

MONTEREY COLLEGE OF LAW

TORTS

MID-TERM EXAMINATION

FALL 2016

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Instructions:

There are three (3) questions in this examination.

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

Question 1

Dan and Dana are roommates who share a beautiful home overlooking the beach. The portion of beach below their home was their private property, and was marked with a NO TRESPASSING sign posted on the beach in the sand on either side of their property. One afternoon, Dan and Dana took their golf clubs and a bucket of balls to the cliff overlooking their private beach to practice hitting golf balls. All the balls were printed with Dan's full name on each ball. Dan and Dana decided to challenge each other to see who could hit a ball the farthest on the sand below. They excitedly lined up their golf balls and hit them at the same time. To their frustration, the sun prevented them from seeing where their balls landed, so they laughed it off and went back inside their house.

Unbeknownst to the Dan and Dana, Peggy (a sixteen year old girl who was legally blind in her right eye) was walking on Dan and Dana's private beach with her seeing-eye dog. Peggy was on vacation with her family at the beach nearby Dan and Dana's private property and had safely walked this beach every day while on vacation, because it was so beautiful, and because Peggy LOVED the feel of the sand on her feet, and the sound of the waves crashing nearby. Neither she nor her seeing-eye dog had noticed the *NO TRESPASSING* signs that Dan and Dana had posted on the sand, and there were no fences or other markings on the beach regarding Dan and Dana's private property. While Peggy and her dog walked on Dan and Dana's private beach that afternoon, one of the balls that Dan or Dana had hit off the cliff struck Peggy on the head, injuring her.

After being struck in the head with one of Dan or Dana's golf balls, Peggy found the golf ball resting beside her, and because it had Dan's full name printed on it, she was able to locate who had owned the ball that had hit her. When contacted by Peggy, Dan and Dana admitted hitting the balls off the cliff that day at the exact time that Peggy had been struck, but had no idea which of them had hit the ball that injured her.

After being struck in the head by Dan or Dana's golf ball, Peggy experienced a severe headache and consulted Doctor, who ran some tests which led him to suspect that Peggy had suffered from a mild concussion. Doc wanted to run a few more tests to be sure. One test involved injecting a dye that permitted an examination of the tiny arteries in the eye. Peggy told Doc she suffered from Multiple Chemical Sensitivities (*MCS*) and was allergic to chemical dyes. Doc promised he would not use any dangerous chemicals and dismissed Peggy's concerns about *MCS* as imaginary. Doc performed the test using a dye that Peggy was in fact, allergic to, which caused Peggy to lose vision in her good left eye, permanently.

Peggy has consulted you, her attorney, to discuss a claim for her injuries. Please identify each Tort claim Peggy could raise against Dan, Dana and Doc, and all relevant defenses.

Question 2

On a sunny day in central California, with good visibility, Pam and Paul, experienced cyclists, are on a training ride along a two-lane road that they cycle each week and which is routinely heavily traveled by vehicles going between 50 and 65mph. The married couple chat as they cycle side-by-side up a hill. Paul, who is peddling along Pam's right side, is well inside the bike lane, but Pam's tires are touching the white line that separates the bike lane from the road. Part of Pam's body also extends outside the bike lane.

Dave, an experienced driver with a large SUV, is driving at the posted speed limit of 55 mph. He sees the two cyclists ahead who are powering up the hill, but he does not see any cars coming in the opposite direction. He is late for work, so he does not slow down.

As bad luck would have it, Jerry, an experienced commercial driver, is safely driving a wide-load tanker truck a little below the speed limit, up the other side of the hill. As he approaches the crest of the hill, Jerry's tanker truck takes up his entire lane of traffic but he does not extend over the center dividing line into the oncoming lane.

Dave's vehicle, Jerry's tanker truck, and Pam and Paul's bicycles all arrive at the top of the hill at the same moment. There is not enough room for Dave to drive past Jerry's oncoming truck and Pam's bicycle without hitting one of them. Rather than collide head-on with a tanker truck, Dave's instantaneous choice is to slam on the brakes and veer toward Pam. Dave's SUV hits Pam's bicycle. Pam suffers a broken back.

Witnessing the collision, Paul is hysterical at the scene. Due to his shock and mental trauma, over the next month he loses 15 pounds.

The California "Three Feet for Safety Statute" makes it a misdemeanor for a driver of a motor vehicle to overtake or pass a bicycle, proceeding in the same direction, without keeping a distance of 3 feet between the vehicle and any part of the bicycle or its rider.

On what theory or theories might Pam recover damages from Dave, and what defenses might Dave reasonably raise?

Does Paul, as a bystander, have an emotional distress claim(s) against Dave? Discuss.

Question 3

Joe suffered from delusions. He believed his next-door neighbor, Nancy, was an extraterrestrial alien, and that she and others aliens were planning a full-scale invasion in the future.

One day, Nancy called Joe to complain that he was driving over her property when he backed out of his driveway. Joe responded by telling Nancy that he could drive any way he wanted. Intending to deter Joe once and for all, Nancy hid strips of nail board in her ground cover where Joe was driving.

The next day, Joe backed out of his driveway and as usual, drove his car on Nancy's property. The nail board punctured all of his tires. Joe became enraged. He jumped out of his car and grabbed a hedge trimmer from his front porch. He ran up to Nancy, who was standing in her front yard, shook the hedge trimmer at her and yelled, "When the invasion comes, ET, I am going to use this baby to cut off your head!"

From the other side of the street, Ben saw Joe angrily raise the hedge trimmer at Nancy. Ben ran across the street, knocked the hedge trimmer out of Joe's hands, then dragged him by one arm into Nancy's toolshed and locked the door. Joe screamed that his shoulder had been dislocated. Nancy unlocked the shed and let him out. However, she told him she was keeping his hedge trimmer until he learned to control himself. A few days later, she used it to trim her bushes and the blade broke. She threw the pieces away.

1. What tort causes of action, if any, may Nancy bring against Joe, and what defenses, if any, will Joe raise? Discuss.
2. What tort causes of action, if any, may Joe bring against Ben, and what defenses, if any, will Ben raise? Discuss.
3. What tort causes of action, if any, may Joe bring against Nancy, and what defenses, if any, will Nancy raise? Discuss.

Torts Fall 216 Walther

ANSWER OUTLINE:

Q1

**Peggy v. Dan and Dana**

Negligence- *Summers v. Tice*- burden shifts to allow each golfer to prove their ball was not the one to hit Peggy, otherwise- both of the golfers are jointly and severally liable.

\*Can Peggy hold Dan and Dana liable for the permanent blindness in her left eye? Medical Malpractice does not necessarily break the causal chain...

Defense of Trespass- what duty did Dan and Dana owe to Peggy who is minor, and has a disability? A property owner must warn child trespassers of known dangers and make safe any dangerous conditions if their property contains an attractive nuisance.

**Peggy v. Eye Doctor**

Negligence

Battery

**Torts – Fall 2016 Examination – C. Crandall/M. McGuire  
Draft Answer Key – Question 2**

I. Pam v. Dave

a. Prima facie elements of negligence are: Duty, breach, causation, harm --**5 points**

i. **Identify and explain negligence per se** (unexcused violation establishes breach of duty or rebuttable presumption of breach of duty) -- **15 points**

1. Statute can define Dave's duty and breach if

- a. The Act was intended to prevent Pam's death -- yes
- b. Pam is within the class of the people to be protected by the Three Feet for Safety -- yes
- c. Dave's violation of the statute was not excused – ?
  - i. If he had complied with the statute, he likely would have gone head-on into a tractor-trailer truck and been killed
  - ii. Dave will also argue that compliance was impossible. Given the wide load and Pam's cycling into the roadway, it was impossible for him to comply without injury to himself or Pam
  - iii. Dave will also argue that his violation of the statute was excused because Pam was contributorily negligent by driving outside the bike lane.

iv. Dave will also argue that his violation of the statute was excused because *Paul* was contributorily negligent by driving in tandem at a dangerous location i.e., the crest of a hill

1. Pam will reply that Paul's contributory negligence cannot be imputed to her as husband and wife

d. it is unclear whether negligence per se applies in this situation

ii. Factual and Legal Causation – **3 points**

1. Assuming that negligence per se applies, Dave's violation of the statute was both the factual and proximate cause of Pam's injuries.

a. The but for test is met

b. as the statute shows, Pam was a foreseeable plaintiff in the zone of danger

iii. Harm – **2 points**

1. The harm to Pam is serious bodily injury

**b. Identify and explain Ordinary negligence** (identification of elements-- duty, breach, causation, harm, as above)--**20 points**

i. even without rebuttable presumption, Dave's behavior appears to be below standard of care

1. Dave should have slowed down as the reasonably prudent driver given the approaching crest of a hill

2. When he saw Pam's bicycle extending from the bike lane into the roadway, he should have slowed down
3. Although the weather and visibility were good, passing Pam at the top of the hill unreasonably endangered her safety
4. Dave was in a large SUV that takes up quite a bit of the roadway
5. Yet, how could he foresee that a wide load would be coming up the hill giving him no room to maneuver? Well... it is probably foreseeable to the reasonably prudent driver

ii. Factual and legal cause--**2 points**

1. As discussed above

iii. Harm--**2 points**

1. As discussed above

iv. Defenses--**1 point**

1. impossibility defense, as discussed above

v. **Identify and explain comparative fault of Pam--18 points**

1. Pam has some responsibility of her own.
2. Dave's burden of proof



3. She and Paul should not have been driving side-by-side, which could well have avoided the accident
4. Pam was aware that cars went fast on the roadway
5. Pam knew she was approaching the top of a hill where it might be difficult to see oncoming traffic. She should have taken precautions and gotten into a line with Paul rather than riding side-by-side

**vi. comparative fault of Paul--1 points**

1. Paul's negligence cannot be imputed to Pam in a suit solely by Pam against Dave

**c. Identify and explain intentional tort of Battery--5 points**

- i. the act by Dave of intentionally veering toward Pam with his car satisfies the prima facie case of this intentional tort--
- ii. did Dave have requisite intention given the need for split second decision?
- iii. punitive damages? -- Intentional torts may give rise to punitive damages but questionable in this case—
- iv. Defenses?
- v. no facts are given to support assault or other torts – Dave did not say anything and Pam never saw him coming

**II. Paul v. Dave**

**a. Identify and explain bystander cause of action for intentional infliction of emotional distress--8 points**

- i. Outrageous conduct by defendant with intent to cause (or gross reckless disregard of probability of causing) emotional distress
  - ii. Severe emotional suffering
  - iii. Factual and legal causation
- b. **Identify and explain bystander cause of action for negligent infliction of emotional distress--8 points**

- i. Dillon v. Legg: damages for emotional distress caused by observing a negligently caused injury are available (1) to persons closely related to the injury victim, (2) who are present at the time of the injury-producing event and (3) aware that it is causing injury to the victim, and who suffer emotional distress as a result.
- ii. Some courts require physical symptoms or injury along with the emotional distress. Restatement (Third) § 47 requires “serious bodily injury.” (Casebook pp. 503-506 [notes].) California does not. In California, physical symptoms NOT required for a bystander to recover from emotional distress.

III. Overall form and content -- 10 points

Torts Midterm Examination  
Fall 2016

Question 3

*Answer Outline – NOT for distribution*

Nancy v. Joe

*Intentional torts. Capable of forming intent despite delusions. Insanity as a defense.*

*Trespass by driving over property. Injury to property not required.*

*Joe will argue Nancy's nail board exceeded force necessary for defense of property as in the spring gun case.)*

*Assault but not battery by hedge trimmer threat. No assault because just words and not imminent harm.*

Joe v. Ben

*Battery, False imprisonment in shed*

*Ben will raise defense of others, but issue about amount of force that can be used*

Joe v. Nancy

*Conversion, trespass to chattels of chain saw.*

*Car tires? Battery? Trespass to chattels? (bonus points) Intentional Torts*

Can Joe be held liable for intentional torts given his delusions. Insanity not a defense of an intentional tort. Joe can be found liable for intentional torts, as he had both the intent to act and the intent to achieve certain results from those actions. The fact that the actions were motivated by an insane delusion will not be a valid defense to the intentional tort actions that may be brought by Nancy and Paul.

Assault

Did Joe assault Nancy when he threatened to kill her when they were talking on the phone, and/or when he raised the hedge trimmer up while they were talking in the yard.

To establish a prima facie case of assault, the plaintiff must show: (i) an act by the defendant that brings about a reasonable apprehension in the plaintiff of an immediate harmful or offensive contact to the plaintiff's person; (ii) intent by the defendant to cause such apprehension; and (iii) causation.

Assault is the intentional creation of apprehension in another of immediate bodily harm. "Apprehension" means that the victim must be aware of the threat against her. Assault requires more than just threatening words alone - the words must be accompanied by an action. Conversely, words may negate immediacy by attaching a condition or time frame to a threat. Here, Nancy could argue that Joe assaulted her twice - once when he said that he was going to kill her when they were talking on the phone, and once when he threatened her with a hedge trimmer when they were on the lawn.

Hedge trimmer -- his words negated the immediacy required for an assault cause of action, because he stated that he would cut off Nancy's head "when the invasion comes." These words attached a future time condition to the threat, thereby negating the immediacy. Nancy could argue, on the other hand, that since the "invasion" was a delusion by Joe, the time frame could be immediate, not future, as it is possible that, in Joe's mind, the invasion was going to happen right away. If Nancy's point of view prevailed, Joe would be liable for assault. However, since Joe was not screaming that the invasion had arrived, but rather was

speaking of the invasion as if it were a future event, a court will likely find that his words negated immediacy, and despite the threatening action he is not liable for assault.

### Nancy's Claim of Trespass to Land

Trespass to land occurs when the Defendant unlawfully enters the land of the Plaintiff. Without consent. Actual damages not required. Spring gun cases – defense of property. Different if trespasser?

### Joe's Claim Trespass to Chattel and Conversion

Trespass to chattel and conversion are property torts that occur when the Defendant damages or steals the property of a plaintiff. The difference between trespass to chattel and conversion is one of degree - trespass to chattel occurs where property is harmed but not completely destroyed, and conversion occurs when the property is destroyed or stolen. Here, Joe could be liable for both torts.

### Joe's claim of Battery

Battery is the intentional infliction of bodily harm caused by harmful or offensive touching to another's person. To establish a prima facie case of battery, the plaintiff must show: (i) an act by the defendant bringing about a harmful or offensive contact to the plaintiff's person; (ii) intent by the defendant to bring about such contact; and (iii) causation.

Can Ben may raise any defenses against the battery cause of action. Ben may raise the defense of "defense of others" to protect him from liability for any battery committed against Joe. A person may use reasonable force in defense of another when that person believes that the other is in danger of immediate bodily harm. The force used must be proportionate to the threat. Here, it appears that Ben knocked Joe over in order to protect Nancy, whom he reasonably believed was in danger of being attacked by Joe with his hedge trimmer. Ben used reasonable, non-deadly force to defend Nancy (even though it could be argued that Joe's hedge trimmer was a deadly weapon). Ben did not escalate the force, but rather responded proportionately. Thus, Ben is likely to be found not liable for battery, because his defense of protection of others would be valid.

It should be noted that, even if Ben was mistaken about his need to defend Nancy, because Joe did not actually intend to harm Nancy until "the invasion comes", this mistake will not negate Ben's defense. Mistaken self-defense (or defense of others) is still a valid defense to an intentional tort so long as the mistake was reasonable. Here, it was reasonable for Ben - who was standing across the street and likely could not hear what Joe was saying - to believe that Nancy was in danger when Joe raised his hedge trimmer in an "angry" manner.

### Joe's Claim of False Imprisonment

False imprisonment is an intentional tort. The elements for false imprisonment are that the tortfeasor must have intended to confine the victim in a bounded area and that the victim have no reasonable means of leaving the bounded area.

The extent of the false imprisonment is usually not key. Mere seconds can amount to false imprisonment. Shed bounded area, no means of escape. Restrained.

#### Joe's Defense of Insanity

Joe may argue he did not have the intent necessary to commit the tort because of his insanity, given his belief that the car was an alien spaceship. However, insanity is not a defense to an intentional tort unless the mental defect is such that the tortfeasor does not understand the nature of his act.

1)

Tort claims that Peggy could raise against Dan, Dana, and Doc (with relevant defenses):

Dan and Dana:

Dan and Dana will be held jointly and severally liable for their torts in this case because it is impossible to determine who hit the golfball that struck Peggy. Based on the facts, It is also impossible to divide Dana and Dana's liability concerning the standard of care they owed to Peggy as landowners. Dan and Dana both own the land, and they are both responsible for the way the land was kept, so they will be jointly and severally liable for all torts here. This means that Peggy can sue either Dan or Dana for the full amount of her damages. She does not have to figure out what proportion of damages both as liable for. Dan and Dana can sue each other to figure that out, but that's up to them. Not Peggy's problem.

*Sue!*

Battery: ✓

Battery is a voluntary act that causes a harmful or offensive contact with a plaintiff's person, or with something closely connected thereto.

Dan and Dana both committed the intentional act of hitting golfballs onto the beach. It was this intentional act that caused the golf ball to hit Peggy on the head. The contact was harmful because it led to a severe headache and a possible concussion. It is likely that Peggy was also offended by being struck with a golfball unexpectedly. So the elements of battery are satisfied. Dan and Dana will be jointly and severally liable for battery to Peggy unless they have an effective defense.

Dan and Dana will also be liable for the subsequent torts that Doc committed. Doc's actions can be considered a dependent intervening cause of the harm that Peggy ultimately suffers in losing her one good eye. Doc's actions are dependent because they would not have happened but for Dana and Dana's actions. They are intervening because they caused harm to Peggy after Dan and Dana's initial causal contribution. Generally, a defendant is liable for dependent intervening causes that are foreseeable. When you injure someone, it is foreseeable that the person will seek help from a doctor. It is also foreseeable that the doctor might act negligently and malpractice. Because of this foreseeability, Dana and Dana will also be liable for Doc's torts.

*yes!*

*Sue!*

Negligence:

Dan and Dana will be liable to Peggy for negligence as well.

Negligence occurs when there is a duty of care, and the duty is breached, causing harm. ✓

As landowners, Dan and Dana had a duty of care to Peggy.

Landowners do not owe a duty of care to unknown trespassers. Nor do they have any duty to inspect their land to discover unknown trespassers.

However, this piece of land was right out between the house and the water, so it was in full view of Dan and Dana. Peggy had walked on this beach every day she was on vacation, so it is likely that Dan and Dana had seen her or her footprints, and they knew someone was trespassing on their land. If the landowners know or have reason to know that there are frequent trespassers on the land, then these trespassers become foreseeable plaintiffs. And we all have a duty of care to foreseeable plaintiffs. In this case, the duty would be that of reasonable care, to warn trespassers of hidden dangers, to make safe what can be made safe, and to protect them from dangerous artificial conditions. In this case there were 2 NO TRESPASSING signs, but that's all. There were no fences or other markings. There certainly was no warning that golfballs might be falling out of the sky onto little girls' heads. It was foreseeable that someone might walk onto this piece of beach. Dana and Dana could have taken more precautions to make their land safe. Dan and Dana did not exercise reasonable care to foreseeable plaintiffs when they decided to hit golfballs onto the beach when the sun was in their eyes, and they couldn't see if anyone was down there.

Further, Dana and Dan had a duty of care to Peggy because their beach was an attractive nuisance to children. Landowner's duty of care to trespassing children is the same as to adults. But something can be an attractive nuisance if it is foreseeable that children might be attracted to it and if it might be dangerous to children. (Also if the child is unaware of the danger, and the potential harm outweighs the utility). In this case, Peggy was attracted to the sand and the waves. Kids love beaches. it was totally foreseeable to Dan and Dana that a child might wander onto their beach. And their ad hoc driving range was clearly potentially dangerous to children. So Dan and Dana had a duty to warn and make safe. They could have taken extra precautions to make their property safe or at least to warn of the dangerous artificial conditions (the driving range). Therefore Dan and Dana are negligent.

Doc:

Peggy could raise claims of Battery and Negligence (Malpractice) against Doc.

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Battery: ✓

Battery is a voluntary act that causes a harmful or offensive contact with a plaintiff's person, or with something closely connected thereto.

Peggy told Doc she had Multiple Chemical Sensitivities, specifically to chemical dyes. Doc dismissed Peggy's concern and used a chemical dye anyway. As a result, Peggy lost vision in her remaining good eye. Peggy's statements to Doc about MCS indicate that she did not consent to the use of the dye. Doc committed the voluntary act of applying the chemical dye to Peggy's eye. This contact proved to be both harmful and offensive. Therefore Doc committed a battery against Peggy.

Negligence/Malpractice:

Further, Doc is liable for negligence to Peggy, specifically medical malpractice. The Standard of Care for Doctors (and other professionals) is the customary practice of other members of the profession who are in good standing. It is not customary to apply chemical dyes to the eyes of patients who suffer from multiple chemical sensitivities, especially sensitivities to chemical dyes. By deviating from custom and the standard of care created by custom, Doc breached his duty of care to his patient Peggy, caused harm, and is therefore liable for negligence/medical malpractice.

Possible Defenses:

There aren't any great defenses Dan and Dana could use against the battery charge, but they could defend against negligence like this:

Comparative Negligence:

If a plaintiff was also negligent, this can decrease the proportion of damages for which the defendant/s are liable.

Dan and Dana could argue that Peggy was comparatively negligent. She ignored or failed to see the NO TRESPASSING signs, and came wandering onto their private beach/driving range. The standard of care that Peggy would be required to exercise would not be that of a 'reasonable person,' but that of a 'reasonable 16-year-old with one eye.' Could a reasonable 16-year-old with one good eye be expected to see a NO TRESPASSING sign? A jury may conclude Peggy did not breach her duty, and there was no comparative negligence. Further, she certainly would not have suspected there



was an ad hoc driving range in operation even if she did see the signs.

Assumption of Risk:

Dan and Dana may also argue that Peggy assumed the risk by entering the beach. Peggy would not have known what risk she was assuming. There were no signs warning her of flying golfballs, so she could not have known what risks she was assuming.

Doc could try to defend against Battery by claiming that Peggy had given consent for the procedure. On the facts, it doesn't sound like she did. It sounds like she specifically told him not to use the dye, and he used it anyway.

Doc could also argue that Peggy assumed the risk. Again, because Peggy specifically told Doc not to use the chemical dye, it is unlikely a jury would find that Peggy understood the risks or that Doc was even going to use the dye. Further, Peggy is 16. It is questionable whether or not, at her age, she would even be able to understand the nature and consequences of her decision to consent or assume the risk. Consent may be ineffective in cases of mistake, fraud, duress, incapacity, and illegality. This looks like a case where incapacity may have made any consent Peggy gave ineffective.

In fact, Doc promised Peggy he would not use any dangerous chemicals, but then he did use the chemical. This was an intentional misrepresentation and probably a fraud which would make her consent ineffective.

Conclusion:

Peggy can hold Dan and Dana jointly and severally liable for one charge of battery by golf ball, one charge of negligence by landowners, one charge of battery by doctor, and one charge of negligence/medical malpractice. None of the defendants have any great defenses to these causes-of-action.

**END OF EXAM**

2)

Pam v. Dave

Battery: harmful or offensive touching of a person without the persons consent.

*good*

In this cas the facts state Dave was driving his vehicle and at the perfect time all three (Daves vehicle, tanker and Pam) were exactly perpendicular. dave decided at this point there was not enough space for all three, therefore Dave chose to slam on his brakes and veer towards Pam. Dave struck Pam with his SUV. Dave's act was harmful to Pam as the case details she suffered a broken back. The oter element is were Daves SUV touched Pam and of course it was withut her consent. Based on the facts Dave should be charged with Battery.

*not crim case!*

Dave will argue it was a nessety based on the facts if he would have hit the tanker then a bigger accident would have occured. Dave will aslo argue that Pam took the assumption of the risk by riding her bike in the white line and having her body extending outside the bike lane. Based on Daves arguement he should not be charged.

*snelly 😊*

*really comparable fault/ contributory negligence*

Intent to Inflict Emotional Distress (IIED): outrageous or reckless conduct that causes a person severe emotional distress

*good*

Based on the battery (see above) Pam will argue the act that Dave created was reckless causing her to be harmed by his actions. Based on the accident it caused severe emotional distress. The emotional distress would come from the pain of her broken back and actually seeing the accident taking place.

*good*

*however, facts dont suggest this as to Pam*

Dave will argue it was a nessety based on the facts if he would have hit the tanker then a bigger accident would have occured. Dave will aslo argue that Pam took the assumption of the risk by riding her bike in the white line and having her body extending outside the bike lane. Based on Daves arguement he should not be charged.

Negligence: Is a doctrine pertaining to tort law in which a person with a specific duty performs their duty as a reasonable prudent person (RPP). If the person fails their duty, then a breach has occurred, leading to damages in which the person can be faced with charges in the court of law.

good

ok ( Duty: RPP would act based on the totality of the circumstances. In this case Dave had a duty to drive the vehicle safely on the road without hitting anybody.

Breach of Duty: Failing to act as a RPP based on the totality of the circumstances. Dave ~~failed his duty~~ he slammed on his breaks and veered towards Pam hitting her causing damages. A rule that Dave violated was Negligence Per Se. Negligence Per Se is the where there is a statue to protect certain kinds of people from certain harm. In this fact pattern the statue is: The California "Three Feet for Safety Statute" . The statute is to protect bicyclist who are proceeding in the same direction without keeping a distance of three feet between them (car and bike). Here we have Pam and Dave proceeding in the same direction, however Dave failed to allow the three feet rule between bike and vehicle. Therefore Dave breached the duty of negligence per se based on the statute protecting Pam as a bike rider and the statute protecting bike riders from harm with vehicles allowing the three feet rule.

Causation: Actual/Proximate. IN this case Dave was the actual cause of the harm. In this case the but for test is needed. Dave but for veered into Pam caused the accident.

Damages: The damages would be for Pam medical expenses, pain and suffering for the broken back.

Strict liability: Dave created a abnormal dangerous activity while driving. Dave slammed on his breaks and veered off hitting Pam.

NO!

Dave should be liable for negligence.

Dave will argue it was a necessity based on the facts if he would have hit the tanker then a bigger accident would have occurred. Dave will also argue that Pam took the assumption of the risk by riding her bike in the white line and having her body extending outside the bike lane. Based on Daves argument he should not be charged.

Can Paul claim emotional distress?

Intent to Inflict Emotional Distress (IIED): outrageous or reckless conduct that causes a person severe emotional distress

) (ok)

Paul is a relative of Pam (husband). Dave was driving his vehicle and at the perfect time all three (Daves vehicle, tanker and Pam) were exactly perpendicular. dave decided at this point there was not enough space for all three, therefore Dave chose to slam on his brakes and veer towards Pam. Dave struck Pam with his SUV. Dave's act was harmful to Pam as the case details she suffered a broken back. The other element is were Daves SUV touched Pam and of course it was withut her consent. Utilizing the Cardoza rule: Paul was in the foreseeable target zone. Paul just witnessed his wife get hit with a vehicle which was an outrageous event, especially an event involving someone he loves go though with that accident. Paul has every right to claim for emotional distress.

↑ don't forget NEEDS too.  
NIED is stronger. Dave's act is probably not outrageous but could be reckless

END OF EXAM

3)

Tort Causes of Action / Nancy against Joe + Defenses:

Trespass to Land:

This is when a defendant commits a voluntary act that causes a physical invasion of a plaintiff's land (or causes a third person or object to invade the land, or enters legally but fails to leave when under legal duty to leave, or fails to remove an object).

Joe did voluntarily and intentionally drive his car over Nancy's land.

Joe may claim that he was mistaken and did not know it was Nancy's property, but mistake is not a defense to Trespass to Land. It is sufficient that Joe intended to drive the car. It doesn't matter if he knew he was driving on Nancy's land.

Joe told Nancy he could drive anyway he wanted. It is possible that Joe believed the law allowed him to drive anyway he wanted, but Joe's mistake of law would not be a defense to Trespass to Land either. Mistake of law is generally not a defense to anything.

Joe might argue that he is or was insane at the time, but this too would not help him.

While mental conditions may be considered to determine whether or not a person has the capacity to act voluntarily, insanity does not preclude liability for torts. A jury would likely conclude that Joe was sane enough to voluntarily drive his car, and that this was sufficient for tort liability.

Assault:

Assault is when a defendant commits an intentional act that causes a plaintiff to have a reasonable apprehension of an immediate harmful or offensive contact.

In this case, Joe did run up to Nancy, enrage, and shake a hedge trimmer at her. These actions alone could put a reasonable person in reasonable apprehension of a harmful or offensive contact. When someone is running at you in a rage and shaking a large lawn tool at you, most reasonable people would be afraid that contact might be imminent.

Now it is true that the fear of contact must be an immediate contact, not one off in the future. And Joe did qualify his threat with "when the invasion comes." So Joe could argue that he wasn't threatening immediate harm, but future harm. Assuming Nancy had no reason to believe the invasion was already happening, she may have taken this to mean that she would not be harmed until that future time. A jury could see it either way. However, it is important to note that Joe's running, yelling, and shaking of the trimmer

would constitute an assault without his additional contingent threats about the future invasion.

Tort Causes of Action / Joe against Ben + Defenses:

Battery:

Battery is when a defendant commits a voluntary act that causes a harmful or offensive contact to the person of a plaintiff or something closely connected thereto.

in this case, Ben did voluntarily run across the street and knock the hedgetrimmer from Joe's hands. The hedgetrimmer would qualify as something closely connected to the person of Joe, and it is fairly certain that Joe would have regarded the knocking of it out of his hands as both harmful and offensive. In any case, a reasonable person would regard having something knocked from his hands as offensive. ✓

Ben would assert the Defense of... Defense of Others:

A defendant may use reasonable force to defend himself / prevent another person from committing a tort against his body.

And a defendant may use reasonable force to defend a third person to the same extent that third person would have the right to defend himself. ✓

In this case, Ben saw Joe assaulting Nancy with a hedgetrimmer. He believed Nancy was in immediate danger of a harmful or offensive contact, and so Ben was justified in using reasonable force to defend Nancy. As the hedgetrimmer was being used as a weapon, it would seem to be reasonable force to knock the weapon from Joe's hands, depriving him of its use.

Ben also committed another battery when he dragged Joe by one arm to Nancy's toolshed. Joe clearly felt the contact was harmful because he complained that his shoulder was dislocated. It is also insulting and frustrating to be dragged by one arm, and I'm sure Joe felt the contact was also offensive in this way. ✓

Still, Ben could assert Defense of Others/Self. Ben may have thought Joe continued to pose a threat and had to be controlled. If Ben's belief were subjectively and objectively reasonable, he had the right to use this reasonable force.

False Imprisonment:

This is when a defendant commits a voluntary act that causes a plaintiff to be restrained

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or confined to a bounded area, against his will, and the plaintiff is either aware of his confinement or is harmed by it. The plaintiff is not "confined" if there is a reasonable means of escape, and the plaintiff is aware of it. ✓

In this case, Ben did voluntarily drag Joe, against Joe's will, and then confined Joe, against Joe's will, in Nancy's shed, a bounded area. Joe was surely aware of his confinement because he was conscious and howling about his shoulder. (maybe harmed too then?) And Joe had no reasonable means of escape.

Ben can assert the Defense of Others/Self and say that confining Joe was necessary in order to keep him from harming Ben or Nancy.

Ben can further argue this as Defense of Authority:

Ben was essentially making a citizen's arrest of Joe. Similar to the shopkeeper's privilege, another form of the Defense of Authority, Ben reasonably believed that Joe was committing crimes/torts and posed a danger to Nancy and Ben. Therefore Ben used reasonable force to confine Joe in a reasonable manner and for a reasonable time.

Tort Causes of Action / Joe against Nancy + Defenses:

Sorry, Nancy, you're not getting off so easy tonight.

Trespass to Chattels:

This is when a defendant commits an intentional act that interferes with a plaintiff's chattel, causing harm. Actual harm must be shown for a cause of action for trespass to chattel.

In this case, Nancy did intentionally place nail boards on her land where she knew Joe would drive. This caused all of Joe's tires to be punctured. Joe's ruined tires would certainly qualify as actual harm, so the elements of trespass to chattels are satisfied here. Further, depending on the severity of the harm, this could be a conversion.

Nancy did also take Joe's hedgetrimmer. This would be another trespass to chattels because it was intentional and it did interfere with Joe's possessory interest in his hedge trimmer. But Nancy also used the hedgetrimmer, broke the blade, and threw away the pieces. So this might be a conversion as well. Let's look...

Conversion:

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This is when a defendant commits an intentional act that causes destruction or substantial harm to a plaintiff's chattel. Alternatively, this is known as a defendant's exercise of "dominion and control" over the plaintiff's chattel. The interference with the plaintiff's possessory interests in the chattel are more significant than with trespass to chattels. The longer the length of time a plaintiff is deprived of possession and the greater the severity of the harm done to the chattel, the more likely it is to be a conversion than a mere trespass. Essentially, a defendant either destroys the chattel or converts it for his own use. The plaintiff is not obligated to accept a return of the chattel, nor does a return of the chattel relieve liability for the conversion.

Nancy destroyed Joe's tires. They are totally useless now to Joe. Because of the severity of the harm, and the absolute deprivation of Joe's possessory interest in his tires, I would say this qualifies as a conversion. Nancy could argue Defense of Property: A defendant may use reasonable force to prevent the commission of a tort against her property. A jury would have to ask whether or not these nail boards qualified as reasonable force. It seems a bit extreme, so a jury could go either way on it.

I do not believe Nancy will be so lucky with her conversion of Joe's hedgetrimmer though.

Nancy did take Joe's hedgetrimmer, ostensibly in Defense of Self/Others, to keep Joe from harming anyone with it, if and when the invasion comes.

But then Nancy went and converted the hedgetrimmer for her own use. She used it to trim her bushes, and that's when it became a conversion. Further, she destroyed the blade and threw the pieces away. It is safe to say that Joe will not be getting his hedgetrimmer back in one piece. Nancy's interference with Joe's property is so severe that it qualifies as a conversion. She could argue that she took it away from Joe to keep him from attacking anyone with it, but this would not explain her converting it for her own use and subsequently breaking the trimmer.. and throwing it away. Sorry, Nancy.

**END OF EXAM**