

KERN COUNTY COLLEGE OF LAW

TORTS

MIDTERM EXAMINATION

FALL 2024

Professor L. Peake

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

\*\*\*\*

QUESTION #1

Elias, entering the Torts classroom first, sat in Mason's chair where everyone knew, by custom and practice, Mason had claimed as his spot. Mason entered and told Elias, "Get out of my seat or I will make you regret it" to which Elias replied, "No, in two seconds I'll make you regret that threat." Mason responded by jerking the chair backwards, causing the chair and Elias to knock over Amritpal's desk into her, resulting in Amritpal being injured.

Who is potentially liable to anyone else for any tort(s), and what potential defenses may apply?

\*\*\*\*\*

KCCL

TORTS MIDTERM

FALL 2024

Prof. L. Peake

QUESTION #2

Jackson pushed his moped into the classroom and classmate Matt suggested that Jackson should do “doughnuts” on it around the classroom tables. Jackson started up his moped and on attempting the first doughnut crashed into Jessica’s table, resulting in a small bruise on Jackson’s arm. Harveen, witnessing the crash, leaped over two tables to help Jackson, resulting in Harveen bleeding profusely from hitting her head on Jessica’s table. George walked in, saw Jackson and Harveen both on the floor, and went to help Jackson, with Jackson telling George, “I’m fine! Help Harveen!” George then started to help Harveen, but stopped out of concern he would get her blood on his clean shirt. Harveen managed to call 911 on her own, and recovered. She has now sued Matt, Jackson and George.

Discuss potential for Harveen to successfully sue each of the three defendants. Assume a comparative fault jurisdiction with joint and several liability.

\*\*\*\*\*

KCCL

TORTS MIDTERM

FALL 2024

Prof. L. Peake

QUESTION #3

Coby and Izzy decided that after Tuesday night's Torts class they would go to "Across The Rails" bar to play the bar's Trivia Game, and asked Chaten if he'd drive them home afterwards, and Chaten agreed. Two hours later, after Coby decisively won, Chaten drove the three of them westbound on 18<sup>th</sup> Street to "F" Street, where Rebecca was driving herself, Kaitlyn, Ashley and Melody northbound in Rebecca's car, with Kaitlyn telling Rebecca, "Speed up! I have to get home by midnight!" and Melody yelling, "Run the light, Becky! You can make it!" In fact, Rebecca did not make it, and ran through the red light controlling her direction of traffic, causing injuries to Chaten, with Coby and Izzy being uninjured. Ashley got out of Rebecca's car to check on possible injuries to Chaten, Coby and Izzy. Alfred, who was eastbound on 18<sup>th</sup> Street on a green light, entered the intersection at a speed in excess of the posted limit, and hit Ashley with his vehicle. Assume the jurisdiction has comparative fault with joint and several liability.

Discuss who has potential negligence liability to Chaten and/or Ashley, including any potential defenses to such liability.

\*\*\*\*\*

## KCCL Torts Midterm Fall 2024 Question #1 Answer Outline

Who is potentially liable to others for any torts; and what potential defenses may apply?

### 1. Mason's potential liability to Elias

#### A. Assault by Mason for threat to Elias

- 1) Assault requires immediacy
- 2) Threat by Mason to Elias does not appear to show immediacy

#### B. Battery by Mason to Elias for jerking chair backwards

- 1) Chair is "attached" to Elias so as to be considered an offensive touching of him
- 2) Jerking of chair an intentional act and satisfies such element of tort of battery

#### C. Negligence by Mason to Elias for jerking of chair causing it to fall backwards

- 1) Elias a foreseeably injured person to whom duty of care owed by Mason
- 2) If Elias injured, act of jerking chair a proximate/legal cause of such harm

#### D. Intentional infliction of emotional distress:

- 1) Threat by Mason arguably satisfy elements of tort? Extreme and outrageous?

#### E. Potential defenses for Mason:

- 1) Mason may attempt to claim contributory negligence by Elias for making threat
- 2) Mason may attempt to claim self defense to assault/battery claims (from threat)

### 2. Elias' potential liability to Mason:

#### A. Assault for Elias' threat to Mason

- 1) Would appear to possibly lack immediacy of harm; not extreme/outrageous
- 2) Would appear to arguably lack threat of harmful/offensive act by Elias

#### B. Potential defenses for Elias:

- 1) Possible defense of self by threat of retaliation by Elias to Mason's threat

#### C. Intentional infliction of emotional distress:

- 1) Threat by Elias to Mason meet elements of IED?

### 3. Mason potential liability to Amritpal:

#### A. Battery for offensive touching by jerking chair into table that then hit Amritpal

- 1) Arguably no "touching" as table not part of or resting against Amritpal

#### B. Negligence liability to Amritpal:

- 1) Foreseeably injured person within scope of harm
- 2) Appears to be causation: no break in chain of causation from jerking of chair

#### C. Defenses available to Mason:

- 1) Do not appear to be any (Amritpal appears to be fault free)

### 4. Elias potential liability to Amritpal:

#### A. Negligence for falling backwards into Amritpal's table pushing it into her

- 1) Duty of Elias not to engage in conduct that creates risk of harm to others
- 2) Arguably, however, no conduct by Elias constitutes a breach of such duty
- 3) Sitting in Mason's chair: not foreseeable that Mason would commit battery

#### B. Defenses potentially available to Elias:

- 1) None: Amritpal appears to not be contributorily negligent; also, no assumption

## KCCL TORTS MIDTERM FALL 2024 QUESTION #2 ANSWER OUTLINE

### Harveen potential recovery against Jackson

1. Negligence of Jackson
  - A. Duty to Harveen/Breach/Legal cause/Harm should be discussed
  - B. Harveen as a rescuer is foreseeably injured person
  - C. Breach of duty of care by Jackson present
  - D. Risk of harm created by Jackson is ONE legal cause/substantial factor in injuries
  - E. Standard of care for Harveen as rescuer for her own injuries: reasonable?
  - F. Jumping over two tables to assist Jackson who has small bruise reasonable?
2. Duty of Jackson to rescue/help Harveen after she sustained bleeding head injury
  - A. Even if the negligent tortfeasor, no independent duty owed by Jackson to “rescue”
  - B. No “special relationship” as classmate, etc. creating add’l duty by Jackson to Harveen
3. Defenses for Jackson in comparative fault state
  - A. Comparative fault by Harveen in jumping over two tables versus calling 911, etc.
  - B. Conduct of Harveen as a legal (proximate) cause of her own injuries

### Harveen potential recovery against Matt

1. Matt a joint tortfeasor with negligence liability to Harveen for suggesting Jackson do donuts?
  - A. No vicarious liability to Matt from Jackson’s conduct (not employer/employee, etc.)
  - B. Answer to MBE question (Class #12; Torts quiz #4) suggests joint tortfeasor fault
    - (1) Query if encouraging another to engage in negligence=joint tortfeasor status
    - (2) Issue of Matt’s encouragement as legal cause/substantial factor of harm here
  - C. Issue of duty, if any, of Matt to Harveen and whether breach of duty by Matt present
2. Defenses for Matt to negligence suit by Harveen
  - A. See above as to Jackson defenses to suit by Harveen: comparative + causation

### Harveen potential recovery against George

1. Duty of George to Harveen from George assuming role of rescuer to Harveen
  - A. No special relationship by George to Harveen as classmates
  - B. By assuming role of “rescuer” duty of George not to harm/leave her in worse state
  - C. Facts do not indicate George harmed or left Harveen in worse position/condition here

## KCCL TORTS MIDTERM FALL 2024 QUESTION #3 ANSWER OUTLINE

Who has potential negligence liability to Chaten

1. Liability of Rebecca to Chaten
  - A. Rebecca duty/breach/causation/harm to Chaten
    - (1) Foreseeable harm to Chaten as motorist on roadway
    - (2) Breach by Rebecca for driving through intersection on red light
    - (3) Presumption of fault as to Rebecca for violating law/running red light
    - (4) Breach as above a legal/substantial factor in causing injuries to Chaten
2. Liability of Kaitlyn to Chaten
  - A. Duty of Kaitlyn to Chaten as motorist by Kaitlyn as a passenger and not the driver?
    - (1) Potentially considered a joint tortfeasor (MBE Tort Quiz #4 answer)
    - (2) Query special relationship between Becky and Kaitlyn? Or vicarious liability?
3. Liability of Melody to Chaten
  - A. See, Liability of Kaitly to Chaten, above
4. Defenses to Rebecca's potential liability
  - A. No comparative appears on the part of Chaten (or assumption of risk)
  - B. No causation defense appears to be present to vitiate fault of Rebecca
5. Defenses to Kaitlyn's potential liability
  - A. No comparative or assumption of risk by Chaten
  - B. Possible lack of causation/no substantial factor to impose fault on passenger Kaitlyn
6. Defenses to Melody's potential liability
  - A. See Kaitlyn's defenses to potential liability, above

Who has potential liability to Ashley

1. Chaten potential liability to Ashley
  - A. No duty as fault free individual to injured opposing driver Chaten to rescuer Ashley
2. Rebecca potential liability to Ashley/defenses possibly available to Rebecca
  - A. Rebecca, as tortfeasor, owes duty to Ashley and has potential liability for such harm
  - B. Ashley a foreseeably injured person as rescuer responding to Becky's fault
  - C. Ashley is fault free passenger, so no comparative fault on Ashley
  - D. Possible causation argument for Rebecca that Alfred an intervening cause (speed)
3. Alfred potential liability to Ashley/possible defenses available to Alfred
  - A. Duty of reasonable care owed by Alfred to foreseeably injured persons
  - B. Alfred has presumption of fault for violating posted speed limit at point of impact
  - C. Possible comparative (being in road); lack of speed being legal cause of impact

1)

Elias v. Mason

✓ **Assault**

✓ An assault is an intentional act causing a reasonable apprehension of an immediate bodily harm or offensive touching to the person of another.

Mason may have assaulted Elias when he said that if Elias didn't get out of his chair, he would regret it. However, there is no evidence that Mason did anything other than threaten by words and for an assault to occur, the threat of immediate harm must be more than mere words. Additionally, the threat is vague and makes no mention of an immediate repercussion. However, based on Elias' response to the threat, it is likely that Elias perceived the threat as immediate and this could be considered reasonable apprehension, especially considering the battery that followed.

1000 Regardless, without a more specific threat of immediate harm, it is unlikely that Mason would be held liable for assault.

**Battery**

A battery is an intentional act by the defendant that causes bodily harm or offensive touching to the plaintiff's person.

✓ Mason jerking the chair would likely be considered an intentional act. Elias, along with the chair, were thrown into another person's desk. While there is no evidence that Elias was harmed by this, it would likely still be considered an offensive touching by a reasonable person.

Therefore, Mason would likely be liable for battery.

Mason v. Elias

**Assault**

Defined above

Elias made a very similar threat to Mason as Mason made to him. With the addition of stating that he would make him regret it in two seconds. Two seconds is not immediate. However, judging by Mason's immediate



retaliation with a battery, it is reasonable to assume that Mason may have been reasonably apprehensive of bodily harm or offensive touching from Elias.

The threat from Elias was not immediate. Therefore, it is unlikely that Elias will be held liable for assault.

### Trespass to Chattels - I DID NOT CONSIDER THIS

An intentional act that causes interference with the owner's right of possession in their property.

The chair was considered Mason's by custom and practice. Therefore, if the chair was considered his property, then Elias sitting in may be considered interference with Mason's right of possession. However, the chair was not damaged or moved by Elias in any way. Furthermore, the chair was located in the Torts classroom and likely would be considered property of the school, not Mason.

Therefore, Elias is unlikely to be held liable for trespass to chattels.

Amritpal v. Mason

### Battery

Defined above

While Mason's intended act was jerking the chair and his likely intended act was Elias, the doctrine of transferred intent would allow Mason's intentional act to transfer to Amritpal. Amritpal was injured by Mason's conduct. this would likely be considered bodily harm.

Therefore, Mason is likely liable to Amritpal for battery as well as Elias.

PLEASE -  
DON'T PUT THIS AS PART  
AMRITPAL V. MASON I RA  
DO YOU SEE WHY?

Amritpal v. Elias

### Negligence

Negligence occurs when the defendant has a duty to the plaintiff and breaches that duty, resulting in damages that the defendants actions were both the actual and proximate cause. GOOD

### Duty

Elias had the duty of a reasonably prudent person to anyone within the zone of danger resulting from any negligent acts. Amritpal was likely right next to where Elias was sitting considering how her injuries occurred.

Therefore, Elias likely has a duty to Amritpal.

---



### **Breach**

The chair that Elias sat in was Mason's by custom and practice. If he knew or reasonably should have known that sitting in could anger Mason, then Elias sitting in the chair may be considered a breach of his duty to his classmates

### **Cause**

But for Elias sitting in Mason's chair, Amritpal would not have been injured. Therefore, Elias' actions were the actual cause of Amritpal's injuries

Whether or not, Mason jerking Elias out of the chair or not was a foreseeable outcome depends what is generally known about Mason. Considering that it was a well known rule that the seat was Mason's, it is reasonable to assume that Mason may be quite territorial. In this case, the harm may be considered foreseeable.

### **Damages**

It is explicitly stated in the facts that Amritpal was harmed.

The only uncertain element is whether Mason jerking on the chair was foreseeable. If it is determined to be so, then it is likely that Elias will be found liable for negligence.

### **Comparative Negligence**

While it is possible that Elias is negligently liable to Amritpal, as an intentional tortfeasor to Amritpal, Mason is also likely to be found at fault for at least a portion of Amritpal's injuries. This would not prevent Elias from paying for the full amount of Amritpal's damages but it may allow him to pursue an action against Mason for his portion of the fault.

11ED ON THRSAB AS TO EACH ELIAS & MASON?

2)

Harveen v. Matt

**Negligence**

**A duty to conform conduct to a specific standard, a breach of that duty, actual and proximate cause (legal causation), and damages.**

Duty

Each person is owed the duty of standard care which is ordinary care of a reasonably prudent person.

Here, Matt had the duty of a reasonable prudent person toward his classmate, Harveen. *AND, AS A RESCUE,*

Therefore, Matt owes a duty to Harveen.

Breach

A breach of duty is when a person no longer conforms to the standard of duty they owe.

When Matt encouraged Jackson to do the doughnuts, he breached his duty to his classmates, specifically the person who got injured aside from Jackson, which was Harveen, *A RESCUE*

Therefore, Matt breached his duty to Harveen.

✓ Actual

Actual cause can be measured through the "But for" test which means that "but for Matt's encouragement of Jackson doing the doughnuts in the classroom, Harveen would not have been injured."

Here, Matt's encouragement played a part in Jackson's negligent conduct which resulted in the injuries

Harveen sustained. *NEED TO REACH BOTH SIDES - REALLY? BUT FOR MATT'S SILLY COMMENT, HARVEEN'S INJURIES WOULD NOT HAVE OCCURRED?*

Therefore, Matt's encouragement could be part of the actual cause towards Harveen's injuries.

Proximate (legal causation)

Proximate cause is part of the foreseeability in the chain events that occur.

The proximate cause of Harveen's injuries can be measured through foreseeability in the conduct of Matt. It was foreseeable that Matt's encouragement would lead to Jackson's doughnuts, which would lead to someone being injured, or in this case, Harveen.

*ARGUMENT*  
*HOWEVER, MATT WOULD LIKELY ARGUE...*

Both Jackson and Matt played a role in the doughnuts, but Matt's prompted the doing of the doughnuts which became the proximate cause of Harveen's injuries.

### Damages

Damages can be awarded to certain parties in a legal claim, they can be special, general, punitive, etc. Here, Harveen would likely be awarded some damages for the negligence of Matt.

### Contributory

Contributory negligence is used when the plaintiff's negligence contributed to their own injuries, therefore they cannot recover.

Here, even though Matt encouraged the doughnuts, Harveen's method of coming to Jackson's aid entailed leaping over two tables which could be argued contributed to her own injuries. Had she not jumped and hit her head on the table, she might not have received the injuries she sustained.

Therefore, contributory negligence could be used as a defense where Harveen would not be able to recover for damages since she played a role in her injuries.

### Comparative

Comparative fault can be used when the parties involved each had some negligence and both have liability in some way.

*POTENTIAL*  
Matt had liability in encouraging Jackson, but Harveen *ARGUMENT* had some liability as well when she chose to leap over tables.

It can be argued there was joint liability from the parties as the negligent conduct was portrayed on both parties.

Overall, Harveen would probably have a greater chance of successfully suing Matt.

Harveen v. Jackson

---

## Negligence

**A duty to conform conduct to a specific standard, a breach of that duty, actual and proximate cause (legal causation), and damages.**

### Duty/Standard of Duty

Jackson had a standard duty being that of a reasonable prudent person, acting with ordinary care to those around him.

He decided to negligently do doughnuts on his moped in a classroom which would entail him not conforming to that standard of care that he owes his classmates around him. Had he acted within a manner exercising ordinary care, he would not have been using the moped inside a classroom, nor began attempting to do doughnuts.

In conclusion, Jackson <sup>HAD A</sup> did not conform to his duty as a classmate and that of an individual with ordinary care. <sup>THIS IS BREACH, NOT DUTY</sup> <sup>DUTY TO HARVEEN AS I RESCUE AND THIS A FORESEEABLE HARM OF</sup>

### Breach

There is a breach of duty, when the defendant no longer abides by the standard of care that they owe duty of.

Jackson breached his duty when he stopped acting with ordinary care towards his classmates. He breached his duty towards Harveen when he decided to start trying to do the doughnuts on the moped.

In conclusion, there was a breach of duty <sup>BY</sup> from Jackson.

### Actual

Actual cause can be measured through the "But for" test which means that "but for Jackson's negligence, Harveen would not have been injured."

Here, but for Jackson attempting to do doughnuts and crashing, Harveen would not have tried to help him.

Therefore, Jackson's using the moped and then proceeding to hurt himself, resulted in Harveen trying to help him, which caused her to hurt herself.

### Proximate (legal causation)

The proximate cause of Harveen's injuries can be measured through foreseeability in the conduct of the defendant.

---



It can be argued it was foreseeable that there was a possibility of Jackson getting hurt riding a moped in a classroom where mopeds are not meant to be used. The result of him getting hurt prompts the factor of Harveen trying to come to his aid and help him.

In other words, Jackson's negligent operation of the moped and him crashing, led to the injuries of Harveen because it was foreseeable that she would try to help him and since she was hurt trying to help him, he would be liable for it. *INJURIES RESULTING FROM REASONABLE ACTION BY HARVEEN AS A RESCUER* <sup>POT</sup>

### Damages

Damages are what can be given as a result of a claim. Some damages can be measured as special, general, or punitive.

Here, Harveen would likely receive damages for the negligence of Jackson because it was his negligent conduct that resulted in her being injured.

Therefore, Harveen would likely be awarded damages.

### Rescuer

A defendant is likely liable for the injuries of a rescuer because they are a foreseeable *(intervening force)*, unless there was recklessness in their rescue (the rescuers).

*o/d* Here, Harveen would be considered a rescuer since she is trying to help Jackson as she witnessed the crash occur. However, it can be argued her rescue was a bit reckless in the sense that she did not need to leap over two tables to help Jackson. She might have had the need to leap over tables, as possibly that could have been the only way, however, there could have been much safer options in going over to Jackson's rescue.

It is likely liable that Jackson would be held for the injuries of Harveen because it was foreseeable that someone would try to help Jackson after he was injured. It could be argued her method to getting to him was a bit reckless, but it would be more likely than not that he would be held liable for Harveen.

### Contributory

Contributory negligence is used when the plaintiff's negligence contributed to their own injuries, therefore they cannot recover.

While Jackson's use of the moped and doing doughnuts in the classroom was negligent in itself, Harveen contributed to her own injuries when she decided to leap over two tables in helping him.

---

Contributory negligence would most likely be used as a defense against Harveen's claims.

### Comparative

Comparative fault can be used when the parties involved each had some negligence and both have liability in some way.

Here, Harveen had negligence in leaping over the tables and Jackson had some negligence when he decided to use the moped in the classroom.

Therefore, they would likely be held jointly liable for their negligent conduct.

### Assumption of Risk

Assumption of the risk comes from acting in a manner knowing there is some kind of risk involved, and still engaging. *RULE NEEDS BETTER WORDING*

Here, it could be argued Harveen assumed the risk of Jackson's rescue which was done by leaping over two tables and then hitting her head. She assumed the risk when she decided that leaping over tables was her method of helping Jackson.

In conclusion, assumption of the risk but not be the strongest defense, but could still be brought up.

Overall, it seems likely that Jackson would be held liable for Harveen's injuries.

### Harveen v. George

#### **Negligence**

**A duty to conform conduct to a specific standard, a breach of that duty, actual and proximate cause (legal causation), and damages.**

#### Duty/Standard of duty

Each person is owed the duty of standard care which is ordinary care of a reasonably prudent person.

Here, George had no duty to help Harveen, but once he began helping her, he owed her that duty. He can be liable for what happens to Harveen since he started to help her, therefore inserting himself into the matter, but then removing himself after he has "touched the issue", ties liability to him. *WHAT DUTY?*

*DUTY: NOT TO LEAVE  
PERSON IN WORSE  
POSITION DID HE*



George owed a standard duty of care to Harveen once he began helping her.

### Breach

A breach of that duty is satisfied once the defendant no longer acts under what a standard duty of care entails or the duty that is owed.

Here, George breached his duty to Harveen when he decided to stop helping Harveen after he had already began.

It would be found that George breached his duty.

### Actual

Actual cause can be measured through the "But for" test which means that "but for George's negligence, Harveen would not be injured".

Here, George's actions were not the actual cause of Harveen's injuries nor were they a result of her having further injuries.

It seems George's actions were not the actual cause of Harveen's injuries.

### Proximate (legal causation)

The proximate cause of Harveen's injuries can be measured through foreseeability in the conduct of the defendant.

It can be argued that it was not foreseeable that George would help Harveen or calls the medics or anything of that sort. Even if it was foreseeable, George's actions were not the proximate cause of Harveen's injuries, plus she did ended up calling 911 and eventually recovered.

Therefore, George could not be seen as the proximate cause the injuries of Harveen unless she had gotten worse when he stopped helping her.

### Damages

Damages can be awarded to the party entitled to receive compensation. Here, Harveen would not likely receive damages based on George's negligence.

---

Overall, Harveen would not be able to successfully sue George for negligence because even though he breached his duty, there was no causation on his behalf.

---

3)

85

**Question 3:**

**Liability to Chaten:**

**Is Rebecca negligently liable to Chaten?**

*The elements of the tort of negligence are: (1) A duty to the plaintiff, (2) a breach of that duty, (3) a chain of causation from the defendant's conduct to the plaintiff's (4) damages (harm) to his person or property.*

**Duty: Did Rebecca owe a duty to Chaten?**

✓ *Automobile drivers have the duty not to harm other motorists or pedestrians with their vehicle, and other people on the road are within the zone of danger as foreseeable plaintiffs.*

Chaten would argue that Rebecca had a duty not to hit him with her car.

It is likely that Rebecca owed a duty to Chaten

**Breach: Did Rebecca breach her duty owed to Chaten?**

*A breach of the standard of care happens when a defendant's conduct deviates from that of a reasonable person in the same situation. Additionally, if the defendant was in violation of a safety statute that pertained to the situation, it can be used as evidence for a breach of duty.*

Chaten would argue that Rebecca breached her duty by driving unsafely in the road and striking his car with her car. Chaten would also argue that because Rebecca breached the rules of the road by running the red light, that she was in breach of her duty.

*NEGL. PER SE / PRESUMPTION OF FAULT*

Rebecca would argue that she did not intend to run the red light, as she thought she could make it.

It is likely that Rebecca breached her duty to Chaten.

**Causation: Did Rebecca cause Chaten's injuries?**

*For the tort of negligence actual and proximate/legal cause is determined by two tests. First there is the "but for" test, where it must be determined that but for the defendant's actions, the plaintiff would not have been injured. Then there is the substantial factor test, where the defendant's actions must have been a substantial factor in causing the plaintiff's injuries. A substantial factor is anything greater than a remote factor.*

Chaten would argue that but for Rebecca's conduct, he would have not have been injured. Chaten was injured after Rebecca's car hit him. It is unlikely that there is any other cause of Chaten's injuries, making the car crash a substantial factor.

It is likely that Rebecca's conduct was the cause of Chaten's injuries.

**Damages:**

*The plaintiff must have suffered harm to his person or property to recover damages from the defendant.*

Chaten was injured in the crash, and his car was likely damaged, meaning that he likely suffered harm to both his person and his property.

**It is likely that Rebecca is negligently liable to Chaten.**

**Are Melody and Kaitly Negligently Liable to Chaten?**

BREAK INTO TWO IRACS AND USE, "SEE ABOVE" - CHATEN v. KAITLYN & MELODY

*See rule above for negligence*

**Duty and Breach: Did Melody and Kaitlyn owe a duty to Chaten? Was it Breached?**

ELF 15  
IS  
AC  
MAZ  
Generally speaking, there is not a duty to avoid encouraging free actors from engaging in dangerous conduct  
JOINT TORTFEASORS?

*There must have been a pre-existing duty for there to have been a breach of said duty.*

Chaten would argue that Kaitlyn and Melody owed a duty not to tell Rebecca to speed, and that they breached this duty by encouraging Rebecca to speed up and run the red light. JOINT TORTFEASORS?

Melody and Kaitlyn would argue that they did not have a duty not to encourage Rebecca to drive dangerously, and that because of that, it is impossible for there to have been a breach of that duty.

It is unlikely that Melody and Kaitlyn owed Chaten a duty or that there was a breach of said duty.

**Causation: Did Melody and Kaitlyn cause Chaten's injuries?**

- ACTUAL CAUSE: BUT FOR ENCOURAGEMENT BY M/K, ACC. WOULD NOT HAVE C  
See general rule for causation above. Superseding intervening factors break the chain of causation from the defendant's conduct to the plaintiff's injuries.

Melody and Kaitlyn would argue that Rebecca's running of the red light was a superseding intervening factor that broke the chain of causation from their conduct to Chaten's injuries. PROXIMATE CAUSE AS COMPARATIVE FAULT ETC.



Chaten would argue that without the encouragement from Melody and Kaitlyn, Rebecca would not have ran the red light, and therefore, their conduct was both the actual and proximate/legal cause of his injuries.

It is unlikely that Melody and Kaitlyn were the cause of Chaten's injuries.

**Damages: Did Chaten Suffer damages?**

*See damages rule above*

It is likely Chaten suffered damages to his person and property because he was in a car crash and was injured.

**It is unlikely that Melody and Kaitlyn are negligently liable to Chaten** (under the common law.)

**Strict liability: Is Rebecca Strictly liable?** *NEGL. CASE --*

*Generally speaking, operating an automobile is not considered an ultra-hazardous activity.*

**It is unlikely that Rebecca is strictly liable to Chaten, because she was operating an automobile, which is not an ultra-hazardous activity.**

**Ashley:**

**Is Alfred negligently Liable to Ashley?**

*For rule on negligence, see above*

**Duty: Did Alfred owe a duty to Ashley?**

*See above rule for duty.*

Ashley would argue that Alfred owed her a duty not to hit her as a pedestrian with his vehicle.

It is likely that Alfred owed a duty to Ashley.

**Breach: Did Alfred Breach his duty to Ashley?** *DUTY TO RESCUE*

*See general rules for breach and rules for breach with regards to safety statutes above.*

Ashley would argue that Alfred breached his duty, because a reasonable person would not speed through an accident scene and hit a pedestrian. She would also argue that Alfred was in violation of the speed limit, because he was driving in excess of the posted limit, meaning that he was in violation of a relevant safety

---

statutes, as it would be less likely that he would have hit her with his car had he been driving under the posted speed limit.

*NEGL. PER SE -*

It is likely that Alfred was in breach of his duty to Ashley.

**Causation: Did Alfred Cause Ashley's injuries?**

*ASHLEY RECKLESS GOING INTO R  
IF SO, DUTY TO RESCUE?*

See above rules for causation:

*PROXIE? SEPARATE ELEMENTS & SUBISSUES*

Ashley would argue that Alfred's speeding was the actual and legal cause of her injuries, as she was hit by Alfred's vehicle, and there was no other intervening cause.

It is likely that Alfred Caused Ashley's injuries.

**Damages:**

See above rule for damages.

Ashley was hit by Alfred's vehicle while it was speeding meaning that it is likely that she suffered injuries as a result.

**Comparative Fault: Was Ashley at comparative fault for her injuries?**

*In comparative fault jurisdictions, the percentage that the plaintiff was at fault (as determined by the trier of fact) is deducted from his damages recovered from the plaintiff.*

Alfred would argue that Ashley's own negligence contributed to her injury, because she rushed out of the car while the light was still green, which is against the rules of the road, and that she had contributed to the initial accident by encouraging Rebecca to run the red light.

Ashley would argue that she acted out of the necessity created by the situation.

It is likely that Ashley was comparatively at fault for her injuries.

**It is likely that Alfred is Negligently liable to Ashley, but that because of her own negligence, the amount of damages she would receive would be reduced by the percentage she was determined to be at fault by the trier of fact.**

**Is Rebecca liable to Ashley for her injuries?**

See rule on negligence above

*DUTY DUE TO RESCUE BY PERSON  
CONTRIBUTING TO INJURIES*



Ashley would argue that Rebecca's negligence was the cause of her injury, because but for the crash, Ashley would not have been injured, and that there was a duty, a breach, and of course, damages sustained on the part of Ashley from Alfred's vehicle. She would also argue that it was foreseeable that Ashley may help potential victims of her unsafe driving, and is therefore liable to Ashley as a potential rescuer.

Rebecca would argue that Alfred's breaking of the speed limit and striking of Ashley, and Ashley's own negligent conduct in getting out the car and onto the road in the middle of a green light were both superseding intervening factors that broke the chain of causation from Rebecca's actions to Ashley's injuries.

**It is likely that Rebecca is not negligently liable to Ashley.**

5000 (Are Kaitlyn and Melody Negligently Liable to Ashley?)

*See rule above for negligence*

Ashley may argue that Kaitlyn and Melody are negligently liable to her because she was a foreseeable plaintiff of their encouragement of Rebecca's unsafe driving.

ACTUAL CAUSE OF ASHLEY'S INJURIES? PROXIMATE CAUSE?  
Kaitlyn and Melody would argue that Rebecca's crashing of the car and Alfred's speeding and subsequent striking of Ashley were (superseding intervening causes) breaking the chain of causation, and that Ashley was not a foreseeable plaintiff of their conduct.

**It is unlikely that Kaitlyn and Melody are negligently liable to Ashley under common law.**

**END OF EXAM**

---