

Monterey College of Law - Hybrid
Torts – Section 1
Fall 2024
Prof. Payne-Tsoupros

Instructions:

You have three hours for this midterm examination. Your midterm consists of two essay questions and twenty-seven multiple-choice questions. I recommend that you spend one hour on each of the essay questions (for two hours total on the essay questions) and one hour on the multiple-choice questions. Each essay question is worth one-third of your midterm grade and the multiple-choice questions comprise the remaining one-third of your midterm grade. By taking this midterm examination, you attest this examination was taken closed book and without consultation with others.

Answer the multiple-choice questions (Question 3) in Exemplify. To select the answer which you believe is correct, click on that answer. Use the 'Next' and 'Previous' buttons to navigate between questions. Review your answers for accuracy before you finish.

For each question, unless stated otherwise, assume the events take place in a jurisdiction that recognizes pure comparative negligence with joint and several liability.

Good luck!

Torts-Sec. 1
Fall 2024
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ESSAY QUESTION 1

Terri saw Anna across the street. Terri was upset with Anna from a previous dispute. Terri marched across the street and tried to punch Anna. Anna ducked out of the way, and Terri hit Jess instead, knocking her down.

Terri then walked to her car and drove away. As she drove away, a sudden storm developed and the road began to flood. Terri knew that Mark's house was further down the block. Terri drove her car up Mark's driveway to get out of the floodwater and wait out the storm. In doing so, Terri damaged Mark's flower garden next to his driveway. When the storm passed, Terri drove home.

Analyze Terri's potential intentional tort liability, including any privileges she may have.

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ESSAY QUESTION 2

Emily was driving home from work one night. Emily did not realize her headlights were not on. A local ordinance required vehicles to be equipped with a muffler to prevent excessive noise. Emily's car did not have a working muffler. It began to rain heavily. The road was becoming slick and visibility was poor. Frank was driving an oncoming car. He was singing along to his favorite music and did not notice that his car drifted into oncoming traffic. Because Emily did not have her headlights on, Frank did not see her when his car crossed into oncoming traffic. Emily swerved hard to the right trying to avoid a collision with Frank's car but was unable to do so, and their cars collided. Emily suffered serious injuries.

Emily sues Frank in negligence for the injuries she sustained. Analyze Emily's claim, including any defenses that Frank may have.

ESSAY QUESTION 1 (max 100 points)

BATTERY	MAX POINTS	YOUR POINTS
Issue identification	5	
<p>Rule (RST)</p> <p>Intend to cause contact w/ the person of the other = ---Acts with purpose of producing the contact OR ---Acts knowing that the consequence is substantially certain to result Actor's conduct causes such a contact Contact causes bodily harm or is offensive ---[Offensive = . . .] Transferred intent = if D has requisite intent to commit battery on one person and the resulting contact is with another person, D will be liable to that other person, even though he was not D's target. (<i>Talmage v. Smith</i>)</p>	10	
<p>Application</p> <p>tried to punch Anna → acting with purpose of producing contact. Yes intent for Terri. ---tried to punch Anna → also intent via knowledge to a substantial certainty for Terri. Anna ducked out of the way → no contact w/ Anna. Anna ducked out of the way → no contact so cannot be H/O contact w/ Anna. hit Jess instead, knocked her down → yes contact w/ Jess. Jess knocked down → bodily harm. Yes harm to Jess. transferred intent → Terri had intent for battery on Anna and resulting harmful contact was with Jess. Intent "transfers" to Jess. → yes intent w/ Jess.</p> <p>Not liable to Anna for battery. Yes, liable to Jess for battery.</p>	10	

ASSAULT	MAX POINTS	YOUR POINTS
Issue identification	5	
<p>Rule (RST)</p> <p>Intends to cause anticipation of imminent and H/O contact. Intent = ---Acts with purpose of producing imminent H/O contact or anticipation of such contact or ---Acts w/ knowledge that such a contact or anticipation is substantially certain to result Other is placed in anticipation of such H/O contact</p>	5	
<p>Application</p> <p>tried to punch Anna → acting with purpose of producing imminent harmful contact. Yes intent. ---tried to punch Anna → also intent via knowledge to a substantial certainty. Anna ducked out of the way → yes anticipation of H/O contact.</p> <p>Yes, liable to Anna for assault.</p>	10	

TRESPASS TO LAND	MAX POINTS	YOUR POINTS
Issue identification	5	
<p>Rule (RST)</p> <p>Intent to make physical contact with, remain on, or cause another person or thing to remain on land in another's possession and Enters or causes entry into the land of another, remains on land in another's possession, or fails to remove something the actor is duty bound to remove</p>	5	
<p>Application</p> <p>Terri drove her car up the Mark's driveway and stayed until the storm passed → yes, intent by Terri to make physical contact with and stay on Mark's land. Yes intent. Terri drove her car up the Mark's driveway and stayed until the storm passed → enters into and remains on Mark's land. Yes entry.</p> <p>Yes, liable to Mark for trespass (absent a privilege).</p>	10	

PRIVILEGE: PRIVATE NECESSITY	MAX POINTS	YOUR POINTS
Issue identification	5	
Rule (<i>Vincent v. Lake Erie</i>)	5	
Force or condition beyond defendant's control Actor takes direct intervention injuring another's property (usually trespass) to avoid greater injury The actor remains responsible for actual damage caused		
Application	10	
sudden storm → force beyond Terri's control Terri entered Mark's land and property without permission → Terri intervened via trespass onto Mark's property road was flooding as Terri was driving home → Terri is avoiding greater injury of threat to her safety/life damaged flower garden → actual damage; Terri needs to pay for damage to flower garden		
Yes, private necessity; no liability for trespass but must pay for damage to flower garden		

OVERALL ORGANIZATION/STRUCTURE FOR ESSAY 1	MAX POINTS	YOUR POINTS
Appropriate use of IRAC structure throughout Requires little to no need to re-read previous portions to understand analysis and award substantive points.	10	

OVERALL WRITING QUALITY FOR ESSAY 1	MAX POINTS	YOUR POINTS
Writing generally has a good and logical flow and is easy to follow and understand Formal academic English with rules of grammar generally followed.	5	

ESSAY QUESTION 1 TOTAL POINTS (max 100) _____

ESSAY QUESTION 2 (max 100 points)

NEGLIGENCE (Emily v. Frank)		MAX POINTS	YOUR POINTS
Overall issue identification (negligence)		n/a	
Overall rule (elements of negligence)		5	
sub-issue – duty – reasonable person standard		1	
	rule - reasonable person standard: the care that would be exercised by a reasonably prudent person under the circumstances to determine reasonable care under the circumstances: Hand Formula/Restatement § 3 ---foreseeable risk of harm ---foreseeable severity of harm ---burden of precautions	2	
	application foreseeable risk of harm → high – driving car into ongoing traffic can easily cause accident foreseeable severity of harm → high - life threatening burden of precautions → low – stay in the correct lane yes, duty to pay attention while driving and stay in correct lane	3	
sub-issue – breach		1	
	rule - breach = conduct that falls below the standard of care established by law for the protection of others against the unreasonable risk of harm	2	
	application standard of care established via reasonable person standard □ stay in correct lane Frank did not stay in correct lane, therefore he breached standard of care yes, breach	3	
sub-issue – cause-in-fact – but-for		1	
	rule - but-for test = but for D's breach of the standard of care, P would not have suffered injury	2	
	application Frank's breach → not staying in the correct lane Frank did not stay in correct lane and drove into oncoming traffic → but for Frank's breach, Emily wouldn't have been injured yes, cause-in-fact	3	
sub-issue – proximate cause		1	
	rule (<i>Wagon Mound</i> cases, <i>Palsgraf</i>): the type of damage that plaintiff suffered was reasonably foreseeable to be caused by the defendant's breach AND the plaintiff was foreseeably within the risk of harm (zone of danger) created by the defendant's breach	2	
	application car accident → yes, reasonably foreseeable that breach (crossing into oncoming traffic) would lead to car accident Emily, driver → yes, fellow drivers are foreseeably harmed by Frank crossing into oncoming traffic yes, proximate cause	3	
sub-issue – damage		1	
	rule - P must suffer damage or harm as a result of D's breach	2	
	application harm □ Emily suffered serious injuries yes, damage	3	
ORGANIZATION/STRUCTURE Appropriate use of IRAC and mini-irac structure throughout Requires little to no need to re-read previous portions to understand analysis and award substantive points.		5	

DEFENSE: COMPARATIVE NEGLIGENCE (Emily’s conduct)			MAX POINTS	YOUR POINTS
Overall issue identification (comparative negligence)			5	
Overall rule (elements of comparative negligence + effect of comparative negligence)			9	
sub-issue – duty – NPS (muffler)			1	
rule – If NPS applies, then duty = comply w/ the statute. for NPS to apply = ---P must be a member of the class of persons . . ---P must suffer the kind of harm . . . ---Applying the standard as the measure of care would be appropriate...			2	
application ordinance for protection of drivers and others on the road → Emily is a driver (yes) ordinance to prevent excessive noise → Emily was injured due to no headlights + Frank driving into oncoming traffic, not due to excessive noise (no) standard is appropriate under the circumstances → requirement to maintain muffler, does not have criminal or other context where may not be appropriate to use standard to determine tort liability (yes) no, NPS does not apply			3	
sub-issue – duty – reasonable person standard (muffler; headlights)			1	
rule - reasonable person standard: the care that would be exercised by a reasonably prudent person under the circumstances to determine reasonable care under the circumstances: Hand Formula/Restatement § 3			1	
application foreseeable risk of harm foreseeable severity of harm burden of precautions	muffler <input type="checkbox"/> variable – possible hearing damage, prevent hearing nearby events <input type="checkbox"/> low/variable – maybe higher to people nearby, more of distraction <input type="checkbox"/> may be expensive to fix yes, duty to have working muffler	headlights <input type="checkbox"/> high - high – driving at night without headlights means other cars can’t see, can easily cause accident <input type="checkbox"/> high – life threatening <input type="checkbox"/> low – turn headlights on yes, duty to put headlights on	2 muffler 2 lights	
sub-issue – breach (muffler; headlights)			1	
rule - breach = conduct that falls below the standard of care established by law for the protection of others against the unreasonable risk of harm			1	
application standard of care established via reasonable person standard	muffler <input type="checkbox"/> duty to have working muffler; Emily did not yes, breach	headlights <input type="checkbox"/> duty to turn on headlights; Emily did not yes, breach	2 muffler 2 lights	
sub-issue – cause-in-fact – but-for (muffler; headlights)			1	
rule - but-for test = but for P’s breach of the standard of care, P would not have suffered injury			1	
application - muffler Emily’s breach → not having working muffler Frank couldn’t see Emily’s car because her headlights weren’t on & they collided → but for Emily’s breach, Emily still would have been injured in the same way. no cause-in-fact	headlights Emily’s breach – headlights not on Frank couldn’t see Emily’s car because her headlights weren’t on & they collided → but for Emily’s breach, Emily wouldn’t have been injured yes, cause-in-fact		2 muffler 2 lights	
sub-issue – proximate cause (headlights)			1	
rule (Wagon Mound cases, Palsgraf): the type of damage that plaintiff suffered was reasonably foreseeable to be caused by the plaintiff’s breach AND the plaintiff was foreseeably within the risk of harm (zone of danger) created by the plaintiff’s breach			2	
application car accident → yes, reasonably foreseeable that breach (driving at night with headlights off) would lead to car accident Emily, driver → yes, foreseeable that someone could get in car accident by driving at night with headlights off yes, proximate cause			3	
sub-issue – damage (headlights)			1	
rule - P must suffer damage or harm as a result of P’s breach			2	
application harm <input type="checkbox"/> Emily suffered serious injuries yes, damage			3	
ORGANIZATION/STRUCTURE Appropriate use of IRAC and mini-irac structure throughout Requires little to no need to re-read previous portions to understand analysis and award substantive points.			5	

OVERALL WRITING QUALITY FOR ESSAY 2	MAX POINTS	YOUR POINTS
Writing generally has a good and logical flow and is easy to follow and understand Formal academic English with rules of grammar generally followed.	5	

ESSAY QUESTION 2 TOTAL POINTS (max 100) _____

1)

Terri=T

Anna=A

Jess=J

Mark=M

b/c=because

Assault

Is T liable to A for assault when T tried to punch A? An actor is liable for assault if they intentionally cause another, through threat of force or attempted contact, causes another to reasonably anticipate imminent harmful or offensive contact with their person.

Here T intended to cause harmful bodily contact with A b/c T tried to punch A. T's attempt to punch A caused A to anticipate imminent harmful or offensive contact b/c A ducked to avoid the punch. T only did not make contact b/c A ducked so A's anticipation of imminent bodily contact was reasonable.

T is liable to A for assault.

Battery

Is T liable to J for battery when she missed A and struck J? Battery is the intentional, unlawful contact with another that is either harmful or offensive. The Intent required for battery may transfer from the torts of assault, false imprisonment, trespass to land, or trespass to chattel. Intent may also transfer between targets. Intention to commit an intentional tort to 1 person transfers to the person who the tort was actually committed against.

Here T swung with the intent to hit A, as it is noted that T attempted to punch A. T also made harmful contact with J as T punched J with enough force to knock her down. Though T will claim that she is not liable to J for battery b/c she did not intend to make contact with J, this argument will

fail because intent transfers from her assault of A to her battery of J because assault and battery are in the group of torts that intent can transfer between and intent transfers from the person one means to commit a tort against to the person who it is actually committed against.

T is liable to J for battery.

Trespass to land

Is T liable to M for trespass to land for driving onto his land to escape flood waters? One is liable for trespass to land if they intentionally enter or remain on another's land, or intentionally cause another to enter or remain on another's land without permission or legal authority. No damages are required to prove this tort.

Here T drove into M's driveway to avoid flood water. T intended to drive onto M's land b/c she knew where he lived and purposely drove into his driveway. There is nothing to indicate that M gave T permission to enter his land.

T committed trespass to land against M.

Private Necessity Privilege

Is T protected from liability to M b/c she acted out of necessity? T will argue however that she was privileged to enter M's land due to private necessity. Private necessity provides an actor with the right to commit a tort against another in order to avoid an imminent and foreseen risk of greater magnitude to the actor, that the actor did not cause. Unlike public necessity which is a complete defense, private necessity is an incomplete defense, meaning that the actor is liable to damages they caused through their actions in avoidance of the risk. Here T was suddenly confronted with flood waters which posed a major risk to T's personal safety and to damaging her car. As T did not cause the flood and T was required to act fast, T was privileged in her trespass onto M's land. However, T is liable to M for damaging his garden during her privileged trespass b/c T acted out of private necessity.

T is liable to M for the damages she caused to M's garden while making her privileged entry onto M's land due to private necessity.

2)

E=Emily

F=Frank

b/c=because

NPS=negligence per se

MVC= Motor Vehicle Collision

SOC=Standard of Care

E v F Negligence

IS F liable to E for negligence for causing the MVC that resulted in E's injuries? A successful negligence claim requires that an actor had a duty to care for the charging party, the actor breached that duty, the actor's breach was both the actual and proximate cause of the charging parties injuries and that the charging party sustained some physical damage to their person or property as a result of the breach.

Duty

Did F have a duty to care for E? Generally everyone has a duty to care for others by using reasonable care to reduce foreseeable risks that arise from their actions in order to protect those in their immediate surroundings, i.e. the zone of danger. Reasonable care is defined as the care that a reasonably prudent person would use to reduce risks they foresaw arising from their actions. Whether or not a reasonably prudent person would take steps to reduce their risk to others is analyzed using the Hand Formula $B=PL$, where B is the burden required to abate the risk, P is the probability that the foreseen harm will occur, and L is the cost of the damages that would arise from the foreseen harm. Where $B>PL$ an actor is required to take steps to reduce their risk to others.

Here F was driving a car. The reasonably prudent person would recognize that driving a car while distracted entails the risk of causing serious bodily injuries to others. The probability of that risk is high as car accident occur all the time, where people are at fault for being distracted. The cost of reducing that risk is low b/c all that is required is proper attention to the road. As the burden of

reducing the risks entailed in driving while distracted is low when compared to the probability that driving while distracted will lead to an accident and the cost of the injuries of that accident, F has a duty to E to pay attention while driving.

Breach

Did F breach his duty to E by driving while distracted? An actor breaches their duty to another when their conduct falls below the standard of care set out by that duty.

Here F was distracted by his favorite music causing F to drift into oncoming traffic. The reasonably prudent person would not let themselves become distracted by music while driving because the reasonably prudent person would see the potential harm that distracted driving would cause and the high probability of injuring another due to said distraction.

F breached his duty of care to E by driving while distracted.

Actual Cause

IS F the actual cause of E's injuries? When determining whether an actor is the actual cause of a given harm the first test used is the but for test. The but for test is performed by creating a scenario where the actor's tortious conduct did not occur and seeing if the other party would still have been injured.

In this case, if F had not been distracted he would not have drifted into oncoming traffic and there would have been no MVC between F and E.

F is the actual cause of E's injuries

Proximate Cause

IS F the proximate cause of E's injuries? To be the proximate cause one must either be the actual cause or a substantial factor in causing the injury, the risk of similar injuries to similar parties must have been reasonably foreseeable and there must have been no independent intervening cause that superseded the actor's conduct and broke the causal chain between the actor and the injured party. The intentional tortious conduct of the other party may act as a superseding event.

Here F is the actual cause. See above. It was also reasonably foreseeable that driving while distracted may lead to drifting into oncoming traffic and getting in an MVC; anyone who has ever had a close call while driving can attest to this. However, F will argue that E's lack of headlight was intentional

and thus a superceding event that broke the causal chain between F's negligence and E's injuries. This is a weak argument b/c even if E had had her lights on F may still have drifted into oncoming traffic and the weather conditions may still have caused E to be unable to stop. Additionally, E's failure to turn on her headlights was not intentional but a simple failure to notice.

F is the proximate cause

Damages

Did E Sustain damages? In order for 1 party to be liable for negligence, the other party must sustain physical damage to their person or property due to the other's negligence.

Here E sustained serious injuries in the MVC.

E sustained damages, sufficient to sustain a negligence claim.

Defenses

Negligence Per Se

F will argue that E was negligent per se b/c she was driving without a working muffler. NPS applies when an actor violates a statute or ordinance. NPS makes an actor liable for negligence if, violation of said statute leads to an injury of the type that the statute is in place to prevent, and the person injured is of the class of people that the statute aims to protect.

Here E did not have a working muffler, contra to local ordinance. E's lack of muffler is not NPS b/c the ordinance is in place to reduce the noise cars make to make the world quieter for those out in the world. E's lack of a muffler did not cause the MVC, and other driver's are not the class of people meant to be protected by the statute.

E was not negligent per se and thus this defense will fail for F.

Comparative Fault

Does E's negligent failure to turn on headlights put her at comparative fault to F, thus reducing E's recovery for damages? In order to be found at comparative fault the charging party must have acted negligent in a manner that was a partial cause of the injuries they are suing to recover damages for. When someone is found to be at comparative fault in a situation, the amount they can recover in

damages is reduced by the percentage that the trier of fact finds them to be at fault. Negligence requires that an actor had a duty to care for another party, the actor breached that duty, the actor's breach was both the actual and proximate cause of the injuries and that some physical damages resulted from the breach.

Duty

Did E have a duty to care for F? Generally everyone has a duty to care for others by using reasonable care to reduce foreseeable risks that arise from their actions in order to protect those in their immediate surroundings, i.e. the zone of danger. Reasonable care is defined as the care that a reasonably prudent person would use to reduce risks they foresaw arising from their actions. Whether or not a reasonably prudent person would take steps to reduce their risk to others is analyzed using the Hand Formula $B = PL$, where B is the burden required to abate the risk, P is the probability that the foreseen harm will occur, and L is the cost of the damages that would arise from the foreseen harm. Where $B > PL$ an actor is required to take steps to reduce their risk to others.

Here E was driving a car. The reasonably prudent person would recognize that driving a car without headlights at night entails the risk of causing serious bodily injuries to others. The probability of that risk is high as car accident occur all the time, due to lack of visibility at night. The cost of reducing that risk is low b/c all that is required is turning on the headlights. As the burden of reducing the risks entailed in driving without headlights at night is low when compared to the probability that driving without headlights at night will lead to an accident and the cost of the injuries of that accident, E had a duty to F to drive with her headlights on.

Breach

Did E breach her duty to care for F by driving without headlights? An actor breaches their duty to another when their conduct falls below the standard of care set out by that duty.

Here E was driving at night without headlights. The reasonably prudent person would not drive at night without headlights because the reasonably prudent person would see the potential harm that driving at night without headlights would cause and the high probability of injuring another due to said lack of headlights.

E breached her duty of care to F by driving without headlights.

Actual Cause

Was E the actual Cause of the MVC between E and F? When determining whether an actor is the actual cause of a given harm the first test used is the but for test. The but for test is performed by creating a scenario where the actor's tortious conduct did not occur and seeing if the other party would still have been injured.

In this case, if E had not driven without headlights F would have seen her and there would have been no MVC between F and E.

E is the actual cause of the MVC between E and F.

Proximate Cause

Was E the proximate Cause of the MVC between E and F? To be the proximate cause one must be the actual cause or a substantial factor to the injuries sustained, the risk of similar injuries to similar parties must have been reasonably foreseeable and there must have been no independent intervening cause that superseded the actor's conduct and broke the causal chain between the actor and the injured party.

Here E is the actual cause. See above. It was also reasonably foreseeable that driving without headlights may lead to being unseen at night and getting in an MVC. However, E will argue that F's drifting into oncoming traffic was a superseding event that broke the causal chain between E's negligence and the subsequent MVC. While F drifting into E's lane may have been a substantial factor in causing the MVC, if E had her lights on F may have been able to notice and avoid collision in time.

E was a proximate cause to the MVC between E and F.

Damages

Did E Sustain damages? In order for 1 party to be liable for negligence, the other party must sustain physical damage to their person or property due to the other's negligence.

Here E sustained serious injuries in the MVC.

E sustained damages, sufficient to sustain a negligence claim.

Conclusion

E is at comparative fault for the collision b/c she failed to turn on her headlights.

E will be able to recover from F for her injuries from the MVC, but her ability to recover will be reduced by the percentage she is found to be at fault.

END OF EXAM