

Empire College of Law
Torts Mid-Term Examination
Fall 2024
Prof. J. Stogner

Instructions:

Answer Two (2) Essay Questions

Answer 25 Multiple-Choice (MBE) Questions in Examsoft/Examplify.

Time Allotted: 3 Hours

QUESTION 1
(One hour)

One day Persi was walking across the street in a crosswalk when he saw his long-time neighborhood enemy, Dave, driving toward him in a two door VW. Persi slowed his pace in the crosswalk just to irritate Dave, who, recognizing his long-time neighborhood enemy Persi, sped up and drove just behind Persi while he was still walking in the crosswalk, scaring him. Persi turned as the VW drove passed him and slammed his hand on the rear of the VW, causing no damage but making a loud banging noise which startled Dave. As Dave pulled the VW to the side of the street and stopped he rolled down his window. Persi strode toward him angrily. When he arrived at the VW, Persi reached through the window and grabbed Dave's keys out of the ignition. "You're not going anywhere. We're gonna talk about this," Persi said, dangling Dave's keys in front of him. Dave tried to get out of the VW by opening his door but Persi pushed the door closed. Dave couldn't get out of the VW through the passenger door because he was in the process of moving residences and his small car's passenger seat and floorboard were full of items. For the next few minutes Dave and Persi yelled profanities at each other and Persi pushed the door closed each time Dave tried to open it. Finally, Dave grabbed a snowglobe from the pile of items on the passenger seat and threw it out the window, hitting Persi in the face and breaking his nose and orbital bone. Persi lost his grip on the car keys, dropping them on the ground as he staggered back in pain. Dave then opened his car door, grabbed the keys from the ground, and drove off. On his way home he drove across Persi's front lawn, leaving huge tire marks.

What are Persi's potential causes of action against Dave, and what are Dave's defenses, if any? Analyze.

What are Dave's potential causes of action against Persi, and what are Persi's defenses, if any? Analyze.

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QUESTION2
(One hour)

One weekend Donnie went camping in Hot Spring State Park. The park featured a bubbling stream of water superheated by magma flowing there, beneath the earth's crust. On Saturday night Donnie built a fire at his open area campsite. But he failed to adhere to State Regulation 8016, which required that any campfire in the park be built against a rock wall and surrounded by stones at least 6 inches high, to prevent the fire from spreading. Donnie's campfire was not built against a rock wall. And the stones that ringed it were only four inches high. Paul was camping nearby. Just before Midnight sudden volcanic activity occurred below the park. It caused an earthquake which tossed flaming timbers out of Donnie's campfire across the open area and onto Paul's tent, which caught fire. Paul rushed from his tent and began running in a panic. He ran over Donnie in the dark, accidentally knocking Donnie into a hot spring pool, which stunned Donnie with its intense heat, rendering him unconscious. Seeing that Donnie was unconscious in the pool of hot water, Paul became afraid and fled the area. Although Donnie regained consciousness and climbed from the pool on his own, the prolonged period of time he remained in the hot water after Paul departed caused more extensive burn injuries to Donnie's skin.

What are Paul's potential causes of action against Donnie? Analyze.

What are Donnie's potential causes of action against Paul? Analyze.

Do not consider any defenses.

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Issue Outline

QUESTION 1

Persi v. Dave

Assault (Dave driving close to Persi)

Battery (Dave throwing snowglobe)

–self-defense to prevent false imprisonment

–but was force excessive (Persi said we're gonna talk)?

Trespass to land (driving across Persi's lawn)

Dave v. Persi

False Imprisonment (keeping Dave in VW)

Conversion (taking car keys)

–was taking a very substantial interference?

–Dave got keys back within minutes (albeit by force)

Trespass to chattel (taking car keys)

–was the taking a substantial interference?

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Winter, 2024
Torts–Mid-term
Issue Outline

QUESTION 2

Paul v. Donnie

Negligence (carelessly(?) built campfire)

- was there a breach at common law?
- was there actual cause respecting the way the campfire was constructed? (Earthquake may have tossed the timbers anyway...but fire was not against a rock wall, so actual cause likely assuming breach)
- was there proximate cause? Earthquake likely not foreseeable and likely a superceding intervening act, a force majeure.

Donnie v. Paul

Negligence (running into Donnie and knocking him into the pool)

- likely due to emergency doctrine no breach when running in a panic.

Negligence (not coming to Donnie's aid when knocked into pool)

- injuries caused by prolonged stay in water after Paul did not come to Donnie's aid likely negligence.
- Paul's act in knocking Donnie into the pool (even if not negligent due to the emergency doctrine) gave rise to a duty to act affirmatively to render aid.

1)

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Persi (P) v. Dave (D)

Does P have a claim against D for Assault?

Assault is an intentional act which creates in another a reasonable apprehension of an imminent harmful or offensive touching. The defendant must have the present apparent ability to carry out the act. Mere words alone are insufficient to constitute assault.

good

Here, the facts tell us that as P was in the crosswalk, D sped up and drove just behind P while he was still walking. The facts tell us D recognized P as his neighborhood enemy and sped up, demonstrating D's intent. When D sped up and drove up just behind P, P was scared, demonstrating that he was aware and thus constitutes an apprehension of an imminent harmful or offensive, without consent, touching by D's car. Accordingly, P will likely prevail in an assault claim against D.

Does P have a claim for Intentional Infliction of Emotional Distress against D?

Intentional Infliction of Emotion Distress (IIED) is intentional or reckless outrageous conduct directed at plaintiff or knowingly done in plaintiff's presence, that causes plaintiff severe emotional distress.

Both P and D were long-time neighborhood enemies. When D recognized P on the crosswalk, he intentionally sped up, an act that was clearly directed at P. Speeding up enough to be just behind P may be sufficient to meet the element of outrageous conduct because a reasonably prudent person would find it outrageous for a car to nearly hit them. The facts state that P was scared. Fear alone is insufficient to constitute severe emotional distress. As such, D is likely not liable for IIED. Had the facts indicated that P suffered from nightmares or any other trauma as a result of this conduct, there may be a claim to establish IIED.

good

Does P have a valid claim against D for battery?

when there is no harmful touch

Battery is the intentional harmful or offensive touching of another without consent. There is a split of authority where some jurisdictions only require there to be a touching and others require there to be both a touching and for it to be offensive. The intent to touch and the intent to offend.

Here, D grabbed a snow globe and threw it out the window. This action constitutes doing an act with a substantial certainty that harm may come about, and thus satisfying the intent element. The snow globe did in fact hit P in the face and broke his nose and orbital bone, constituting a harmful touching without P's consent. In both jurisdictions that require a touching and those that require touching and offensiveness, D is likely liable for battery of P. D may attempt to use the defense of justification arguing that the quasi-legal reason for his tortious act was to escape being falsely imprisoned. However, it is unlikely given the extent of the injuries to P that D will be off the hook. D may also attempt to rely on the recovery of property defense as it relates to his keys, but again, the amount of force used is too excessive for D to have the benefit of this privilege.

now about self-defense?

unnecessary when the issue is about intent. D's

Does P have a claim against D for Trespass to Land?

Trespass to Land is the intentional unauthorized entry onto the land of another.

D intentionally drove across P's lawn without authorization. Even if he had not left huge tire marks, D would be liable for trespass to land the second his vehicle entered onto the land of P.

D v. P

Does D have a claim against P for Trespass to Chattel?

Trespass to Chattel is an intentional act that: (1) impairs the condition, quality, or value of chattel; (2) results in a substantial interference with another's right to possess chattel; or (3) causes injury to plaintiff's person, property, or anything plaintiff has a legally protected interest in. Damages are to be proven but in the case of substantial dispossession they are presumed.

Here, P slammed his hand on the rear of D's VW. The facts tell us that there was no damage to the VW. Accordingly, because there was no damage, P's act did not impair the value of the VW, did not create a substantial interference with D's right to possess the VW, and did not cause injury to D's person or his VW. P is not liable for trespass to chattel.

- what about taking the car keys?

Is P liable to D for assault?

Assault defined supra.

The facts tell us P strode towards D angrily. P then reached into D's open window and took his keys. The facts are silent as to whether D did in fact see this, but given that he was startled from P's previous action of slamming his hand on his car, D was likely in a reasonable apprehension of an imminent harmful touching when P reached through the window. As such, P will likely be liable for assault.

I don't think the facts support that there was apprehension of a battery. But it's a close call.

Is P liable to D for false imprisonment?

False Imprisonment is the intentional restraint of the physical liberty of another by duress, force, or threat. The plaintiff must have been aware of the restraint or harmed by it.

P took D's keys and told him he was not going anywhere. This action (taking the keys), combined with P's words (not leaving anywhere), constitute an intentional restraint of D's physical liberty. D was aware of this restraint because he made multiple attempts to open his door but P kept pushing the door close, meeting the force requirement to establish a valid claim against P for false imprisonment. There was no reasonable means of escape because his passenger door was blocked by D's moving items and thus was confined to only the driver side's door where P was.

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Does D have a claim against P for IIED?

IIED defined supra.

P was dangling D's keys in front of him while being falsely imprisoned. This was a clear intentional act, directed at D because the keys were in front of him. However, the facts again are silent as to whether this caused D any severe emotional distress. D is not likely to prevail on a claim against P for IIED because there are no facts that indicate any severe emotional distress.

Does D have a claim against P for trespass to chattel of his car?

Trespass to chattel defined supra.

Good Here, P kept pushing D's door shut at every attempt of escape by D. Because P had D's keys and also kept pushing the door shut every time D attempted to escape, P was substantially interfering with D's right to possess his car and drive away with it. This interference with D's right to possess chattel is sufficient to establish a trespass to chattel and thus P will likely be held liable for a trespass to chattel.

Does D have a claim against P for battery when pushing the door shut?

Battery defined supra.

Good P kept pushing D's door shut when D would opening the door. As we know from the food tray case, an item held close enough to the body can serve as an extension of the body for purposes of a battery. Here, as D was holding his door attempting to open it, P kept pushing it shut. Because this was a repeated act done by P, P knew with a substantial certainty that there could be harm, which would satisfy the intent element. The facts do not indicate that D was harmed, but an argument could be made that a reasonably prudent person would find it offensive to have their door pushed continuously as they are trying to open it. If the handle was close enough to D's body, D could potentially have a valid claim against P for battery.

2)

Paul (P) vs. Donnie (D)

Does P have a claim for negligence against D?

Negligence is injury caused by the creation of an unreasonable risk of harm to a foreseeable plaintiff. It is comprised of duty, breach, causation, and damages. A **duty** is owed to act with reasonable due care and to conform to a specific standard of conduct. A duty is generally owed when there is a special relationship between the plaintiff and the defendant or depending on the status of the plaintiff. A **breach** occurs when one fails to act as a reasonably prudent person would under the same or similar circumstances. **Causation** is two pronged, actual cause and proximate cause, and requires plaintiff to prove both. **Actual cause (cause in fact)** is the factual analysis and requires plaintiff to prove that absent defendant's carelessness, plaintiff's harm would not have occurred. When there is one clear cause of harm, the "but for, would not" test is utilized. When there is more than one potential cause of harm, the "substantial factor" test is used. Proximate cause is the legal analysis and requires plaintiff to establish a reasonably close relationship between plaintiff's harm and defendant's carelessness.

Proximate cause is absent and can cut off liability if the harm is too remote in time or distance from defendant's carelessness, the type of injury is unforeseeable (in Wagonmound jurisdictions), there is a superseding intervening act, or public policy dictates no proximate cause. **Damages** are either in the form of injury/harm to plaintiff's person or property.

Negligence per se occurs when there has been a violation of a statute or ordinance.

Negligence per se creates a rebuttable presumption of a breach of the duty of due care that can only be overcome by an excuse. For negligence per se to apply, the statute must be intended to protect the class of individuals which plaintiff is included in, the type of harm plaintiff suffered is the type of harm the statute intends to prevent, and that it is otherwise appropriate to serve as

I strongly recommend that you first evaluate the common law negligence then per se

their person, or personal property. Conversion is an intentional act that substantially or completely interferes with another person's right to possess chattel.

Here, P reached through D's car window and purposely grabbed D's keys out of the ignition, refusing to return them. D was able to retrieve the keys from the ground where P dropped them a short time later. D would have a cause of action for trespass to chattel.

False Imprisonment of D in his car

False imprisonment is an intentional restraint of the liberty of another under force, duress or threat and an awareness of the confinement by the plaintiff or injury that was caused by the restraint.

P purposely grabbed D's keys from the car ignition, told D he was "not going anywhere", and held the car door closed when D tried to leave the car. D was aware he was trapped in the car and eventually threw a snow-globe at P to get him to release the car door. D has a cause of action for false imprisonment against P.

2)

What are Paul's (P) Causes of Action against Donnie (D)?

Was D Negligent for the Burning of P's Tent?

Negligence is injury caused by an unreasonable risk of harm to a foreseeable plaintiff. The elements of negligence are duty, breach, causation and damages.

Duty is an obligation to act with reasonable care, to conform to a standard of conduct.

As a camper in a public park, D had a duty to act as a reasonably prudent camper building a campfire, which means he would be required to follow the park's guidelines for building campfires.

Breach is a failure to adhere to the duty.

D built a campfire that was not against a rock wall that was ringed with stones only 4 inch high, which was in violation of a State Regulation required any campfire in the park be built against a rock wall and surrounded by stones at least 6 inches high to prevent fire from spreading; therefore, D breached his duty to act as a reasonable camper.

Causation requires the plaintiff to show that without the careless act of the defendant, the plaintiff would not have been harmed. Both actual causation and proximate causation must be proved. Here, the flaming timbers from D's fire were tossed onto P's tent and caused the tent to burn--but for D's campfire, P's tent would not have caught on fire; therefore, D's campfire is the Actual cause of P's tent catching on fire. Proximate cause requires a reasonably close relationship between the careless act and the harm. Without proximate cause, liability is cut off. Here, sudden volcanic activity caused an earthquake, which tossed flaming timbers from D's campfire on to the tent. Seismic activity is an unforeseeable superseding act, and without the seismic activity the timbers would not have been tossed from the campfire to the tent, therefore, proximate cause is not established and D is not liable for the damage to the tent.

Neg Per Se.

Negligence per se is a way of establishing negligence when an actor violates a statute or regulation. The statute must be intended to protect the type of harm that resulted from the failure to adhere to the statute, and the plaintiff must be of the class the statute was designed to protect. Here, D failed to adhere to a statute that was designed to protect other campers and the state from the risk of a fire starting from a wayward embers, so while P was in the class of plaintiffs the statute was designed to protect, the tossing of firewood from a campfire during an earthquake was not the type of incident the statute was designed to protect against, therefore, it is unlikely Negligence per se would establish breach and causation in this situation.

Since P would not be able to establish causation, he would not have a cause of action against D for negligence.

What are Donnie's (D) Causes of Action against Paul (P)?

Is P negligent for failing to assist D after he knocked him into the hot spring pool?

Negligence, defined supra.

A duty to render aid is created when a careless act places another person in danger.

P accidentally knocked D into a hot spring pool, causing D to lose consciousness in the hot spring. Being unconscious in a hot spring is a dangerous situation for D and since P knocked him into the pool, he had a duty to assist him in getting to safety. P breached his duty to assist D by leaving him in the pool and fleeing the area.

By leaving D in the pool, D remained in the hot water longer and suffered more extensive burns to his skin—but for P's careless act of leaving D in the pool, D's injuries would not be extensive. There is no proximate cause exception that would cut off liability; therefore, the causation element has been met.

D has a cause of action against P for negligence.

END OF EXAM