

Empire College of Law
Torts Mid-Term Examination
Fall 2023
Prof. J. Stogner

Instructions:

Answer Two (2) Essay Questions

Answer 25 Multiple-Choice (MBE) Questions

Time Allotted: 3 Hours

Question 1

Dachshund dog lover Doug and Persian cat lover Peter lived in the same neighborhood. One day Doug was driving in the neighborhood, daydreaming, when his car drifted off the street and partially onto the sidewalk in front of Peter's house. Right as Doug's car was going up over the curb Peter's little boy pushed Peter's Persian cat out an upstairs window and the cat fell onto the sidewalk, where Doug's car struck the cat, severely injuring it. Doug backed off the sidewalk and drove home.

Peter rushed out of his house, scooped up his cat and jumped in his car to take the cat to the veterinary hospital. As he drove Peter saw Doug's dachshund dog, which was deaf, asleep in the street ahead of him. Intent on getting his cat to the vet as soon as possible, Peter proceeded straight ahead and, because it didn't move, hit Doug's dog, severely injuring the dog. From inside his house Doug heard his dog yelp and ran out as Peter drove on. Doug scooped up his dog and jumped in his car to take his dog to the veterinary hospital.

Doug and Peter arrived at the veterinary hospital parking lot at the same time. Peter exited his car quickly, gripping a pen in his hand, intent on obtaining Doug's insurance information. As Doug was exiting his car he saw Peter about 20 yards away looking angry, with his fist clenched. Believing he was going to be punched by Peter, to prevent the attack Doug rushed Peter and punched at him. Peter moved slightly to avoid the blow and Doug's punch missed his face but struck the bill of Peter's baseball cap, which flew off Peter's head.

Staff members of the veterinary hospital rushed out, calmed down Doug and Peter, then took both the cat and the dog in for treatment.

The next day, Peter downloaded video from his dashcam of Peter's car striking Doug's dog. He sent the video, which he titled "deaf dog drama", to Doug just to spite him. The video upset Doug greatly.

What are Peter's potential causes of action against Doug, and what are Doug's defenses, if any? Discuss.

What are Doug's potential causes of action against Peter, and what are Peter's defenses, if any? Discuss.

Torts
Professor Stogner
Mid-terms-Fall, 2023

Essay Question 2

Delores owned a doughnut shop. A local ordinance, adopted by the City Council to make the town look more attractive, required that all store signs be at least 12 feet from the street. One day Delores ignored the ordinance and placed her movable doughnut shop sign right at the curb. Potsy drove up and parked in front of the doughnut shop. As he did so the passenger side mirror on his car struck the sign. The mirror broke.

Potsy went into the doughnut shop to confront Delores about his broken mirror. Noone was at the customer counter so Potsy walked behind the customer counter, through a door and into the kitchen where the doughnuts were made each morning. As he stood next to some high shelves holding pots and pans, Potsy called out for Delores. Suddenly Potsy was struck on the head and fell down. He saw a large pan laying on the floor next to him and realized that he'd been struck on the head with it somehow.

Delores, who had been in the employee restroom, heard the pan hit the floor and came into the kitchen. She saw Potsy sitting on the floor next to the pan. "What are you doing in here?" she asked. Potsy was angry. He picked up the pan, stood up, and tossed it at Delores, intending to hit her with it. Instead, the pan crashed into a large glass mixer on a shelf next to Delores and destroyed the mixer.

After Potsy destroyed the mixer Delores ran out of the kitchen and closed the door behind her, locking it from the outside so Potsy couldn't follow her. "Let me out," Potsy yelled. Potsy didn't know it, but there was a storeroom attached to the kitchen and inside the storeroom there was an unlocked door leading to a landing deck outside where suppliers brought the doughnut ingredients each week.

Delores called the police from the customer counter telephone and thirty minutes later an officer arrived, at which time Delores unlocked and opened the door for Potsy.

What are Potsy's potential causes of action against Delores, and what are her defenses, if any? Discuss.

What are Delores's potential causes of action against Potsy, and what are his defenses, if any? Discuss?

1) \$ may start of ... sounds like ...
Doug (D) v. Peter (P)

Is P liable for trespass to chattels when P hits D's dog with his car?

Trespass to chattels

Trespass to chattels is an intentional act that impairs the value, condition, or quality of the chattel of another, OR substantially interferes with another's right to possess chattel, OR causes damages to the person, the property of the person, or something which the person has a legally protected interest.

Intent is an act done on purpose or done with substantial certainty that an outcome will occur.

Here, although the facts state that he had the intent to get his cat to the vet as soon as possible, he knew with substantial certainty that D's dog was deaf and blind, and if he proceeded that he would hit D's dog. By severely injuring D's dog, P impaired the dog's condition and also caused damage to the dog. D may invoke his privilege of private necessity as a defense. Private necessity is the privilege to cause damage to the property of another in order to save or preserve your own property or person, however damages must be paid. Here, P is trying to get to the hospital to save his injured cat as quickly as possible. P may have thought that time was of the essence, therefor he could not slow down or deviate. P will likely not be liable for trespass to chattels using his defense, however he will liable for the vet expenses of D's dog.

Is P liable for assault when he exited his car quickly looking angry with his fist clenched?

Assault

Assault is an intentional act that creates in another a reasonable apprehension of receiving an imminent harmful and offensive touching, and the defendant must have the present and apparent ability to carry out the act.

Here, there are no facts to support that P intended to create apprehension. The facts state he only intended to get insurance information. Looking angry and clinching of the fist also does not necessarily rise to the level of a reasonable apprehension. P will not likely be liable for assault

Is P liable for the intention infliction of emotional distress when he sent D the video of P hitting his dog?

Intention infliction of emotional distress (IIED)

IIED is the intentional or reckless, outrageous behavior directed at the plaintiff or knowingly done in the presence of that causes the plaintiff severe emotional distress.

Here, the facts state that P did so to spite D, therefore doing so with intent to get back at him. Sending another a video of their beloved pet being hit by a car is behavior that that the general public would characterize as outrageous. The facts state that as a result of P sending this video, D was greatly upset. P will likely be liable for IIED, but D must show some form of physical objective damage as a result of being greatly upset in order to have a cause of action.

Peter (P) v. Doug (D)

Is D liable for negligence when his car jumps a curb and hits P's cat?

Negligence

Negligence is the creation of an unreasonable risk to a foreseeable plaintiff that causes either personal injury or property damage. It's composed of duty, breach, cause, and damage.

Here, D owes a duty as a driver to operate his vehicle according to the standard of a reasonably prudent person driving a vehicle. He breaches this duty when he begins daydreaming because a reasonably prudent person driving a vehicle would give his full attention to driving the vehicle. Causation is composed of actual cause and proximate cause. Actual cause is the physical relationship between the careless act of the defendant, and the harm suffered by the plaintiff. The "but for" test is used to analyze actual cause. But for D daydreaming and jumping the curb, P's cat would not have been hit. The issue here lies in proximate causation. Proximate cause is the reasonably close legal relationship between the careless act of the defendant, and the harm suffered by plaintiff. Proximate causation can be cut off by remoteness, unforeseeability, a superceding intervening act, or for public policy. Here, D jumps the curb just as P's son pushes P's cat out the window, which happens simultaneously, ending in D hitting the cat. A superceding and interfering act can come from a third party. P's son pushing the cat out the window would be a superceding intervening act which cuts off liability. Therefore, D will likely not be liable for negligence.

Is D liable for trespass to chattels when he jumps the curb and hits P's cat?

Trespass to chattels defined supra.

There is not indication in the facts that D acted with intent or substantial certainty when he was daydreaming, causing him to jump the curb and hit P's cat. Therefore, he will likely not be liable for trespass to chattels.

Is D liable for battery when he rushed and punched P?

Battery is the intentional harmful or offensive touching of another without consent.

Here, D acted with intent because he subjectively believed P was going to punch him, therefore he needed to act in order to thwart the advance and prevent the attack. Although P moved slightly to dodge the blow, D made contact with his hat which flew off his head. The hat is part of the person of P, therefore D made contact with P. Hitting somebody's hat off their head is generally accepted as offensive behavior. P never consented to the touching. Therefore, D will likely be liable for battery.

Is D liable for assault when rushed and punched at P?

Assault defined supra.

Here, D is acting intentionally for the same reason stated for battery. Rushing and punching towards anybody is reasonably placing another in apprehension. The act was imminent because D was rushing towards P. P was aware and reacted by moving slightly which shows that he was placed in apprehension. D had the present apparent ability to carry out the act as he was rushing and punching towards P all in one motion, therefore D will likely be liable for assault.

Is D liable for trespass to chattels when he struck the bill of P's hat?

Trespass to chattels defined supra.

The transferred intent doctrine states that the defendant's intended tort and target/victim may be transferred to another target/victim if it's a BATFIT tort (battery, assault, trespass to chattels, false imprisonment, and trespass to land). Although D intended to punch P (battery), this may be transferred to P's hat as trespass to chattels because he hit the off P's head.

There is no indication as to whether the hat's quality or value was impaired, therefore D will likely not be liable for trespass to chattels.

END OF EXAM

2)

Delores (D) v. Patsy (P)

Is P liable for assault when P tossed the pan at D?

Assault

Assault is an intentional act that creates in another a reasonable apprehension of receiving an imminent harmful or offensive touching, and the defendant must have the present and apparent ability to carry out the act.

Here, P acted with intent because the facts state that he intended to do so. It was imminent because the object was thrown through the air at D. If it would have touched D, it would have harmed her. The facts do not state whether D was aware of P throwing the pan at her. There is no indication that she ducked or moved, P could have simply missed. Therefore, D did not have any apprehension, and P will not likely be liable for assault. If D had seen her throw the pan, then P would be liable.

Is P liable for trespass to chattels when P threw a pan which hit the mixer?

Trespass to chattels is an intentional act that impairs the condition, quality, or value of one's chattel, OR substantially interferes with one's right to possess chattel, OR causes damage to the person, the person's property, or something which the person has a legally protected interest.

The doctrine of transferred intent states that a tort and intended target/plaintiff can be transferred to another tort and intended target/plaintiff if it's a BATFIT tort (battery, assault, trespass to land, false imprisonment, and trespass to chattels).

Here, P is throws a pan at D intending to hit D and hits the mixer instead destroying the mixer. The mixer was completely damaged because it was destroyed. Therefore, under the transferred intent doctrine, P will likely be liable for trespass to chattels of the mixer.

Is P liable for conversion when P threw a pan and hit the mixer, destroying it?

Conversion is an intentional act that completely, or very substantially, interferes with one's right to possess chattel.

Here, when P threw the pan and hit the mixer and destroyed it as the facts state. Destroying property is a complete interference with the chattel of another. However, the transferred intent doctrine does not apply to conversion. Therefore, D will not be liable for conversion.

Patsy (P) v. Delores (D)

Is D liable for Negligence when P's side mirror strikes D's sign?

Negligence is the creation of an unreasonable risk to a foreseeable plaintiff that causes personal injury or damage to property and is comprised of duty, breach, cause, and damage.

D as a landowner owes a general duty of due care to maintain a reasonably safe premises regardless of the status of the plaintiff. Placing her sign right at the edge of the curb is not a breach of her general duty. She is simply making a cosmetic decision as to where she would

like her sign. It's unreasonable to assume that she this somehow is a breach of her general duty of due care because even though the sign is right at the edge of the curb, P would have had to have seen it pulling in. Ultimately a judge will decide if a duty was owed or not. It's unlikely that D will be liable for common law negligence. *Careless to P's sign*

Is D liable for negligence per se by violating the local ordinance and placing her sign at the edge of the curb?

Negligence per se is a presumption of negligence when a defendant violates a statute or ordinance. The plaintiff must be part of the class that the statute intends to protect, and the harm incurred must be the type of harm the statute intended to prevent. This shifts the burden of proof to the defendant who may rebut with an excuse for the violation. *Drone*

Good Here, the violation is intended to make the town more attractive. It has absolutely no relation to P or the type of harm incurred by P. Therefore, D will not be liable for negligence under a theory of negligence per se.

Is D liable for negligence when P was struck in the head by a pan?

Negligence defined supra.

403 Here, regardless of P's status, D owes a general duty of due care to reasonably maintain a safe premises. In this case, P is an invitee as she originally drove to the doughnut shop to purchase doughnuts, therefore she is owed a duty to have unsafe conditions remedied. However, when she crosses the threshold of walking behind the counter and into the kitchen, she is going beyond the scope of an invitee and is a trespassor as she has no consent to be there. Trespassors are generally owed no duty unless they are known, they are frequent or tolerated, the defendant's wanton or willful act caused harm, or there was a dangerous condition present which the defendant knew about. A pan hanging or resting above a persons head does not rise to the level of a dangerous condition, and there is nothing to support that D knew that it could be dangerous. Therefore, even though P could use res ipsa loquiter as a theory for breach, D did not owe a duty to P, therefore D will likely not be liable for negligence. *was about P's head*

Is D liable for False imprisonment when she locks P inside?

False imprisonment is the intentional restraint of the physical liberty of another, and the defendant must be aware of the restraint or harmed by it. Here, although there was an unlocked door for P to escape, P was not aware of the exit. P was aware of the restraint because she yelled "let me out". She was under the belief that she was restrained to the room. D may invoke self defense and argue that P had thrown an object at her, therefore she was in fear a harmful or offensive touching and by locking D inside the room she did so as a means of reasonable force to get away from P.

END OF EXAM