MONTEREY COLLEGE OF LAW
HYBRID
TORTS SEC. 2
MIDTERM EXAMINATION
FALL 2024
PROF. L. HOLDER

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

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QUESTION 1

Lisa had some eight-week-old puppies to sell. Bob and Carol went to her house in Bakersfield, California, to look at them. Lisa invited them into the living room where the puppies were located and said, "Whatever you do, don't go into the room at the end of the hall."

As they were playing with the puppies, the largest puppy gave Carol a nasty bite on her hand. Lisa told Bob to go to the bathroom near the end of the hall to retrieve some bandages from the cabinet.

Forgetting Lisa's earlier admonition, Bob opened the door at the end of the hall, thinking it was the bathroom, and entered a darkened room where Lisa kept an enormous pet gray wolf. The gray wolf jumped between Bob and the door and bared its teeth in a menacing way and growled low in its chest. Frightened, Bob froze in place.

In attending to Carol's bite, Lisa mistakenly grabbed a bottle of rubbing alcohol, thinking it was a bottle of hydrogen peroxide. When Lisa poured the alcohol into Carol's wound, Carol screamed. Hearing Carol's scream, Bob lunged past the gray wolf, which gave him a deep gash to the back of his leg as it grabbed and tore away part of Bob's pant leg as he passed. Shaken and injured, Bob and Carol fled Lisa's house.

Bob and Carol filed a lawsuit against Lisa in strict liability.

1. What claims may Carol reasonably raise against Lisa, what arguments may Lisa reasonably make, and what is the likely outcome? Discuss.

2. What claims may Bob reasonably raise against Lisa, what arguments may Lisa reasonably make, and what is the likely outcome? Discuss.

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QUESTION 2

For four years, Lisa & Jason have patronized their favorite Taft, California, restaurant, El Leoncito, at least twice a month. Their favorite waiter is Joe, who always serves them.

Lisa is highly allergic to pepitas, which are Styrian pumpkin seeds. In fact, Lisa is allergic to all squash. Joe knows about Lisa's squash allergy, and per restaurant policy, always asks when taking the order if Lisa and Jason have any allergies and confirms Lisa's squash allergy.

Lisa's favorite dish at EL is Pork Tamales with Mole Coloradito, which is only available in November and December. In November, Lisa & Jason went to EL so that Lisa could order the tamales. Joe was not working, so Jan waited on Lisa & Jason.

Because Jan knew Lisa & Jason were regulars, and always sat in Joe's station, Jan told Lisa & Jason that Joe was swept up in a deportation raid. Everyone was very upset. Without looking at the specials menu, Lisa ordered her favorite tamales. Jan forgot to ask Lisa & Jason about allergies.

What Lisa would have seen had she read the menu is that the chef had changed the mole recipe, which previously used sunflower seeds, to use pepitas instead.

The food came out and Lisa dove into her tamales with gusto. Within one minute of taking the first bite, Lisa's throat started to constrict. She could not speak. She gestured wildly at Jason to help her! Jason shouted, "Is there a doctor in the house!?" Doctor Carter was in the house, but she was enjoying her tamales, and did not want to get involved. Jason thought Lisa had a chunk of pork stuck in her throat, and so administered the Heimlich maneuver. Seeing no progress, he became more vigorous and ended up breaking two of her ribs.

Lisa lost consciousness from lack of oxygen and turned blue. Jason was hysterical. Another restaurant patron recognized that Lisa was having an allergic reaction and administered her personal EpiPen. Lisa resumed breathing and eventually recovered from her painful broken ribs.

Lisa and Jason filed a lawsuit against EL and Dr. Carter in negligence.

1. What claims may Lisa reasonably raise against EL, what arguments may EL reasonably make, and what is the likely outcome? Discuss.

2. What claims may Lisa reasonably raise against Dr. Carter, what arguments may Dr. Carter reasonably make, and what is the likely outcome? Discuss.

3. What claims may Jason reasonably raise against EL, what arguments may EL reasonably make, and what is the likely outcome? Discuss.

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QUESTION 3

In the latest case of mistaken identity involving the controversial use of facial recognition software to catch thieves, a California man is suing Sunglasses Hut after the company relied on error-prone facial recognition technology to falsely accuse him of felony armed robbery of a Sunglasses Hut store.

On Saturday, Murphy went to the South Coast Plaza shopping mall to purchase some new sunglasses. Shortly after he entered the Sunglasses Hut store, he saw two workers whispering and surreptitiously gesturing toward him. Murphy chalked up the odd behavior to the fact that he was 72 years old and probably not a typical Sunglasses Hut shopper, but Murphy enjoyed expensive sunglasses.

As Murphy was browsing and trying on glasses, he saw a large and imposing mall security guard, who obviously never missed a day at the gym, enter the store. The guard, Roy, scanned the store, then made a beeline for Murphy. Murphy was immediately intimidated by Roy's presence and movement toward him.

Roy, a man of few words, took Murphy by the arm and said, "You are coming with me." Alarmed, frightened, and knowing he could not overpower Roy, Murphy complied. Roy took Murphy to a windowless holding room, pushed him inside, and said, "You will wait here." Roy then locked the only door. On the way to the holding room, Murphy's old sunglasses fell off the top of his head and Roy stepped on them, breaking them at the nose bridge.

Forty minutes later, Roy returned with the Sunglasses Hut store manager and said, "You can go." The store manager explained that the store was robbed the previous Sunday, and the perpetrator was caught on video. The store uses artificial intelligence to scan the faces of people entering the store for known shoplifters. When Murphy entered the store, the AI system identified him as last week's robber, so the workers called mall security. Further investigation by human eyes confirmed that Murphy was not last week's robber.

Murphy filed a lawsuit against Sunglasses Hut.

What intentional or strict liability torts may Murphy reasonably raise against Sunglasses Hut, what arguments may Sunglasses Hut reasonably make, and what is the likely outcome? Discuss.

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TORTS HYB SEC. 2 HOLDER 2024 FALL
QUESTION 1 – INTENTIONAL TORTS

Murphy v. Sunglasses Hut

False imprisonment
a. Defined: An intentional act or omission by the defendant that causes the plaintiff to be ***confined or restrained to a bounded area***
b. Confinement or restraint includes threats of force, false arrests, and failure to provide a means of escape when under a duty to do so

See the attached outline.

Remedies: general, special, punitive damages

Defenses: Shopkeepers privilege

Assault
a. Defined: Intentional creation by the defendant of a ***reasonable apprehension*** of immediate harmful or offensive contact to the plaintiff's person
b. "Apprehension" need not be fear
c. Words alone generally are not enough

Two incidences: (1) shown the shiv , (2) threat to kill (words not enough)

Remedies: general, special, punitive damages

Defenses: none

Battery
a. Defined: A ***harmful or offensive contact*** with the plaintiff's person intentionally caused by the defendant
b. "Person" includes things connected to the person
c. Contact is deemed "offensive" if the plaintiff has not expressly or impliedly consented to it

Remedies: general, special, punitive damages

Defenses: none

Vicarious liability
Imposition of liability on one person for the actionable conduct of another.
See the attached outline.

Was there an agency or other special relationship between Sunglasses Hut and the sheriff, so that Sunglasses Hut is responsible for the sheriff's actions?

Same question regarding the three assailants.

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ANSWER OUTLINE

QUESTION 2 – STRICT LIABILITY

Carol v. Lisa

Duty to Invitee –

Strict liability – domestic animal (puppy)

General rule

California statute

Defenses – assumption of risk; comparative negligence

Damages: general, special

Bob v. Lisa

Duty to Trespasser – Bob when entering last room

Strict liability – wild animal (gray wolf)

Defenses – assumption of risk; comparative negligence

Damages: general, special

TORTS HYB SEC. 2 HOLDER 2024 FALL
QUESTION 3 – NEGLIGENCE

TORTS HYB SEC. 2 HOLDER
QUESTION 3 – NEGLIGENCE
El Leoncito hypothetical

Lisa v. EL

Negligence: Prima facie elements: duty, breach, causation, damages.

Duty / Standard of care:

- **Reasonable Person Standard:** A duty of care arises if a ***reasonable person*** in the actor's position should perceive that her conduct places someone at an unreasonable risk of harm.
- **Custom or Usage (asking about allergies):** Custom or usage may be introduced to establish the standard of care in a given case. However, customary methods of conduct do not furnish a test that is conclusive for controlling the question of whether certain conduct amounted to negligence.
- **Voluntary undertaking (failing to ask about allergies when have always done so)**: when a person voluntarily assumes a duty not imposed by law, that person can be negligent if he or she discontinues the action without proper notice.

Breach: Where the defendant's conduct falls short of that level required by the applicable standard of care owed to the plaintiff, she has breached her duty.

Causation:

- **"But For" Test:** An act or omission to act is the cause in fact of an injury when the injury would not have occurred ***but for*** the act.
- **Proximate Cause (Legal Causation)**: doctrine of proximate causation is a ***limitation of liability*** and deals with liability or nonliability for unforeseeable or unusual consequences of one's acts. The defendant is liable for all harmful results that are ***the normal incidents of and within the increased risk caused by*** his acts. In other words, if one of the reasons that make defendant's act negligent is a greater risk of a particular harmful result occurring, and that harmful result does occur, defendant generally is liable
- **Negligence of Rescuers:** Generally, rescuers are viewed as foreseeable intervening forces, and so the original tortfeasor usually is liable for their negligence.

Damages: Broken ribs (inflicted by Jason), medical bills, lost wages, general damages.

- **Vicarious Liability:** Vicarious liability is liability that is derivatively imposed. In short, this means that one person commits a tortious act against a third party, and another person is liable to the third party for this act. This may be

so even though the other person has played no part in it, has done nothing whatever to aid or encourage it, or indeed has done everything possible to prevent it. This liability rests upon a special relationship between the tortfeasor and the person to whom his tortious conduct is ultimately imputed.

- **Respondeat Superior:** An employer will be vicariously liable for tortious acts committed by her employee if the tortious acts occur ***within the scope of the employment relationship***.

Defenses:

- **Contributory / comparative negligence** (failure to read the menu, not carrying an EpiPen)
- **Implied Assumption of Risk: 1) Knowledge of Risk, 2) Voluntary Assumption** (eating at a restaurant with severe allergy)

Conclusion: EL is liable / not liable for damages to Lisa for negligence.

Lisa v. Dr. Carter.

Negligence, supra

Duty: **No Duty to Act.** As a general matter, no legal duty is imposed on any person to affirmatively act for the benefit of others. "The State does not require, and the [licensed doctor] does not [pledge], that he will practice at all or on other terms than he may choose to accept." *Hurley v. Eddingfield*

Conclusion: Dr. Carter is not liable for damages to Lisa.

Jason v. EL

Negligent Infliction of Emotional Distress

Duty: A duty to avoid negligent infliction of emotional distress may be breached when the defendant creates a foreseeable risk of physical injury to the plaintiff. The plaintiff usually must satisfy two requirements to prevail: (1) plaintiff must be within the "zone of danger"; and (2) plaintiff must suffer physical symptoms from the distress.

Bystander Not in Zone of Danger Seeing Injury to Another

Traditionally, a bystander outside the "zone of danger" of physical injury who sees the defendant negligently injuring another could not recover damages for her own distress. A majority of states now allow recovery in these cases as long as (1) the plaintiff and the person injured by the defendant are ***closely related***, (2) ***the plaintiff was present*** at the scene of the injury, and (3) the plaintiff ***personally observed or perceived*** the event. Most of these states also drop the requirement of physical symptoms in this situation.

Damages: General damages for emotional distress.

- Vicarious Liability: supra.

Defenses: Supra – nothing applies

Conclusion: EL is liable / not liable to Jason for damages for NIED.

95

1)

Transaction governed by the UCC, Article 2.

Contract law is generally governed by common law. Article 2 of the Uniform Commercial Code governs the sale of goods, and specifically excludes transactions related to real estate, intangibles, services and construction contracts. Goods are tangible, movable things.

Here, Sammuel and Barry are deciding the new home of various livestock. Livestock are tangible, movable things.

Therefore, this agreement will fall under the purview of Article 2.

Were there adequate elements for Sammuel and Barry to form a contract?

A contract is a promise or a set of promises for the breach of which the law recognizes a remedy, or under which the law recognizes performance as a duty. A valid contract requires an offer, an open offer, acceptance, and consideration.

Additionally, a bilateral contract is one in which parties exchange mutual promises. Both parties have a right, and both parties have a duty.

Here, Sammuel and Barry are negotiating the sale of livestock. We will continue to evaluate the individually required elements for successful contract formation below.

Was Sammuel's first email to Barry a valid offer for the sale of the cattle?

An offer is a promise to do or not do something that one has a right to otherwise do. An offer presents something to be accepted, and which forms a contract upon acceptance. Additionally, an offer must capture the intentions of the parties, it must relay clear and definite terms, and it must be known to the parties so as to be able to be accepted.

Initially, Sammuel emailed Barry on September 1st with the offer to sell his herd of cattle. Sammuel's original email to Barry included the intentions of the parties (Sammuel, to sell his herd to Barry), the goods of interest (herd of cattle), the price ($50,000), and a timeline to accept ("let me know by the end of the month"). Sammuel additionally included his clear intentions to seek other buyers should Barry not be interested; this is of significance, and will be revisited later ("if you don't want the cattle, I'll reach out to other people.").

Thus, Sammuel's email on September 1 satisfies all requirements of an offer.

Did Barry successfully accept Sammuel's offer for the sale of cattle?

An acceptance is an offeree's assent to an offeror's terms, by express act or implied conduct, through a manner requested or authorized by the offeror.

Here, the majority of the exchange occurs via email, excepting Barry's September 20th attempt to mail acceptance of Sammuel's offer. If an offeror does not stipulate a specific manner of acceptance to their offer, a reasonable manner is acceptable. Sammuel did not require acceptance by any specific means. Therefore, manner of acceptance (email versus snail mail) is not truly the issue at hand in this question.

The more critical question is whether or not Barry's initial response to Sammuel on September 5th was in any way an assent to proposed terms. Conversely, it was effectively a declination of Sammuel's offer. Upon receiving Sammuel's first message, Barry responded with language and phrasing that read strongly as a counteroffer, which is in

essence a rejection of the original offer received. Barry effectively communicated his disinterest in Sammuel's offer for the herd of cattle by saying, "Yes, I did talk about increasing my herd of cattle *but since then*, I decided to focus on [other animals]" (italics added for emphasis). Regardless of any other subsequent actions by Barry to try to recoup the sale, Sammuel would have had arguably clear reason to understand Barry's disinterest in the cattle--and therefore reason to pursue other buyers, just as he noted he would in his original missive to Barry.

fantastic

Thus, Barry did not accept Sammuel's initial offer. Rather, Barry terminated Sammuel's offer and then tried to revisit the opportunity too late on September 20th.

Was Sammuel's offer still open when Barry tried to accept it on September 20?

An offer is open until terminated or revoked. An offer can be terminated by acceptance, rejection, death of one of the parties, or lapse of time. An offer can be revoked by the offeror any time before acceptance unless held open through an option contract with the support of consideration, or unless it was a firm offer in writing by a merchant.

Here, as previously discussed, Barry's response on September 5th effectively acted as a rejection of Sammuel's offer to sell the cattle herd for $50,000.

Therefore, the offer was no longer open when Barry tried to revisit and revive it through his written letter on September 20. Sammuel had rightfully moved on.

Was there consideration?

Consideration is the bargained for exchange of legal value.

While we have already established the death of this transaction, we can review the fact that this would have been a bilateral contract with clearly outlined exchange between the parties. Sammuel would have sold and passed title of his cattle to Barry in exchange for $50,000.

Therefore, had there been no other issues, consideration would have been satisfied for contract formation. great

Would there have been any contractual issues due to the statute of frauds? great issue spotting

The statute of frauds extends to transactions related to marriage, contracts that cannot be performed in one year, real estate, executor guarantees of an estate, suretyship, and the sale of goods over $500. Per the statue, these types of transactions must be in writing. Additionally, this writing would require clear identification of the parties, the quantity of goods, and signature or authorization of the party to be charged.

Here, we are most certainly dealing with a transaction over $500. While we have established that the offer was rejected, Sammuel's initial email would have satisfied all of the requirements of a writing for the statute of fraud--short of Barry's acceptance. In addition to the terms already outlined above (cost and timeline), Sammuel's email contained the specifically required quantity (the herd), and it was addressed and sent directly to Barry from Sammuel himself. Across the collection of documents that would have included Barry's written assent, the requirements of the writing for this high value of a transaction would have been met.

Therefore, there likely would not have been any issues presented due to protections extended by the statute of frauds. great

Could Barry claim that he did not intend to decline the cattle when asking about emus and buffalo?

yes

An offeror is entitled to know whether his offer is clearly accepted or not. If Barry had intended to communicate an inquiry that did not negate Sammuel's original offer, it would have been his responsibility to be more clear in his response or more qualifying in his additional questions. By responding with a negation ("Yes I did...but...") and an inquiry about entirely different animals, Barry has objectively communicated alternate preferences and priorities for any business transactions for available livestock. Whether Barry intended a conditional acceptance or simply wanted additional time to evaluate, it would have been incumbent upon him to communicate more clearly his desire to continue contemplating the original offer.

Therefore, Barry would be in a weak position to argue that he did not intend to terminate Sammuel's offer with his September 5th message.

Conclusion: there was no contract between Barry and Sammuel.

In summary, Barry's response on September 5th rejected Sammuel's September 1st offer and closed further opportunity for this deal under Sammuel's original offer. While Barry's later steps hint at his potential understanding of a timeline to consider through the end of the month, under which acceptance with the mailbox rule could apply, he unfortunately let the cattle herd out of the pen when expressing his interest in emus and buffalo instead. Therefore, there was no contract between Barry and Sammuel for the sale of the cattle.

Fantastic

2)

7:30 planning

7:45 writing

8:30 next

good but erase next time I like your planning margin

Transaction governed by the UCC — Excellent. Start w/ applicable law!

Perfect I R A C!

Generally, contract law is governed by common law. Transactions relating to the sale of goods fall under the purview of Uniform Commercial Code's Article 2. Article 2 would not extend to services, construction contracts, intangibles or real estate. yes

A hybrid contract that includes both goods and services can be analyzed under the predominant purpose test to determine which law would apply.

good catch

Here, Brad is purchasing an RV from Camping World. While some services do seem to have been included in his discussion with camping world, it would be difficult to maintain that Camping World's agreement to clean and detail the RV were of greater significance to the transaction than purchase of the RV itself.

Therefore, this contract will be reviewed under the UCC.

Was the modification documented adequately under the statute of frauds?

The statue of frauds requires agreements to be in writing when related to marriage, contracts that cannot be completed in one year, estate executorships, suretyships, real estate, and goods worth $500 or more.

1 2 3 4 5 6/6, great

Here, Brad and Camping World satisfied this requirement at the time of Brad's initial purchase with the signed sales order. Unfortunately for Brad, the discount offered by the sales manager was not also documented in writing. This would have been significantly helpful, and is possibly a point of contention that will hurt Brad's claim.

Therefore, the modification was not adequately documented under the statute of frauds. However, we will discuss non-integrated agreement and parole evidence in more detail below.

Was there good faith in the modification of the purchase terms?

Under the UCC, contract modifications are possible when completed in good faith; additional consideration would not be required.

Here, Brad contacted Camping World on February 5th, upon seeing a lower price for a similar RV. As the facts have been provided, the $1,000 discount form Camping World appears to have been offered by the sales manager and was not explicitly requested by Brad. This gesture, even with the qualification that the model Brad purchased was in better shape, was accepted by Brad who "thanked the manager and hung up."

Thus, there initially may have been good faith between the parties with the offer to modify the price term of this contract. This substantiates the validly of Brad's claim to the lower price.

Was there good faith in Campus World's interactions following the verbal price reduction?

Under the UCC, good faith is assumed and required of all parites.

The actions by Campus World and its representatives regarding the February 5th price modification conversation serve to demolish arguments of good faith by the vendor. After receiving his camper and paying in cash as agreed, Brad received a written invoice for the remaining amount of the original price. When re-engaging with the sales manger, Brad was provided seemingly brand new information on additional, conditional terms. The sales manager does not appear to have discussed that the store would "take of $1,000 if [Brad] didn't have [them] clean and detail the RV" in their February 5th call. As established in Lucy v. Zehmer, contract terms are evaluated objectively and based on the fact and circumstances that are openly communicated to parties. Weight is not given to intentions that a party may have *meant* or *thought* but did not express, therefore the sales manager is in a terrible position to claim these significantly altered terms that he did not express to Brad to even be able to accept.

great catch →

only essay in class where someone addressed this fantastic

Secondly--regarding the new terms: the sales manager's attempt to introduce these new terms orally undermines his argument and the store's credibility. The manager ultimately claimed that "I don't have to give you that $1,000 discount, that deal wasn't in the written contract," right after attempting to defend the remaining balance Brad owed with new terms that *also were not in the written contract.* This is contradictory. – yes

Therefore, Camping World and its agents have taken actions and made statements that display poor business ethics and faulty arguments. sure

Was the pre-printed sales contract form an integrated contract to begin with? Can parol evidence about the sales manager's offered discount apply?

Parol evidence is oral evidence that can be examined in relation to contract formation questions and disputes. If an agreement is wholly integrated, parol evidence is generally not allowed to modify, add, or subtract from the terms of a written agreement. If an

agreement is partially integrated, parol evidence can be accepted to help supplement understanding of vague terms or further intentions of the parties.

Here, Camping World's sales manger is attempting to claim that the pre-printed sales contract was a wholly integrated agreement. By defaulting to the argument that only the written terms would prevail, the manager is reneging on his conversation with Brad about the price reduction. Once again, the store manager is unfortunately trying to glean benefit from all sides of his argument. While he may try to return only to the terms on the parties' pre-printed sales contract--Camping World unfortunately (for them) never met the condition of a fully integrated agreement to begin with. While the form Brad signed contained the stipulation that "This contract may only be rescinded, changed, or modified in writing, signed by both parties," the contract also seems to have been missing any mention of the vehicle cleaning and detailing incentive that was offered from the get-to. This substantiates that this sales order was already not an integrated writing.

Therefore, Brad's agreement was only partially integrated, and parol evidence should be allowed to support any claim he may make.

Was there successful accord and satisfaction?

An accord and satisfaction is an agreement to substitute alternate performance so as to discharge a debt. Accord is the agreement, and satisfaction is the discharge. It is incumbent upon the party being charged to substantiate that there was a meeting of the minds in the acceptance of the accord and satisfaction.

Here, Brad did have a conversation with Camping World on March 1st that stipulated his disagreement with the remaining balance on his invoice. Brad would have been better positioned to more clearly communicate that his check was intended as an accord and satisfaction, however the "For Full Payment" memo on his check may prevail here.

Additionally, the fact that the merchant cashed the check supports Brad's position. (Although the fact that the sales manager called Brad to threaten suit for the remaining $500 does not. It helps that they cashed the check first, then contacted Brad after.)

Therefore, Brad has a good argument for a successful accord and satisfaction. yes

Overall conclusion: Brad has a good argument to fight the remaining $500 claim from Camping World. → nice how you address the call of the question

The nuances of this transaction are unfortunately messy for Brad. yes Overall, based on the totality of the circumstances, there are substantial details that will support Brad's claim to deny the remaining $500 that Camping World is attempting to collect. As long as Camping World does not outright deny some of the conversations that seem to have occurred between Brad and the sales manager, those details can only reveal some gaps, holes, and contractions in Camping World's argument in a way that discredits their good faith dealings with their customer.

you got it!

END OF EXAM