

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.

- o **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.

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80 Very Good. May have missed some minor issues or lacked complete discussion of some fact or legal rule. Otherwise well organized and clear; reasoning clear and cogent.

Analysis applied the facts to an accurate statement of the law and reached a conclusion.

- 1) Answer reflected a qualify understanding of the subject matter.

## **Carol V. Lisa** +

### **STRICT LIABILITY** +

1. The nature of the defendant's activity imposes an absolute duty to make safe;
2. The dangerous aspect of the activity is the actual and proximate cause of the plaintiff's injury; and
3. The plaintiff suffered damage to person or property.

When someone, specifically a landowner with animals, can be found liable for injuries sustained by another without negligence. In other words, the owner can attempt to mitigate the risk and do nothing wrong but still be determined to be strictly liable. Strict liability will depend on the status of the person on the premises (invitee, licensee, trespasser). It will also depend on how the injury occurred. Bite, claw and attack satisfy the requirements for strict liability as they are the harm that comes with animals that have a predisposed or known propensity for behavior that can cause harm. +

**Domestic Animals:** Most jurisdictions require that the owner be aware of dangerous past behavior by a domestic animal such as a dog. This is widely known as the one bite rule. However, In CA, there is a dog statute # 3342 that states that any dog bite, regardless of their nature or past behavior, satisfies strict liability to the appropriate premises plaintiff (invitee or licensee). Good

### **Invitee/Licensee** +

**Invitee:** Person that attends a landowner's premises for a commercial or business purpose to the landowner's benefit (example: business customer/patron) +

**Licensee:** Person that attends a landowner's premises for their own benefit (example: social guest). +

Here, it could be argued that Carol was a licensee that went to Lisa's house to look at the puppies to purchase one or she also could have been just going over to her friend Lisa's house to buy one. Either way, as an invitee or licensee, Lisa can be found strictly liable for Carol's injuries. In a different jurisdiction, Lisa would likely receive the benefit of the first bite rule as the dogs are just young puppies and did not show any dangerous propensities beforehand. Good +

Since it does not indicate that Carol was buying a puppy, we can determine her to be a licensee. Therefore, Lisa will be strictly liable for her dog bite injury.

### **Causation** +

**Actual Cause:** But for Test +



But for Lisa's dog biting Carol, the injury to her hand would not have occurred. +

**Proximate Cause: Foreseeability Test** +

It was foreseeable that a dog/puppy could have bitten and injured Carol. +

**Damages** +

**General:** non- economic damages that can be awarded from an injury or harm.

Carol was injured and was likely faced with emotional damages, loss of enjoyment, and pain and suffering. +

Therefore, Carol will recover general damages. +

**Special:** economic damages that can be awarded from an injury or harm. +

Carol was injured and will likely face medical bills for past, current, and future treatment. She also might face loss wages due to being unable to work, +

Therefore, Carol will recover special damages. +

**Punitive:** damages resulting from grossly reckless and malicious behavior. +

There was nothing grossly reckless or malicious that caused Carol's injury.

Therefore, Carol will not recover punitive damages. +

**Lisa Defenses** +

**Assumption of Risk** +

When an individual, knowing the risks involved, voluntarily puts themselves in danger's way.

Here, Carol was playing with the puppies but nothing suggests that the puppies were dangerous. Had Carol known that the puppies were dangerous, she might not have gone to the house of played with them. +

Therefore, the assumption of risk defense will fail

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**Contributory Negligence** +

When someone contributes to the negligence that causes harm, they can be barred from any recovery.

Carol doesn't seem to have done anything that contributed to the harm, other than play with the puppies. Also, CA does not recognize contributory negligence. +

Therefore, her contributory negligence defense will fail.

**Comparative Negligence (Pure)** +

When someone contributes to the negligence that causes the harm, they can have their damages reduced based on the apportionment of the fault. Again, Carol does not seem to have done anything wrong. +

Therefore, this defense will fail.

**One Bite Rule** +

Outside of CA, the owner needs to be aware of dangerous propensities or behaviors of his dog (previous bite, attacks, etc) to be found strictly liable. +

Again, CA statute 3342 eliminates that defense since it occurred in Bakersfield, CA. +

This defense will fail. +

**CONCLUSION**

Lisa will be found strictly liable for Carol's dog bite injury. +

**Bob v. Lisa** +**Strict Liability** +

**supra**

**Wild Animals** +

An owner of a wild animal will be strictly liable for harm that is caused by the animal's predisposed dangerous propensities if they are a licensee or invitee. + If they are a trespasser, they will more than

likely need to pursue a negligence claim. Good!

An enormous pet grey wolf constitutes a wild animal regardless if Lisa treats it as a pet. Any injuries Bob incurs, Lisa will be strictly liable for if he is an invitee or licensee on Lisa's property. +

### **Invitee/Licensee** +

supra But is Bob a trespasser in the room he was told to not enter?  
If trespasser, must show negligence.  
Thus, SL would fail

Bob attending Lisa's house to look and play with the puppies constitutes him as a licensee. Therefore, Lisa has a duty to warn Bob of the wild animal she has in the house. Even with the warning, which was minimal as Lisa never indicated why they should not go to the back of the house, strict liability will apply if any injuries occur to Bob. +

When Bob opens the door, he is met with a vicious wolf. In his attempt to get away from the wolf, he lunges past it and has his leg gashed open and pant leg ripped. Strict liability will not apply if the injury caused is not due to the dangerous propensities of the animal (teeth or claw). As Bob gets past the wolf, the wolf claws Bob causing the injury. +

Therefore, since the injury was caused by claw (an attack), Lisa will be strictly liable for Bob's injuries. +

### **Causation**

**Actual Cause:** But for Test +

But for Lisa's having a wild animal in the home, the injury to Bob's leg would not have occurred. +

**Proximate Cause: Foreseeability Test** +

It was foreseeable that a wolf (wild animal) could have injured Bob or anyone else that visited the house. +

### **Damages** +

**General:** non-economic damages that can be awarded from an injury or harm. +

Bob was injured and was likely faced with emotional damages, loss of enjoyment, and pain and suffering. +

Therefore, Bob will recover general damages.

**Special:** economic damages that can be awarded from an injury or harm. +

Bob was injured and will likely face medical bills for past, current, and future treatment. He also might face loss wages due to being unable to work, +

Therefore, Bob will recover special damages. +

**Punitive:** damages resulting from grossly reckless and malicious behavior. +

One could argue that Lisa was grossly reckless or malicious by keeping a wild animal / wolf in the house. +

Therefore, Bob could recover punitive damages. +

## **Lisa Defenses**

### **Assumption of Risk** +

When an individual, knowing the risks involved, voluntarily puts themselves in danger's way. +

Here, Bob opened the door and confronted the wolf after Lisa said to not go in the room at the end of the hall. However, the warning was not sufficient and then Lisa directs Bob to the back of the house to grab bandages. Bob was not aware of the risk of the wolf, therefore, could not assume it. +

Therefore, the assumption of risk defense will fail +

### **Contributory Negligence** +

When someone contributes to the negligence that causes harm, they can be barred from any recovery.

Bob doesn't seem to have done anything that contributed to the harm, other than go to the back of the house as directed by Lisa. Also, CA does not recognize contributory negligence. +

Therefore, his contributory negligence defense will fail. +

### **Comparative Negligence (Pure)** +

When someone contributes to the negligence that causes the harm, they can have their damages reduced based on the apportionment of the fault.

Again, Bob does not seem to have done anything wrong or been negligent in any way. +  
Opening the wrong door?

Therefore, this defense will fail. +

### **Licensee - Provided Warning** +

As a licensee, the property owner must properly warn of the danger. +Good

Due to the wolf being a wild animal, Lisa will be strictly liable for injuries to Bob.

This defense will fail.

### **Trespasser** +

Someone that unlawfully enters someone else's property. +

Lisa could argue that she warned Bob to not go into that back room. That Bob's actions constituted as a trespass and that she owed him no duty. If this were the case, Bob could still try a negligence claim against Lisa. Good

Therefore, this defense will fail as Bob was not a trespasser.

### **CONCLUSION** +

Lisa will be found strictly liable for Bob's wolf claw injury. +

### **FINAL CONCLUSION** +

Both Lisa and Bob were licensees on Lisa's property as they were social guests visiting to play with the puppies. They both suffered injuries as a result of a dog (domestic) and wolf (wild), and Lisa will be strictly liable for their damages. Both will recover special and general damages, as Bob might also be able to recover punitive damages. Good

- 2) 79 Good to Very Good. Missed some minor issues or lacked complete discussion of some fact or legal rule. Otherwise well organized and clear; reasoning clear and cogent. Analysis applied the facts to a (usually) accurate statement of the law and reached a conclusion. Answer reflected a good understanding of the subject matter.

### **Lisa v. EL** +

**To establish a prima facie case for negligence,** + **the following elements must be proved:**

1. **The existence of a duty on the part of the defendant to conform to a specific standard of conduct for the protection of the plaintiff against unreasonable risk of injury;** +
2. **Breach of that duty on the part of the defendant;** +
3. **That breach of the defendant was the actual and proximate cause of the plaintiff's injury;** +
4. **Damages to plaintiff's person or property.** +good!

### **Duty:** +

**Reasonable person standard:** When a person engages in an activity, he is under a legal duty to act as a reasonable prudent person would under the same or similar circumstances. + Here, Jan, working in the restaurant as a waiter, should have reasonably known that customers dining at a restaurant could have certain allergies that should be observed. But Jan forgot to ask Lisa and Jason when taking their orders because he was occupied of telling them about what happened to their regular server, Joe. Therefore, Jan, under the circumstance, was not reasonably attentive in doing his job. +

GOOD!

**Common Carriers and Innkeepers:** Common carriers and innkeepers (i.e., hotels, restaurants, and the like) are held to a very high degree of care to exercise in serving their patrons/guests to prevent harm and protect them from third party harm. + Here, Jan, being employed by the restaurant EL, is held to a very high degree of care + as a waiter serving Lisa and Jason to prevent harm in their course of restaurant operations. Jan knows and it is said that it is a protocol + for them waiters to ask of any known allergies of guests so as to avoid the harm that happened to Lisa. +

### **Breach:** +

**When the defendant falls short of that level required of the applicable standard of care owed to the plaintiff, therefore defendant breach his duty.** + Here, Jan failed to ask Lisa and Jason of any known allergies they have as a part of the restaurant's protocol. Jan as a waiter, has breached his duty by forgetting to ask the allergies Lisa and Jason have before taking their orders. Good

**Actual and Proximate Cause:** <sup>+</sup>

**Actual Cause: Actual cause is the cause in fact of the injury.** Here, Jason forgot to ask Lisa of her allergies before taking her order. Because Lisa did not look at the menu (due to Jan telling them about the story of Joe's deportation) and just directly ordered her tamales, without knowing that one of the tamales's ingredients were replaced by pepitas, an item Lisa is allergic to, Lisa ate the tamales containing the pepitas and Lisa's throat started to restrict. Jan's failure to ask and note Lisa's allergy to squash caused Lisa's throat constriction. <sup>+</sup> Therefore, the tamales with squash was the actual cause of the injury. <sup>+</sup> Good

**Proximate cause: Proximate cause is all harmful results that are within the natural consequence and increased risk of defendant's act.** <sup>+</sup>

Here, Jan's failure to ask Lisa's allergies resulted in Lisa ordering the tamales. Moreover, Jan telling the story about Joe distracted Lisa and did not look at the menu. Had Lisa look at the menu and had Jan asked Lisa's allergy as a part of the restaurant's protocol, Lisa's allergic reaction of her throat constricting could have been prevented. Because Lisa's allergic reaction is a foreseeable result caused by a foreseeable intervening force such as Jan failing to ask Lisa's allergy and Lisa ordering a tamales containing the pepitas she is allergic to because she was distracted, Jan's action is a proximate cause.

Broken ribs: Jason a superseding intervening force? Rescuer and rescuer negligence foreseeable? Liable for broken ribs?

**Damages to plaintiff's person or property: Actual harm or injury to plaintiff.** Here, Lisa's throat started to constrict, she had broken ribs, and lost consciousness. There was an actual harm and injury resulted out of defendant's act. <sup>+</sup>

**Defenses:** <sup>+</sup>

**Contributory negligence: When a plaintiff contributed negligently to his injury, the court will bar him from recovery under common law.** <sup>+</sup> Here, Lisa failed to look at the menu where she could have seen the ingredients that has been changed by the chef containing the ingredients where she is allergic to. <sup>+</sup> She could have checked since she knew she has certain allergies and could have prevented her allergic reactions had she look at the menu. Lisa will be contributory negligent in this situation and may not recover. <sup>+</sup>

**Comparative negligence:** <sup>+</sup> Comparative negligence states now permits plaintiff to recover even if she contributed negligently to her injuries. <sup>+</sup>

**"Partial" Comparative Negligence:** <sup>+</sup> Plaintiff can recover is he did not contributed negligently to his

injury beyond a threshold level (he is not more than 50% at fault). Here, Lisa was the customer and Jan was the waiter who holds a greater responsibility of checking the orders for possible allergies of the customers. Lisa could not be more than 50% at fault in this circumstance therefore allowing her to recover for her injury.

**"Pure" Comparative Negligence:** Under this defense, the plaintiff can recover in percentage of her fault versus that of the percentage of the fault of the defendant. If Lisa would be 30% at fault in this situation and the damages is \$1,000, she could recover 70% of it or \$700 from EL.

Cal applies PCN

**Assumption of risk:** The plaintiff assumes the risk of danger of the defendant's act if he voluntarily submitted to it either expressly or impliedly. Here, Lisa did not expressly submitted to her having allergic reaction. However, by not checking the menu, Lisa could have impliedly assumed the risk. What about risk for eating out in general? Undisclosed ingredients, cross-contamination risk? She surely knows that risk and assumes it.

**Vicarious liability:** This liability is derivatively imposed because of the tortfeasor's relationship to the person/entity where the negligence is imputed. Here, EL as the employer of Jan, could be held vicarious liable for Jan's negligence.

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.

**Conclusion:** EL will be liable for negligence.

**Lisa v. Dr. Carter**

Negligence- supra.

**To establish a prima facie case for negligence, the following elements must be proved:**

1. **The existence of a duty on the part of the defendant to conform to a specific standard of conduct for the protection of the plaintiff against unreasonable risk of injury;**
2. **Breach of that duty on the part of the defendant;**
3. **That breach of the defendant was the actual and proximate cause of the plaintiff's injury;**
4. **Damages to plaintiff's person or property.**

**Duty:** General Rule—No Duty to Act  
As a general matter, no legal duty is imposed on any person to affirmatively act for the benefit of others.

**Reasonable person standard:** When a person engages in an activity, he is under a legal duty to act as a reasonable prudent person would under the same or similar circumstances. Here, Dr. Carter, knowing that his help is needed as professional, and that it is an emergency, should have reasonably acted on the emergency situation. His reason is he wanted to enjoy his meal rather than



helping the emergency situation.

**Professional: A person who is a professional or has special skills or knowledge is required to exercise reasonable care as a professional or in that occupation in good standing.** Here, Dr. Carter by profession is a doctor and a doctor under the same situation would have acted to reasonably aid Lisa in her allergic reaction.

**Breach:**

**When the defendant falls short of that level required of the applicable standard of care owed to the plaintiff, therefore defendant breach his duty.** Here, Dr. Carter being a professional, has fall short in acting to aid Lisa in an emergency situation. Therefore, Dr. Carter has breached his duty.

**Actual and Proximate Cause:**

**Actual Cause: Actual cause is the cause in fact of the injury.** Here, Dr. Carter's failure to act was not the actual cause of Lisa's allergic reaction. It was Lisa eating tamales with the squash which she is allergic to. Therefore, Dr. Carter was not the actual cause of Lisa's injury.

**Proximate cause: Proximate cause is all harmful results that are within the natural consequence and increased risk of defendant's act.** Here, Lisa suffered further difficulty breathing because of the broken ribs since Jason acted because when he asked if there's any doctor at the area, Dr. Carter did not respond. Dr. Carter could be a proximate cause of Lisa's further injury.

**Damages to plaintiff's person or property: Actual harm or injury to plaintiff.** Here, Lisa's throat started to constrict, she had broken ribs, and lost consciousness. There was an actual harm and injury resulted out of defendant's act.

**Defenses:**

No defenses.

**Conclusion: Dr. Carter will not be held liable for negligence.** <sup>+</sup>

**Jason v. EL** <sup>+</sup>

**Negligent Infliction of Emotional Distress:** <sup>+</sup>

**To prove negligent infliction of emotional distress is when the defendant cause an**

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**unreasonable risk of physical injury to plaintiff. The plaintiff must prove that:**

1. **Plaintiff was within the "zone of danger"** <sup>+</sup>
2. **Plaintiff suffered physical symptoms from the distress** <sup>+good</sup>

**If plaintiff is a bystander, he must prove that:** <sup>+</sup>

1. **The plaintiff and the victim was closely related** <sup>+</sup>
2. **The plaintiff was present at the scene of the injury** <sup>+</sup>
3. **The plaintiff personally observed and <sup>perceived</sup> seen the injury** <sup>+good</sup>

Here, Jason was described to be always with Lisa when eating at EL and considered both of them as regulars although <sup>right! so we don't know</sup> there was no fact stated that Jason was closely related to Lisa in a degree to which the court would consider him as one. Jason was present at the scene of the injury and did even turn hysterical when Lisa turned blue but since his relationship with Lisa was not clearly define, as a bystander, it cannot be proved that he was closely related to Lisa. <sup>Analyze both scenarios</sup>

**Conclusion: Jason will not be successful in claiming NIED against EL.**

- 80 Very Good. May have missed some minor issues or lacked complete discussion of some fact or legal rule. Otherwise well organized and clear; reasoning clear and cogent.
- 3) Analysis applied the facts to an accurate statement of the law and reached a conclusion. Answer reflected a qualify understanding of the subject matter.

### 1. **Murphy v. Sunglass Hut** +

#### **Vicarious Liability** +

Defendant may be liable for the acts of another depending on the relationship between the defendant and the tortfeasor. + Principals are generally not vicariously liable for independent contractors. + However, two exceptions exist: a) independent contractors engaged in inherently dangerous activity or b) duty is not delegable because of public policy. + Good

Here, Roy was a mall security guard and not an employee of Sunglass Hut. Generally, Sunglass hut will not be liable for Roy's conduct however, his job fits the exception of an inherently dangerous activity because apprehending shoplifters can result in violence. I agree.

Thus, Sunglass Hut is vicariously liable. +

#### **Assault** +

To establish a prima facie case of assault, plaintiff must prove: a) defendant created a reasonable apprehension of imminent harmful or offensive harm, b) intent, and c) causation. +

#### **Reasonable Apprehension** +

The apprehension of imminent harm or offensive contact must be a reasonable one. Apprehension is the awareness that harmful or offensive contact is imminent. +

Here, Murphy's apprehension was reasonable because he saw Roy approach him. Murphy was aware that Roy was targeting him by his movement. Use the facts. Does "intimidated " arise to apprehension?

Thus, this element is met.

#### **Imminent** +

The apprehension must be immediate, future threats of harm are insufficient. +

Here, Murphy was immediately intimidated when he saw his movement towards him. +good

Thus, this element is met.

### **Harmful or Offensive Contact**

Contact is harmful if causes actual injury or pain. Contact is offensive if it would offend a reasonable person of ordinary sensibilities.

Here, Murphy was intimidated by Roy because he was large and imposing while Murphy was an elderly man. It is very likely Roy could have harmed Murphy. *Still wondering if intimidation is enough*

Thus, this element is met

### **Intent** +

Intent is met when a defendant: a) acts with the purpose of causing the intended consequence, or b) acts knowing that the consequence is substantially likely to result. *+Good*

Here, Roy intended to apprehend a suspected shop lifter not cause harm to Murphy. *Did he intend to cause apprehension?*

Thus, this element is not met.

### **Causation** +

Causation is met when the defendant's act is the actual cause<sup>+</sup> of the plaintiff's injury or substantial factor that caused the plaintiff's injury. <sup>+</sup>

Here, Roy's movement<sup>+</sup> towards Murphy did cause the reasonable apprehension.

Thus, this element is met.

### **Defense: Consent** +

If a plaintiff consented to the defendant's acts, defendant may not be liable. Consent can be given by: a) expressly by shown willingness or b) impliedly by conduct, words, custom or by law. <sup>+</sup>

Here, no facts indicate that Murphy consented to be assaulted. <sup>+</sup>

Thus, this is not a valid defense.

### **Defense: Self-Defense/Defense of Others/Defense of Property** *Good*

If a defendant acted in Self-Defense/Defense of Others/Defense of Property, defendant may not be liable. Self defense applies when: a) defendant had reasonable belief that a tort was being or about to be committed against himself, another or his property, and b) only used reasonable force. +

Here, no facts indicate that Roy was acting in self defense. +

Thus, this is not a valid defense.

### **Conclusion** +

In conclusion, the prima facie case of assault was not met. +

### **Battery** +

To establish a prima facie case of battery, plaintiff must prove: a) defendant's act created a harmful or offensive contact to plaintiff's person, b) intent, and c) causation. +

### **Harmful or Offensive Contact** +

Supra.

Here, Roy grabbed Murphy by the arm and pushed him. This conduct was harmful and offensive to any reasonable person. +

Thus, this element is met.

### **Intent** +

Supra.

Here, Roy intended to create a harmful contact as her grabbed and pushed Murphy. +

Thus, this element is met.

### **Causation** +

Supra.

Here, Roy's acts were the actual cause of the harmful contact. Roy grabbed Murphy's arm and pushed him. +

Thus, this element is met.

### **Defense: Consent** +

Supra.

Here, no facts indicate that Murphy consented to being battered. +

Thus, this is not a valid defense.

### **Defense: Self-Defense/Defense of Others/Defense of Property** +

Supra.

Here, no facts indicate that Roy acted in self defense. What about defense of property? No bc the theft was last week

Thus, this is not a valid defense.

### **Conclusion** +

In conclusion, the prima facie case for battery is met and there are no valid defenses. +

### **False Imprisonment** +

To establish a prima facie case of false imprisonment, plaintiff must prove: a) defendant confine or restrained plaintiff to a bounded area by act or omission, b) intent, and c) causation. +

### **Confinement or Restraint**

Confinement is met by physical force, physical barrier, no means of escape, or misuse of legal authority. +Good

Here, Murphy was confined in a small room by force when he was pushed. The only door was locked so he had no means of escape. +

Was he also confined when he was being "walked" to the room by Roy?

Thus, this element is met. +

### **Bounded Area** +

Bounded area is met when a plaintiff's freedom is limited in all directions of movement and there are

no reasonable means of escape. +

Here, Murphy was locked in a room, he was not free to go at any time and had no means of escape. +

### **Intent** +

Supra.

Here, Roy intended to confine Murphy to a bounded area because he pushed him in the room and locked the door. Said, "You will wait here." Use facts

Thus, this element is met.

### **Causation** +

Supra.

Here, Roy's act of pushing Murphy in the room and locking the door were the actual cause of his confinement. +

Thus, this element is met.

### **Defense: Consent** +

Supra.

Here, Sunglass hut can argue that Murphy consented to going with Roy into the small room. However, this is a weak argument because Roy will say he only complied because he was frightened. Consent cannot be given under duress. Good

Thus, this is not a valid defense.

### **Defense: Self-Defense/Defense of Others/Defense of Property**

Supra.

Here, no facts indicate that Roy was acting in self defense.

Thus, this is not a valid defense.

### **Defense: Shopkeeper's Privilege** +

A shopkeeper<sup>+</sup> may detain a suspected shopkeeper<sup>lifter</sup> if: a) there is a reasonable belief of theft,<sup>+</sup> b) detainment is done in a reasonable manner,<sup>+</sup> and c) detainment is done in a reasonable time.<sup>+</sup>

Here, Sunglass Hut relied on error-prone AI to suspect Murphy was a shoplifter, so it was not reasonable. They also detained Murphy unreasonably in a windowless room and by force because he was an elderly man. They also took too long to review the facial recognition.<sup>Good</sup> Why is 40 min too long?

Thus, this is not a valid defense.

### **Conclusion**

In conclusion, the prima facie case of false imprisonment was met. <sup>+</sup>

### **Trespass to Chattels** <sup>+</sup>

To establish a prima facie case of trespass to chattels, plaintiff must prove: a) defendant interferes with plaintiff's right to possession of chattels,<sup>+</sup> b) intent,<sup>+</sup> c) causation,<sup>+</sup> d) damages. <sup>+</sup>

### **Interference**

Interference is met when defendant intermeddles by directly damaging the chattles or dispossessing the plaintiff's lawful right to possession. <sup>+</sup>

Here, Roy stepped on Murphy's sunglasses and broke them.<sup>+</sup> Roy directly damages Murphy's chattles. <sup>+</sup>

Thus, this element is met.

### **Intent**

Supra.

Here, no facts indicate that Roy intended to knock over the sunglasses and step on them. <sup>+</sup>

Thus, this element is not met. <sup>+</sup> Accidentally causing damage to or loss of another's chattel does not amount to conversion unless the actor was using the chattel without permission when the accident occurred.

### **Causation** <sup>+</sup>

Supra.



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Here, Roy stepped on the sunglasses and caused them to break. +

Thus, this element is met. +

**Damages** +

Actual damages are required, the loss of possession of chattel is considered actual harm. +

Here, Murphy's sunglasses were actually damaged. +

Thus, this element is met.

**Defense: Consent** +

Supra.

Here, no facts indicate that Murphy consented. +

Thus, this is not a valid defense.

**Defense: Self-Defense/Defense of Others/Defense of Property** +

Supra.

Here, no facts indicate that Roy was acting in self defense. +

Thus, this is not a valid defense.

**Defense: Necessity** +

Defendant is not liable if he acted in either public necessity or private necessity that benefited the owner.

Here, no facts indicate that Roy acted in necessity. +

Thus, this is not a valid defense.

**Conclusion** +

In conclusion, the prima facie case of trespass to chattels is not met. Since the sunglasses were destroyed this may be conversion, however there is also la

**Conclusion** +

In conclusion, Murphy has a strong legal claim for battery and false imprisonment.

**Remedies: Damages**

Special damages awarded to plaintiff for all economic losses incurred by the harm, including past, present and future. General damages are awarded to plaintiff for pain and suffering. +

Here, Murphy should be awarded special damages for the damage to his sunglasses as well as general damages for his pain and suffering. Why? no conversion or TTC?

**END OF EXAM**