, and false imprisonment.  
Pablo will not be able to successfully sue the city for negligence.***

**END OF EXAM**