

**Kern County College of Law**  
**Torts**  
**Final Examination**  
**Spring 2021**

**Answer All Three Essay Questions.**

**Total Time Allotted: Four (4) Hours**

**Recommended Allocation of Time: Equal Time per Question**

**Question One**

Lorenzo was driving his friend Lorraine over the Grapevine on Interstate 5 to watch a Lakers basketball game, when their vehicle was struck from behind by a drunk driver. Lorenzo and Lorraine's vehicle crashed into a ravine where they were trapped inside.

State and local law enforcement responded to the accident, along with a medical transport and rescue helicopter crew. The latter was accompanied by a video camera operator employed by a television producer.

The "jaws of life" were required to extricate Lorenzo and Lorraine from the vehicle. The cameraman filmed their removal from the vehicle, the efforts of the flight nurse and medic to provide medical care during the extrication, and their transport to the hospital in the helicopter. The flight nurse wore a tiny microphone that picked up his conversations with other rescue workers and with Lorenzo.

A local Deputy Sheriff on the scene used his iphone to take a photograph of the jaws of life being used, and sent it to his girlfriend later that day. The photograph depicted the scene from a distance and did not show Lorenzo or Lorraine.

Two weeks later, the cameraman's videotape and sound track were edited as part of a series that was broadcast six months after the accident, on a documentary television show about emergency responses.

Lorenzo and Lorraine did not consent to the foregoing filming, recording, broadcast, or photography.

Six months after the accident, the reporter's videotaped footage was used as part of a documentary program about medical rescues. The program was broadcast nationwide.

**Question: What causes of action do Lorenzo and Lorraine have against the medical transport and rescue helicopter crew, the cameraman, and the Deputy Sheriff, what damages, if any, can they recover, and what defenses if any, do the defendants have? Please discuss.**

## Question Two

Michael and Morgan own a dog grooming and kennel business. They advertise on Facebook and Instagram. Michael is also a licensed firearms instructor and owner and is active in legislative advocacy groups that support the right to bear arms found in the Second Amendment. He is a frequent contributor to the local newspaper's "Community Voices" section, writing articles warning the public of the need to be vigilant about protecting their right to own guns. Michael is also a frequent contributor to "The American Militiamen," an online publication for gun rights. Both Michael and Morgan like to "surf the net" and read Facebook pages that interest them. One day, Michael came across a disturbing page promoting the concealed carry of handguns by elementary school children, which was posted by a group that called themselves "Wolverines Not Wimps" (WNW). Michael reported it to Facebook, who removed it.

Approximately two weeks after reporting the WNW Facebook page, members of WNW posted threats and false statements on Michael and Morgan's personal and business Facebook pages and on their business's Instagram page. One Facebook post threatened to "come over and finish you off." Some of the posts mentioned their four dogs by name, and included photos of their home. WNW started a "Go Pay Me" page to raise money online to pay the bail for anyone who would go to Michael and Morgan's dog grooming and kennel business and punch them. Michael and Morgan hired a private security company to provide 24-hour security at the business, to protect themselves, their employees, their customers, their pets, and their customers' pets.

Some of the Facebook posts stated that Michael and Morgan (1) had been convicted of animal abuse, (2) had been raided by Homeland Security and the Bureau of Alcohol, Tobacco & Firearms, and (3) operated a kennel that was constantly infected by canine parvovirus, a highly contagious potentially deadly disease. They also posted these accusations on Michael and Morgan's Google business page. All of these posts were false, and many of them were "liked" and "shared" and commented on by numerous users other than Michael and Morgan.



During the summer, when the kennel business is in its peak season, local television station WKIF, which is owned and operated by We Knew It First Media, Inc. sent a television news crew to the kennel to investigate a WNW allegation that Michael and Morgan buried dead animals in the exercise yard at night. It was the top story in WKIF's news program that evening and the following day, and was posted on the station's Facebook page. WNW posted about the story on social media and shared news articles and the news video about it.

Michael and Morgan had to explain to their employees that they did not bury dead animals in the kennel's exercise yard, and the local news station was reporting false information. The dog grooming and kennel business lost 80% of its usual income that summer, and most of the employees were laid off.

Michael and Morgan were frightened by the threats posted on Facebook and Instagram. They lived in fear and installed a camera security system at their home as a result, and continued to employ round-the-clock private security at their business. They both had to see their physicians and were prescribed anti-anxiety medications to keep them calm and help them sleep at night. Morgan refuses to leave the house alone. Michael and Morgan's personal and business relationships have suffered, and they have lost their joy and trust in people. Their feelings of fear, anxiety, and unhappiness continue day and night.

**Question: What causes of action do Michael and Morgan have against WNW, We Knew It First Media, Inc., Facebook, Instagram, and Go Pay Me, what damages, if any, can they recover, and what defenses if any, do the defendants have? Please discuss.**

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Prof. T. Goldner

### Question Three

Kathryn has four children, ages 2, 7, 12, and 14. Her three oldest children attend school remotely due to the COVID-19 pandemic, and they are restless from being inside every day. Hoping to encourage them to go outside, Kathryn decides to buy them a hoverboard.

Kathryn researches hoverboards online, and decides on an electric hoverboard scooter with flashing wheel lights, built-in speakers, a long-lasting battery, and positive recommendations on Amazon. It is manufactured by Top Hoverboards, Inc. and sold by Amazon. The price is \$299. She orders one from Amazon online, and waits for it to arrive.

Amazon ships the hoverboard to Kathryn through the United States Postal Service. Kathryn and her family are out of town when the hoverboard arrives in a large brown Amazon box. The mail carrier leaves the box on the front porch, where it sits for two days. Upon returning home, Kathryn is dismayed to discover that the box has already been opened, but is relieved that the hoverboard is still in the box.

Kathryn's neighborhood had recently been targeted by "porch pirates," thieves who steal home delivery packages. Kathryn is so relieved that the hoverboard was not stolen that she fails to notice that there is no invoice, return label, instruction manual, or written warnings in the box.

Kathryn's three oldest children are over-the-top excited to see the hoverboard. Even though there are no stickers or labels on the hoverboard and there were no instructions in the box, they figure out how to charge it using a charger that came with the hoverboard. The children see that the hoverboard has an "on-off" switch. When the switch is turned to "on," the hoverboard is ready to ride and depending on the rider's distribution of weight, it can move in any direction and even spin around. The hoverboard does not move when the switch is turned to "off."

There is also a light on the charger, which turns from red to green when the hoverboard is fully charged. Kathryn and the children do not know that Top Hoverboards, Inc.'s instruction manual instructs users to always unplug the charger from the hoverboard when the light on the charger turns from red to green, to prevent overcharging.

The three oldest children quickly become hoverboard enthusiasts. They ride it almost non-stop around the house, on the sidewalk, in the driveway, and in the quiet tree-lined street in front of their house. They keep it charging whenever they are not riding it. Occasionally, they fall off the hoverboard when they lose their balance, but do not have any serious injuries.

Bobby, the 7-year old, often forgets to turn off the hoverboard when he stops riding it, and frequently leaves it in the family room where the family spends most of their "together time." Neither Bobby nor his older siblings unplug the charger from the hoverboard when the light on the charger turns from red to green, unless they are going to ride it immediately.

Two weeks after the hoverboard was delivered, Kathryn brushes up against it as she walks past it in the family room. The hoverboard swings around and violently hits Kathryn in the leg. She almost loses her balance. This is when she learns that when the hoverboard switch is left in the "on" position, when it is touched it will automatically swing around until it hits something - or someone. After maternal questioning, Bobby confesses that he was the last one to use the hoverboard, and that he forgot to turn it off. When Kathryn threatens to throw the hoverboard away, Bobby promises to always turn it off when he is done using it.

The next day Celeste, Kathryn's two-year old toddler, falls asleep on the family room floor. While sleeping, she yawns and stretches her arms, and her left arm touches the hoverboard. The hoverboard swings around and hits her arm, breaking it. It turns out that Bobby was the last one to use the hoverboard and he forgot to turn it off when he was done.

Kathryn immediately takes Celeste to an urgent care center, where her left arm is placed in a cast. When they return home, Kathryn grabs the hoverboard, takes it to Goodwill, and leaves it in the donation drop-off box.

The following day, Steve, a 19-year old student, buys the hoverboard from Goodwill for \$50. He already has one hoverboard, but cannot believe his good luck to find an almost-new one for only \$50. He charges it up using the charger to his other hoverboard, and rides it all day, delighted with his new toy. That evening,

Steve starts charging the new hoverboard and goes to bed, dreaming about his next hoverboard ride.

Early the next morning, the hoverboard spontaneously combusts while charging. Fire crews are called to Steve's house, but the house was completely destroyed by the time they arrived. Fortunately, Steve got out alive and uninjured.

**Question: What cause(s) of action do Kathryn, Celeste, and Steve have against Amazon, Top Hoverboards, Inc., the United States Postal Service, and Goodwill, what damages, if any, can they recover, and what defenses if any, do the defendants have?**

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Torts Final Examination Answer Outline Question One  
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**Question: What causes of action do Lorenzo and Lorraine have against the medical transport and rescue helicopter crew, the cameraman, and the Deputy Sheriff, what damages, if any, can they recover, and what defenses do the defendants have? Please discuss.**

Two invasion of privacy causes of action: public disclosure of private facts, and intrusion upon seclusion

**1. Public disclosure of private facts**

§ 652D Publicity Given to Private Life

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.

- Elements: (1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern.
- Newsworthiness is an element of the “private facts” tort, and a complete bar to liability. If the rescue broadcast is newsworthy, there is no public disclosure of private facts liability.
- Are the facts disclosed about them proportionately related to a newsworthy subject, emergency rescues?
- Likely result: the broadcast of the rescue details were of legitimate public concern because they were relevant to a newsworthy subject and their intrusiveness was not greatly disproportionate to their relevance.

## **2. Intrusion upon seclusion**

### **§ 652B Intrusion Upon Seclusion**

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

- Elements: (1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person.
- Involves unconsented-to physical intrusion into the home, hospital room or other place the privacy of which is legally recognized, as well as unwarranted sensory intrusions such as eavesdropping, wiretapping, and visual or photographic spying.
- Did the cameraman intentionally intrude, physically or otherwise, upon the Lorenzo and Lorraine's solitude or seclusion of another by intruding into a place or conversation private to them? This requires an objectively reasonable expectation of seclusion or solitude in the place or conversation.
- Is there an objectively reasonable expectation of privacy inside a rescue helicopter or an ambulance? Yes, because it is similar to a hospital room.
- Was Lorenzo's conversation private? Placing a microphone on the nurse's ear and recording what she said and heard, allowed the cameraman to hear conversations that were likely intended to be private - because Lorenzo is a patient and the nurse is a medical provider.
- Newsworthiness - does not bar liability for intrusion, but it does bar liability for public disclosure of a private fact.

## **3. Local Deputy Sheriff's photo**

The difference is the distinction between a single impersonal photograph of an accident scene sent to a single individual (the Deputy's girlfriend), and a news broadcast of the rescue that includes video and audio recording of the rescue and conversations between a medical provider and a patient/accident victim.

A. Public disclosure of private acts elements: (1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern.

- Is the single photo taken at the scene of an accident and sent to one person, a public disclosure of a private fact? No, because it showed only the jaws of life, not Lorenzo or Lorraine.
- Is the photo offensive and objectionable to a reasonable person? No.
- Is the photo of something that is a legitimate public concern? Yes.

B. Intrusion Upon Seclusion elements: (1) intrusion into a private place, conversation or matter, (2) in a manner highly offensive to a reasonable person.

The photo was taken on the ground at an accident scene and not in an area or under circumstances where there was a reasonable expectation of privacy. The photo did not depict anything that was highly offensive to a reasonable person.

Torts Final Examination Answer Outline Question Two  
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**Question: What causes of action do Michael and Morgan have against WNW, We Knew It First Media Inc., Facebook, and Instagram, what damages can they recover, and what defenses do these defendants have? Please discuss.**

1. Michael and Morgan vs. WNW

A. Elements

To prevail on a defamation claim, the plaintiff must prove the defendant made a statement about the plaintiff that meets all of these criteria:

- Statement has been published
- Statement is false



- Statement has injured the plaintiff's reputation
- Statement is not legally privileged

#### B. Published

Published means that a third party (someone other than the person who made the statement or the person who is the subject of the statement) heard or saw the statement.

The Facebook postings were communicated in writing on Michael and Morgan's Facebook pages and those posts were "liked" and "shared" and commented on by numerous users other than Michael and Morgan. This shows that the postings were communicated in writing or print to a third person capable of understanding, and did understand, their defamatory import.

#### C. False

The statements posted by the WNW members were false.

#### D. Injured the plaintiff's reputation (defamatory)

A statement is defamatory if it injures a person's reputation and exposes the person to public hatred, contempt, ridicule, or financial injury or impeaches any person's honesty, integrity, virtue, or reputation.

A statement is defamatory *per se* if it injures a person in his office, profession, or occupation; charges a person with the commission of a crime; imputes sexual misconduct; or accuses a person of having a loathsome disease.

The WNW members published statements on Michael and Morgan's Facebook page that they were convicted of animal abuse, which is a crime. These statements also injured Michael and Morgan in their profession as owners of a dog grooming and kennel business. They lost 80 % of their summer income and had to lay off most of their employees.

The WNW members posts were defamatory *per se*.

E. Not legally privileged. No legal privileges that apply to the statements published by WNW members or WNW.

#### F. Free Speech

Public figure/private figure

Michael's gun rights advocacy may make him a public figure, which requires that he prove an additional element - malice. For defamation, malice means the

defendants knew their statements were false, or they posted them with a reckless disregard for whether they were true or false.

Morgan is a private figure, no need to show malice. But no strict liability if the subject matter of the defamation is a matter of public concern.

WKIF Media, Inc. – reporting is privileged, matter of public concern.

#### G. Causation

When statements are defamatory per se, general damages are presumed without requiring specific evidence of harm to the plaintiff's reputation. Recoverable general damages include damages for injuries to reputation and mental anguish, without proof of injury.

#### H. Damages

General damages for impairment to the victim's reputation and standing in the community, personal humiliation, shame, and disgrace, pain and suffering, which includes physical and mental pain and suffering, mental anguish, emotional distress, loss of enjoyment of life, and anxiety.

Special damages for monetary losses due to reputational injury, including loss of customers,, lost economic opportunities, lost earnings, future lost earning capacity, medical expenses.

Punitive damages to punish and deter

Michael and Morgan received threats at their home and office due to the Facebook posts. They lived in fear and installed security systems at their home and their office. They had to get medicine to stay calm to sleep. Morgan refused to leave their home alone. They both lost joy and trust in people, and these feelings continues day and night.

#### I. Defenses

- Truth: Not applicable, because the defamatory statements were false
- Opinion: Not applicable, because the statements were made as alleged facts
- Consent to the publication: No consent
- Absolute privilege: Not applicable.
- Qualified privilege: Only potentially applicable QP is for statements made about matters of public concern. Privilege lost if made out of malice
- Retraction: Not applicable, because no retractions were made

## **2. Michael and Morgan vs. We Knew It First Media, Inc.**



The television news broadcast is a statement, and is subject to the above analysis, with an important difference: WKIF has a privilege re reports on matters of public concern. First Amendment. Reporting about allegations of dogs being buried in the exercise yard of a kennel is a matter of local public concern.

### **3. Michael and Morgan vs. Facebook and Instagram**

No cause of action against Facebook and Instagram, because Facebook and Instagram are social media platforms that are not liable for what is posted by their users under Section 230 (c) of the Communications Decency Act. **"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."**

## Torts Final Examination Answer Outline Question Three Kern County College of Law Spring 2021

What causes of action do Kathryn, Celeste, and Steve have against Amazon, Top Hoverboards, Inc., United States Postal Service, and Goodwill, what damages, if any, can they recover, and what defenses if any, do the defendants have?

**I. Products Liability based strict liability for a defective product.** Defendant is liable for plaintiff's injury regardless of whether defendant exercised due care.

#### A. Preliminary issues

Proper plaintiffs: anyone who was injured using the hoverboard. Injured includes personal injury (Karen, Celeste) and property damage (Steve's house). Were Kathryn, Celeste, or Steve injured while using the hoverboard? With a hoverboard, must a person be injured while riding it, to be a "user?"



The test: was it reasonably foreseeable that they might be injured by the hoverboard?

Proper defendants: all commercial suppliers in the distribution chain. Amazon, Top Hoverboards, Inc., and Goodwill (resellers are liable if not an occasional sale)

- Restatement §1 Liability of Commercial Seller or Distributor for Harm Caused by Defective Products
- One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by the defect.

Bonus: USPS – can it be liable? Is a transport service in the distribution chain? Does the USPS have immunity? Consider if a government agency, non-discretionary decision, and Federal Tort Claims Act applies.

Did the mail carrier exercise discretion in leaving the Amazon box on the front porch? Did that contribute to one or more reasons why the product was defective, e.g., the lack of a warning/instructions?

## B. Defective Product

Is the hoverboard defective? Was it in a defective condition unreasonably dangerous?

- §2 Categories of Product Defect  
A product is defective when, at the time of sale or distribution, it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings. A product:
  - (a) contains a *manufacturing defect* when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product;
  - (b) is *defective in design* when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a

Punitive (generally not allowed, requires willful, wanton, malicious conduct)

E. Defenses: Misuse, alteration, contributory negligence, comparative negligence (reduces the award)

Did the plaintiffs:

- Misuse the product (by using it in a manner that that is neither intended nor foreseeable) – by leaving the hoverboard switch in the “on” position when not in use, by leaving it plugged into the charger except when in use, by using a different charger)
- Alter or modify the product
- Fail to conform to applicable standards of care

## **2. Products Liability based on negligence**

If there is no strict liability, negligence is an alternative basis for liability.

Traditional negligence analysis:

Duty, breach, cause, damage

Anyone who places a product in the chain of distribution owes a duty of reasonable care to all foreseeable plaintiffs.

Defenses: contributory negligence, comparative negligence (reduces the award), assumption of the risk

Same damages: Compensatory (general and special, including pain and suffering, medical expenses, and in Steven’s case, property damage.)

Punitive (generally not allowed, requires willful, wanton, or malicious conduct)

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## **L&L v Medical Transport and Rescue Helicopter Crew**

### **Intrusion Upon Seclusion**

Restatement 652B addresses that intrusion upon seclusion is when a defendant unreasonably intrudes into a plaintiff's seclusion and would be objectionable to a reasonable person. Intrusion upon seclusion includes physical and non-physical intrusion. In order to determine if there was an intrusion upon seclusion it is essential to determine if the medical crews or rescue crew intruded upon L&L seclusion and if a reasonable person would find their actions objectionable. L&L were recently involved in a severe accident which required them to be removed from a vehicle using the jaws of life. They were on their way home from a basketball game and were struck by a drunk driver. Here, the flight nurse wore a microphone to record the conversations between rescue workers and Lorenzo during the accident. During this timeframe, neither L or L were aware of the recording. The recording would be considered an unreasonable intrusion because it was done in a means that concealed the nature and activity of the crews. L&L were not given the opportunity to object or made aware that they were being recorded, instead they were secretly recorded without their consent. It is reasonable to conclude that the use of the microphone by the medical crew was an unreasonable intrusion upon L&L seclusion.

Next, it must be established if a reasonable person in a similar circumstance would find the intrusion objectionable. Here, the nurse wore a tiny microphone which likely would be easy to conceal due to its size and would go undetected by L&L. There is no information within the facts that noted she was unaware that she was wearing the mic. The facts support that the nurse was fully aware of the mic & its purpose, which was used with the intent of recording the conversations of L&L and crews. A reasonable person would find that concealing the microphone unreasonable and objectionable because it is highly invasion upon one's personal privacy. L&L had just encountered an accident and without their knowledge the crews were recording their voice and conversation. If L&L pursued for intrusion upon seclusion is likely the court would rule in their favor, because of the means in which the medical crews conducted the recording. Concealing or hiding a microphone appears to be an intentional action that would cause one to believe that the medical staff

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may have also found this unreasonable intrusive, which was the reason to conceal. At no point in time were L&L notified or made aware of the microphone until after medical staff had recorded without their consent. A medical crew is expected to conduct themselves with professionalism and abide by laws/guidelines. Recording an individual without their permission unreasonably intrudes upon the plaintiff's seclusion and based upon the facts present would be objectionable to a reasonable person.

### **Highly Offensive - Reasonable Person**

One may argue that the use of the microphone could be viewed as highly offensive. The medical crew has likely encountered emergency situations that are not only time sensitive but private in nature. Here, the medical crews elected to use a microphone without informing the patients they were treating. The lack of providing them with the knowledge of being recorded likely could have exposed them to divulging personal or private details that they would not do otherwise. A reasonable person under a similar situation would find that a small mic used by medical crews without prior consent or knowledge of the patient would be highly offensive.

### **Expectation Of Privacy**

L&L were recently involved in an auto accident which placed them in a vulnerable position, they were trapped within the vehicle awaiting for medical assistance. Medical crews were documenting the emergency situation of a private event involving L&L. The event that was taking place was not a matter of public concern, it was a private matter. The public did not have a right to know the details involving the accident with L&L nor was there a necessity to record/film this information. A reasonable person may not have an expectation of privacy within their vehicle. Yet, one would argue medical crews are held to a higher standard and a person involved with medical staff would expect to have their private affairs protected. Medical staff are expected to maintain the privacy and safety of their patients. However, in the present case the staff violated the essence of L&L privacy rights by recording them. Therefore, the recording would be deemed an intrusion of their privacy.

### **Negligence:**

In order to have a claim for negligence, plaintiff must prove that there was a duty of care breached, the cause of the breach was because of the defendant's negligent action, and those actions caused damages. Here, L&L would be considered foreseeable plaintiffs. They were involved in an auto

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accident in a visible/public area awaiting rescue from medical crews, and within a zone of danger. Medical crews had a duty to ensure that they were providing medical care to L&L. One may argue that medical crews breached this duty of care when they recorded L&L without the consent or permission of either party. However, it must be evaluated that if this breach rises to the level a negligent act that one would reasonable foresee that would or could have caused harm. Here, the medical crews were recording L&L and in the process of recording they filmed interactions between medical staff and the audio was used by the camera crew. One can argue that this would constitute a breach because their conduct was unreasonable given the circumstances. The breach was the direct cause of L&L emotional distress and trauma. But for the medical staff recording the interactions with L&L, then they would not have suffered damages as the result of the televised programming of their accident. If L&L pursue a claim for negligence it is unlikely that they will prevail under a negligence theory because they cannot prove any damages resulted from the breach. Here, medical crews had a duty to ensure that they were conducting themselves in a professional manner and ensuring they were providing safety to those in need. The crew failed this duty by placing an emphasis on recording the interactions of L&L without permission. This recording was used by the camera man for a television broadcast in result, but they did not suffer any damages. In order to prove negligence all elements must be satisfied and damages element has not been met. Therefore, if L&L present a claim for negligence it is likely they will not prevail.

### **Damages:**

Damages are awarded to provide compensation to the harm that a plaintiff suffered as a result of the defendants negligent, harmful, or intentional action. Damages can be provided as a means of compensatory or punitive. The goal of damages is to make the plaintiff whole before the injury occurred.

- **Economic Damages:** In order to prove economic damages, also called special, L&L would need to prove that they suffered a loss that can be calculated or supported, such as lost wages or medical expenses. Unless L&L are able to provide support that they suffered economic harm, they will not prevail in a suit for economic damages. L&L cannot speculate or provided estimated amounts of their harm, they must be able to provide sufficient support to show that the harm that was caused by the defendant resulted in damages. Here, without additional evidence to support that there was an economic loss L&L would not prevail under economic damages.
- **Non-Economic Damages:** Non-economic damages, also referred to as general damages, consist of damages that cannot be calculated or assigned a monetary value. Non-economic



damages consist of pain of suffering, loss of enjoyment, loss of reputation or mental anguish. Here, L&L would need to show evidence to support that the defendants harm resulted in non-economic damages. In order to prove they would need to prove that harm or injury by the defendant caused damages. However, without additional facts to show there was non-economic damages they would not likely prevail. There is no evidence to support that either L&L suffered damages as the result of medical crews.

### **Defenses:**

- **Public Property/No Expectation Of Privacy:** The Medical Transport and Helicopter crew will argue that L&L had no reasonable expectation of privacy in a public location. The medical crew will further note that the location of the recording was in a public location, not within a space that one would expect to have a level of secrecy or privacy. The medical crews may further contend that the recording was professionally conducted and only was to be used to record the communication between staffing & the patients. In the medical field, communication is important and the use of the microphone allowed them to properly communicate and complete rescue efforts.
- **Risk ( Negligence Defense):** The medical crew will argue that the use of recording outweighed the risk that potentially could be associated with any harm that L&L suffered, it allowed them to record the emergency crew in action. This footage could be used to help other medical crews for training purposes or provide insight to the public of the behind the scenes work of emergency crews.
- **Consent:** Medical Transport and Helicopter crew may argue that L&L provided implied consent when they were in an emergency situation. The consent that was provided was to ensure that they provided the highest level of medical care, which included recording/communicating through the microphone.

## **L&L v. Cameraman**

### **Public Disclosure of Embarrassing Fact**

A party who gives publicity to a matter concerning the life of another can be found liable of invasion of privacy if the publicized information was highly offensive to a reasonable person and was not a legitimate concern to public. Here, cameraman recorded the rescue efforts of medical staff using the

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jaws of life to remove L&L from a vehicle. L&L will argue that cameraman is liable because they publicized their accident nationwide on television and was highly offensive to a reasonable person, and the televised broadcast was not a concern of the public. However, it is unlikely that L&L will prevail under a COA of public disclosure of embarrassing fact because all of the elements have not been satisfied. L&L were televised, but the information gathered was not one of which that was private or one that a reasonable person would consider offensive. It is likely that a reasonable person would consider the recording a means of training or education value. Furthermore, drunk driver kill thousands of people each year. It is important that the public is aware of the dangers of not only driving under the influence but aware of the outcome for those that do. This is very much a public concern, the public has a right to know what is going on in their community so that they can be informed and aware. Therefore, if L&L pursue for a PDEF COA it is likely they will not prevail.

### **False Light**

False light is when a publication of a fact about a plaintiff is made by the defendant which places the plaintiff in a false eye in the public spectrum. Here, L&L were in a public space and the recording that was captured the nature events that lead up to the event. L&L will argue that the natural events were not captured, because the filming was modified and edited. L&L will further argue that it put them in the public eye without their consent or willingness and by doing so placed them in a negative light because they were associated with an accident involving drunk driving. L&L may further argue that it would lead others to believe or assume that they were the cause of the accident. However, this argument will likely fail because in order to prove false light there must be a publication of a fact about the plaintiff that places in a false light. The facts do not provide any aftermath details, such as threats of harm or harassment as a result of the filming. The plaintiff would need to show that the filming was done in a means that projected them in a negative light in a public spectrum. Based upon the facts presented, there is not enough evidence to support the false eye element. It can be argued that the element of publication is satisfied through the means of recording and posting the recording via television nationwide, but it did not focus on L&L. The broadcasting was focused on the rescue efforts of medical staffs during the incident of L&L. Therefore if L&L present a claim against cameraman for false light, they likely will not prevail unless they can prove that the publication placed them in a false eye of the public.

### **Appropriation**

Appropriation occurs when one uses another's likeness which is unauthorized by the defendant. Here, L&L will argue that their likeness was used to gain television viewers and it was an unauthorized use of their likeness because they did not consent. However, in order to prove this

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COA it must be proved that camera used L&L picture or name for their commercial advantage. There is no evidence to support that the television station obtained or received a benefit from airing the broadcast. Here, the facts support that the television program was used a means of awareness to show emergency responses. Therefore, if L&L present a claim for appropriation, they will not prevail under this COA because there is not support to show that camera benefited from L&L nor is there support to show that camera used L&L name or photograph in the broadcast.

**Defenses:**

- **Public Record/Truth:** The cameraman will argue that there was no disclosure of embarrassing details, they only shared factual information concerning the rescue of L&L. The rescue occurred in a public space, and was available to anyone that was within the area. The broadcast did not disclose any private matters, they merely documented a emergency rescue. L&L were not depicted as the drunk driver or the one that caused the accident, instead the telecast was focused on the emergency crews work in emergency situations. They may argue that they aired a public fact that was a matter of public concern, so that people are aware of the dangers of drunk driving. And also to highlight the hard work and skill that goes into an emergency rescue situation. Here, the camera crew did not intentionally intend to inflict harm nor did they disclose any facts that were not already available to the public.
- **Consent:** The cameraman will argue that they were unaware of any prior handling by medical staffs use of the microphone. The cameraman may argue that he did not have knowledge that there was no consent between the medical crews and L&L. Yet, since has using his video camera in a public forum, it was not a violation of L&L privacy rights. The cameraman filmed L&L removal from the vehicle in a public space and it appears by the facts that the filming was not concealed. Cameraman will further argue that he had a right to film the content as a matter of public concern and awareness, it was recording an important event that concerned the community. Recording the event likely would provide awareness on the dangers of alcohol involved accidents.

**Damages:**

- **Economic -** Rules defined above. There is no evidence to support that L&L suffered any tangible or monetary damages as the result of cameraman. Based upon the
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review of the facts there is no evidence to support a damage claim under economic damages for L&L. In order to prove damages, L&L must be able to support that they suffered harm as the result of D. L&L would not be able to recover under economic damages unless they can prove that there was a loss that was the cause or result of cameraman. Without this support they will not likely prevail in a damage claim under economic damages.

- **Non Economic** - Rules defined above. L&L has not been able to show that they suffered a loss as a result of the harm of cameraman. They would need to show that cameramans actions caused harm and this harm resulted in damages. There are no damages that L&L can claim under this theory unless they can prove that there was harm and that D was the cause of the harm. Therefore based upon the facts, there is no remedy of damages available under non-economic.

## **L&L v. Deputy Sheriff**

### **Intrusion Upon Seclusion**

Intrusion upon seclusion has the same applicable rules as defined above. Intrusion upon seclusion includes physical and non-physical intrusion. Here, the Deputy Sheriff taking a photograph would be consistent with a non-physical form of intrusion. The Deputy Sheriff secured a photograph without the permission or consent of L&L and shared with a 3rd party. L&L may argue that taking the photograph without consent and sharing to another person would constitute a violation of their privacy. L&L had recently been involved in an accident and an officer failed to honor their privacy by sharing their private details to another person. Here, a reasonable person would find that taking a photograph and sharing with another person would be highly offensive and objectable. They likely would hold the deputy to a higher standard, and therefore find that because of this standard of care he breached it was offensive and harmful to L&L. Therefore if L&L present a claim for intrusion upon seclusion they likely will prevail.

### **Defenses:**

Truth: Deputy may argue that he shared factual information in a public location. However, the information that was shared was sensitive in nature and given to a 3rd party. The sharing of the photograph was not for a legitimate business or emergency purpose. It may be argued that sharing

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the photograph could be viewed as offensive depending on the content/graphic nature of the photograph. Therefore deputy will likely not prevail under this argument.

**END OF EXAM**

2)

## **M&M v. WNW**

### **ASSAULT**

Issue: Whether WNW is liable for assault for posting threats on Facebook/Instagram and for the "Go Pay me" page raising money to pay bail for anyone who would go to their business and punch them

Rule: Assault is the intent to cause harmful or offensive contact or the apprehension thereof, and the apprehension is realized.

Analysis: Generally the apprehension must be of an immediate assault, however the facts here may provide enough to allow for the immediacy requirement to be met. WNW made threats the facts do not give the details of other than one to "come over and finish you off", and the offer to pay bail for anyone who punched M&M at their business. Further, WNW is a gun rights group, many members of which are presumably proficient with firearms and would be capable of shooting M&M from a significant distance any time they were visible. M&M clearly realized an apprehension of imminent attack as they hired 24 hour security to protect themselves among other things.

Conclusion: A jury could find this combination of threats, tactics, and abilities justified a reasonable apprehension of imminent assault

### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)**

Issue: whether WNW is liable for IIED

Rule: IIED requires extreme and outrageous conduct, that intentionally or recklessly, causes the victim to suffer severe emotional distress.

Analysis: Here, WNW posted verbal threats to "finish off" and tried to raise money to pay bail for anyone someone to punch M&M, posted their dogs names, and a picture of their home on the internet. This qualifies as extreme and outrageous conduct. At a minimum these postings reckless, and by their volume and intensity is likely that M&M can show WNW intended these threats to intimidate, silence, or scare them. Lastly, as a result of the threats they both suffered severe emotional distress as evidenced by being prescribed anti-anxiety medication to keep calm and for sleep, Morgan refuses to leave home alone, and both their feelings of fear, anxiety, and unhappiness continue day and night,

## DEFAMATION

Issue: Whether WNW false statements and reposting of the WNW story defamed M&M and .

Defamation occurs when a defendant makes a defamatory statement, or of concerning the plaintiff, with publication to a third person, that causes damage to the plaintiff. In written form defamation is libel, and is slander when in verbal form.

### Defamatory Statement

a defamatory statement occurs when when a defendant makes a false statement that would cause the plaintiff to be subject to hatred, contempt, or ridicule from the public. When the statement concerns a public figure the defamation must be made with actual malice, defined as knowledge of the statements falsity or reckless disregard of as to its truth or falsity.

Michael is not a public figure, but he may be a limited purpose public figure as he frequently contributes on "community voices" and "The American Militiamen" regarding gun rights, thus requiring him to prove at a minimum that WNW acted negligently regarding the truth or falsity. Here, WNW made "false statements that M&M were convicted of animal abuse, been raided by Homeland security and ATF, the kennel was constantly infected with Parvo. It is apparent that WNW knew these statements to be false and therefore acted with malice.

### Of and Concerning the Plaintiff

The statement must be understood to be about the plaintiff. Here, the posts were made to M&M facebook, Instagram and Google business pages, clearly making them of and concerning M&M.

### Publication

Publication requires the statement be made intentionally or negligently to at least one other person. Here the statements were prolific and clearly intentional, and as evidenced by the numerous users who "liked" and "shared" the posts were made to multiple third parties.

### Damages

Where the defamation is slander per se, or libel on its face (criminal activity, loathsome disease, lack of integrity, adultery, prejudicial words in businesses, etc.) damages are presumed, where the libel/slander is "per quod" damages must be proven.

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Here, the allegations the M&M had been convicted of animal abuse, raided by Homeland security and ATF are both libel per se, while the allegations of parvo may be per se, but regardless M&M can show special damages in lost business to substantiate this as libel per quod.

### Defenses

Defenses to defamation include the absolute defense of truth, absolute privilege (legislative debate, judicial proceeding, spouses, accurate reporting of judicial proceedings), qualified privilege (Public official, public figure, limited purpose public figure) consent. and opinion.

Here, Michael is likely considered a limited purpose public figure based on his contributions regarding 2nd amendment issues, however as discussed above this only serves to heighten the bar for defamation, and as discussed WNW crossed that threshold easily, and this defense will not succeed.

### Conclusion

The false statements would constitute defamation/libel and the republishing of the potentially defamatory WKIF story would likewise constitute defamation.

### **PUBLIC DISCLOSURE OF PRIVATE FACT (PDPF)**

Issue: Whether WNW publicly disclosing pictures of their home and names of their dogs is PDPF

Rule: PDPF occurs where there is widespread public disclosure, of truthful private information about the plaintiff, that would be highly offensive to a reasonable person, which is not of legitimate public interest.

Analysis: Here WNW widely published posts threatening M&M and publishing the names of the dogs and the picture of the house on facebook and instagram. these posts were widely published and would the private facts posted in this manner would be highly offensive to a reasonable person.

Which is not of legitimate public interest. The names of M&M's dogs and their house is not of public interest

Conclusion: WNW will both be liable for PDPF

### **DEFENSES**

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WNW does not appear to have any viable defenses (consent, defense, privilege, or necessity) for either intentional tort

WNW does not appear to have any viable defenses to Defamation, as they demonstrated malice, the statements clearly were false and were in regards to proveable facts, not "opinions"

### **M&M v We Knew it First Media Inc. (WNIFMI)**

VICARIOUS LIABILITY/RESPONDEAT SUPERIOR (RS):

Rule: A defendant may be vicariously liable for the tort of another based on the relationship between the defendant and the tortfeasor. Under RS an employer can be held vicariously liable for the torts of an employee that occur within the scope of employment. There are exceptions to this rule for independent contractors, employees on a frolic (no vicarious liability) vs. a detour (vicarious liability), and employees who commit intentional torts.

Analysis: Here WNIFMI as the owner of WKIF can be held vicariously liable for the tortious acts of their subsidiary and the employees of WKIF. WKIF and its employees were acting within the scope of employment and were not committing an intentional tort when they ran with the story that M&M buried dead animals in the yard.

Conclusion: WNIFMI can be held liable for the acts of WKIF and employees.

### DEFAMATION

Issue: Whether WNIFMI news story made false statements which defamed M&M.

Defamation occurs when a defendant makes a defamatory statement, or of concerning the plaintiff, with publication to a third person, that causes damage to the plaintiff. In written form defamation is libel, and is slander when in verbal form.

#### Defamatory Statement

a defamatory statement occurs when when a defendant makes a false statement that would cause the plaintiff to be subject to hatred, contempt, or ridicule from the public. When the statement concerns a public figure the defamation must be made with actual malice, defined as knowledge of the statements falsity or reckless disregard of as to its truth or falsity.

For these purposes Michael is not a public figure, nor a limited purpose public figure as he is only that for second amendment issues where he frequently contributes on "community voices" and "The American Militiamen" regarding gun rights. Here the issue is whether he buries animals in the exercise yard of his kennel and grooming business. However, as this is a business where he cares for the public's pets this may be a matter of public interest, where Michael would need to show at least reckless disregard for the statements truth or falsity. Here, WKIF/WNIFMI ran a story that investigated an allegation the M&M buried animals in their exercise yard at night. The facts do not tell us whether they stated anything as a fact, their story made any conclusions, etc. If they made any false statements, M&M would need to prove at least reckless disregard. Since the facts do not indicate any attempt on the part of WKIF to verify any of the rather outlandish and potential defamatory statements, which should be considered reckless behavior for a news station.

#### Of and Concerning the Plaintiff

The statement must be understood to be about the plaintiff. Here, the the story was about M&M and their business.

#### Publication

Publication requires the statement be made intentionally or negligently to at least one other person. Here, it was the top story on the news and was then reposted to the stations facebook page.

#### Damages

Where the defamation is slander per se, or libel on its face (criminal activity, loathsome disease, lack of integrity, adultery, prejudicial words in business, etc.) damages are presumed, where the libel/slander is "per quod" damages must be proven.

Here, the allegations might be of criminal activity, burying animals in the exercise yard, but certainly are likely to and in part did cause proveable damages in the form of lost business.

#### Conclusion:

Depending on whether the story made any false statements of fact, M&M may recover from WKIF/WNIFMI

FALSE LIGHT

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The publication of information putting plaintiff in a false light in the public eye in a way that would be highly offensive to a reasonable person.

Here, WKI, ran a story alleging M&M buried dead animals in their Exercise yard. By the facts this is a false allegation, which would be highly offensive to a reasonable person, and is in part why it was the lead story, because the allegation was so terrible and if true would offend most of the public.

## DEFENSES

Qualified privilege - Public interest - KFI may argue that the allegations were a matter of public concern. However being apparently entirely unfounded, and apparently not investigated, this defense will not work.

## M&M v Facebook & Instagram

Defamation

The rules remain the same however for media companies like Facebook, Instagram, and Go Pay Me, etc. Section 230 immunity will apply and M&M will not be able to recover in tort against them for the defamatory postings made by their users.

## DAMAGES

In tort law, damages serve to compensate a plaintiff for the harm(s) suffered as the result of defendant(s) tortious act(s)

Special damages v. WNW: private security, lost business,

General damages v. WNW: Emotional distress, Anxiety

**END OF EXAM**

3)

**Katheryn, Celeste and Steve v. Top Hoverboards Inc.**

**Products Liability:** When a consumer is injured by a product, there are 5 theories the consumer can sue under in the area of products liability: battery; strict products liability; negligence; breach of warranties; and misrepresentation. The facts in the present case would give rise to SPL of the causes of action against Top Hoverboard and Amazon

**Strict Products Liability (SPL):** All parties along the chain of commerce are strictly liable for any defective products placed into the stream of commerce that actually and proximately caused the defendant's injuries (damages) even if there is no privity between the plaintiff and defendant.

Steve can recover from Top Hoverboards and Amazon even though he did not buy the hoverboard from them.

Katheryn, Celeste can recover from Top Hoverboards and Amazon as well.

**Commercial Supplier:** manufacturer (including the manufacturer of defective component parts), retailer, assembler, or wholesaler.

Here, the facts state that Top Hoverboards Inc was the manufacturer and thus liable.

**Proper Defendant:** any commercial supplier, manufacturer (including the manufacturer of defective component parts), retailer, assembler, or wholesaler who puts dangerous or defective products into the stream of commerce and therefore may be strictly liable for any injuries that result from the dangerous or defective product.

Here, the facts state that Top Hoverboards is the manufacturer and that Amazon is the distributor hence they are proper defendants.

The postal office is not a proper defendant because it is not in the commercial chain and thus cannot be held liable by Katheryn, Celeste or Steve.

**Proper Plaintiff - User or Consumer:** Traditionally, the person injured was required to be the purchaser of the product, or at least a person in privity with the purchaser. Modernly, a

proper plaintiff is any user, consumer, or foreseeable bystander who could be injured by the product.

Katherine, Celeste are foreseeable users. It is expected that parents will encourage their children to go outside in general, but specially during the pandemic.

Katherine is a foreseeable user because it is likely that a parent would like to buy toys for her kids in a convenient manner such as ordering online.

Celeste is a foreseeable plaintiff because it is foreseeable that households will have multiple children and other kids can use the HB and thus can also be injured.

**Defective Condition:** A product can be defective by: manufacturing defect; design defect; or failure to adequately warn.

Although the facts do not clearly state whether the hoverboard was defective it can be inferred from the combustion and that it would violently swing around that it had a design defect and manufacturer defect. There is also inadequate warning on the charger of the hoverboard (HB) itself.

**Manufacturing Defect:** A manufacturing defect can occur when all the products leave the plant in the same condition and there is a defect in the design of the product. There are two tests for design defects: the consumer expectation test and the reasonable alternative test.

- **Consumer Expectation Test:** This is met if the product leaves the plant in a condition more dangerous than the average consumer would reasonably expect.

Here, Kathryn and Celeste can argue that the HB left the plant in a dangerous condition because when they discovered the violent swings after being used.

Steve would also make the same argument, he will use his experience as an owner of another HB.

- **Reasonable alternative Test:** This test compares the design of the product with other reasonable alternative available in the market. The test balances the availability of alternatives and their cost against the risk to users and the value of lives saved.

Here, Kathryn and Celeste that there are other HB out there that do not swing violent and cause broken bones on children that are not even riding the HB.

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Steve can argue there are HB out in the Market that do not comust when charging. He could attest to this because he already owned a HB.

**Failure to Warn:** A product is defective if the defendant, knowing of a defect, fails to adequately warn the consumer. An adequate warning is one that tells the consumer of the risk, how it occurs, how to prevents such risk, and any mitigating factors to avoid further injury.

Here, Katherine, Celeste and Steve are likely to argue that Top HB failed to warn because although the instruction were included in the package they were not adequate because once the HB left the box foreseeable users would not be able to see the warning.

Steve will have a similar argument since no contract is required he is likely to argue that the HB should have include a warning on the charger and on the HB itself.

**Actual Cause:** The injury to the plaintiff must have been actually caused by the defendant's product. The test is "but for" the defendant's conduct, the plaintiff would not have been injured.

Here, Katherine is likely to show that Celeste was injured by the HB. Katherine is likely to show that "but for" the design defect, manufacture defect and inadequacy warning Celeste would not have been violent hit by the HB that broke her arm.

**Proximate Cause (Legal Cause):** Additionally, the plaintiff's injury must have been caused by the defendant's product. The type of injury must have been foreseeable at the time the product was placed in the stream of commerce.

Here, Katherine and Celeste are likely to argue that the manufacture should have foreseen that other kids in the home like Celeste or their parents would be injured by the HB.

Although the facts do no state whether Top HB was aware of the defects that doesn't not matter because this is SPL

### **Intervening Cause - argument for Top HB and Amazon**

Top HB and Amazon are likely to raise an intervening cause argument.

**Superseding Force:** is one that serves to break the cause connection between def. initial action and the ultimate injury.

Here, the facts state that the box was left outside Katherine's home where it sat for two days and that when they finally got the HB it was already opened. '

**Substantial Change:** when the plt substantially alters the product

Here, Top HB and Amazon could potentially argue that the product was modified by an unknown person, however the facts do not state that and thus is unlikely to prevail.

**Contributory Negligence:** A plaintiff contributes to his own injury when his behavior falls below what the reasonable person would have done to protect himself from injury. At common law, plaintiff's contributory negligence completely barred his right to recover even though the degree of defendant's negligence was much greater than that of plaintiff. This is now a minority rule as many courts have rejected it because of "all or nothing approach".

Here, Top HB and Amazon are likely to argue that Katherine was CN by leaving the HB outside the poach for two days. This is unlikely to prevail.

**Comparative Negligence:** whereby the plaintiff's own negligence reduces the damages the plaintiff may recover. This is the majority rule. There is pure comparative negligence and modified comparative negligence.

- **Pure Comparative:** Plaintiff may recover a percentage of their damages even though their negligence exceeds that of the defendant.
- **Partial Comparative:** Plaintiff may be barred from recovery if their negligence equals or exceeds that of the defendant

Top HB and Amazon are not likely to show that Katherine, Celeste or Steve were comparative negligent.

**Assumption of Risk:** A complete bar to recovery for a plaintiff who places themselves at risk with knowledge and acceptance.

Top and Amazon are likely to argue that Katherine assume the risk once she found out that the HB would swing violently when it first hit her. This defense is likely to be in favor of Top HB and Amazon.

**Misuse:** A party uses a product not as intended shall not have a cause of action in products liability. Here, the facts do not show that the product was being misused and even if it was it was because it did not have adequate warnings.

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## **Negligence**

Negligence: defendant's breach of duty of care owed to the plaintiff which is the actual and proximate cause of the plaintiff's damages.

Duty: A person has a duty to use the reasonable person standard of care. Under the Majority view, also known as the Cardozo view, the duty of care only extends to foreseeable plaintiffs. Under the minority view, or the Andrew's view, a person owes a duty to any and all potential plaintiffs.

Here, Katherine, Celeste and Steve are likely to show that Top HB had the duty to manufacture HB like a reasonable HB. And Amazon had the duty to distribute Top HB like a reasonable distributors. Amazon could have avoided liability by making sure the products they distributed were not defective in their design or warning labels.

Breach: A defendant breaches his duty when he fails to act like a reasonable, prudent person.

Here, Top HB and Amazon breached that duty by falling to conform to the manufacturing standard and distributors.

Cause: Supra

Here, but for Top HB and Amazon breaching their duty Celeste would not have gotten a broken arm.

Steve can argue that but for Top HB and Amazon breaching their duty his house would not have been completely destroyed by the fire.

Damages: A plaintiff must show actual damages in order to have a negligence case.

Here, Celeste can show medical bills and medical related expenses.

Steve can show that his home was completely burned down and that constitutes damages.

Defenses: Supra

Steve did not assume the risk or was contributory negligent. Steve is likely to win a negligence case against Top HB or Amazon.

Celeste did not assume the risk or was contributory negligent. Celeste is likely to win a negligence case against Top HB or Amazon.

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Katherine might not win a case against Top HB or Amazon because she learned about the violent swing of the HB and continue to allow the use of it in her home, thus assuming the risk .

**Warranties:** Implied in every product are 2 implied warranties: Implied Warranty of merchantability and implied warranty of fitness and plaintiff need not prove any fault on defendant's parts.

Express warranties: flows to user/consumer if sellers explicit promise or representation, made to the buyer, about the nature and quality of the goods, becomes part of the "basis of the bargain"

Here, there not facts that Top BH or Amazon promised the buyer anything directly. The facts state that it had good reviews, but there are not promises made by the manufacture or seller.

**Implied warranty of merchantability:** A product must be merchantable meaning generally safe and fit for ordinary purposes.

Here, Top BH and Amazon violated the implied warranty of merchantability meaning that the goods were supposed to be fit for ordinary use because they sold HB and they were expected to function like other HB

**Indemnity:** A less culpable defendant may seek damages against a more culpable defendant, if the former were sued for damages by the plaintiff under Joint and Several Liability theory.

Amazon might be able to recover from Top HB because Amazon is less culpab

**END OF EXAM**