

KERN COUNTY COLLEGE OF LAW

TORTS

MIDTERM EXAMINATION

FALL 2023

PROF. Thomas Brill

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

Question #1 (60 minutes)

A group of middle school students met in a classroom to play chess as part of a school chess club. During one of the chess tournaments, as the players were concentrating on their match, another student (John) thought it would be funny to light some firecrackers and toss them into the room. Andrew, one of the players, had a heart condition, and suffered a heart attack as a result. As most of the students ran screaming from the building, one of the students, Billy, saw Andrew's obvious distress, rifled through his backpack, and stole Andrew's wallet. Timmy, another student, mistakenly believed John had more firecrackers, so he ran up to him and punched him in the face, breaking his nose, before leaving. John was actually holding some pencils.

John ran home to tell his parents that Timmy punched him. John's dad, who was 5' 3" and skinny, went to Timmy's house, hoping to find Timmy at home. When he got there, he knocked on the door but no one answered. He kicked the door in and found Timmy's parents watching television. He yelled at them, "nobody's leaving here until Timmy gets home." Timmy's dad was alarmed but thought this crazy little guy couldn't possibly keep him from leaving. Timmy's mom, however, fainted and hit her head on the table. Timmy's dad became so angry he threw a plate of cheese at John's dad, hitting him in the face, and scaring him off.

Identify the intentional torts and potential defenses for:

1. Andrew against John and Billy.
2. John against Timmy..
3. Timmy's Dad against John's Dad and Timmy's Mom against John's Dad.

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Fall 2023 Final Exam

Professor Thomas Brill

Question #2 (60 minutes)

Robert and Melissa are cyclists. They love to bike on quiet country roads where there is not much traffic. One day they rode Calypso Road to Chesterville. They were surprised to see so much traffic, most of it in the opposite lane; they had been unaware Chesterville was hosting an apple festival. But since they spent a long time getting there, they decided to ride anyway. Calypso Road is a tree-lined, two-lane country road. The trees are old and branches from them often fall onto the roadway. The city of Chesterville is aware of the problem but stopped sending workers to trim the trees and clean the debris, resulting in an increase in the number of branches on the road. This lack of maintenance was due to the town's economic decline. Calypso Road is normally a quiet road and the lack of maintenance is not usually a problem.

Robert and Melissa rode eastbound without incident until they crested a hill and were confronted by several tree branches. Robert and Melissa swerved into the opposite lane to avoid the branches. Tammy, driving westbound in her 2020 Ford F100 pickup truck, was putting her sun shade down and not looking ahead. The sun was starting to set and blinded her momentarily. When she looked up, she saw the two bicyclists in her path and swerved off the road to avoid crashing into Robert or Melissa. Despite her evasive action, she clipped Robert's bike, shoving him into Melissa. Both Robert and Melissa suffered broken bones from the crash. Tammy's truck went off the road and rolled over. She was not wearing her seat belt and broke her neck in the accident. The state they are in is a pure comparative negligence state.

Discuss Robert's and Melissa's claims against Tammy including defenses.

Discuss Robert's and Melissa's claims against the city including defenses.

Discuss Tammy's claims against Robert and Melissa including defenses.

Discuss Tammy's claims against the city including defenses.

Question #3 (60 minutes)

Cheryl and her boyfriend, Ron, loved to hunt. Their favorite place to hunt dove was near a remote, abandoned cabin. Every year when dove season opened, they would spend the weekend shooting near the cabin even though they were trespassing. No one ever approached them in all the years they hunted there.

During the last summer, and unbeknownst to Cheryl and Ron, the Boy Scouts had built a camp on land the Scouts had purchased next to the cabin. The camp was hidden by a ravine and bushes.

A Cub Scout troop was camping over the first weekend of dove season. Paul, an eight-year-old, developmentally disabled scout did not always follow instructions. The scout master warned him multiple times not to wander off, but the warnings went unheeded. As the other scouts were doing a "sleuth hunt" where they had to be very quiet and look for animals, Paul walked away, ignored "No Trespassing" signs, stepped over a fallen barbed wire fence, and wandered into the ravine.

Cheryl and Ron were happily firing away at dove, not noticing that Paul was there. One of them hit Paul with shot from a shotgun, although the exact gun from which the shot came could not be identified. When Ron and Cheryl saw what happened, they ran off. The scout master caught them because they ran into him as he was searching for Paul. They confessed what had happened.

Paul suffered several pellet injuries in his right arm. It hurt a little but it wasn't life threatening. He was taken to a local hospital. Dr. Martinson was a recent graduate and concluded an MRI was needed. Dr. Martinson had Paul sign a consent form that required disclosure of any metal in his body. Paul did not understand the form and just signed it. The magnets from the MRI pulled the metal pellets through Paul's heart, and it was all Dr. Martinson could do to keep him alive. Paul ended up spending a month in the hospital, but eventually recovered.

What are Paul's claims against Cheryl? Ron? The Cub Scouts? Dr. Martinson? Be sure to discuss any defenses for each defendant.

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Question #1 60 minutes – Answer Rubric

GRADING RUBRIC:

Andrew versus John

- assault (5 points)
- Battery (5 points),
- Strict Liability using a dangerous instrumentality (10points)

Andrew against Billy:

- trespass to chattels (10 points)

John against Timmy:

- battery (10 points),
- defense to battery for use of reasonable force (5 points),
- mistaken belief (5 points)

Timmy's Dad against John's Dad

- false imprisonment (10points),
- dad might not have had the necessary belief that he was being confined (5 points),
- trespass to property (10 points)

Timmy's Mom against John's Dad

- false imprisonment (10 points),
- mom can recover all damages, even if not foreseeable (5 points),
- trespass to property (10 points)

TOTAL POSSIBLE POINTS: 100

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Question #2 60 minutes

GRADING RUBRIC:

Robert and Melissa:

- Negligence against Tammy (10 points),
- standard of care in an emergency (5 points),
- defense of comparative negligence (10 points);
- Negligence against city (10 points),
- same defenses (5 points)

Tammy:

- Negligence against Robert and Melissa (10 points),
- defenses of comparative negligence (10 points),
- seat belt defense (5 points),
- defense of assumption of risk (5 points),
- last clear chance (5 points);
- against city for negligence (10 points),
- failure to warn (5 points),
- defenses of assumption of risk and comparative negligence (10 points)

TOTAL POSSIBLE POINTS: 100

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Question #3 60 minutes

GRADING RUBRIC:

Paul against Cheryl and Ron:

- Negligence—duty and breach(10 points),
- causation--Summers v Tice (burden shifts) (5 plus 5 points),
- foreseeability analysis (5 points), medical malpractice does not break the chain (10 points)
- damages (10 points)

Paul against Cub Scouts:

- Duty of scout master (in loco parentis), knowledge of disability (10 points)
- defense of third-party conduct (10 points)

Paul against Dr. Martinson

- medical malpractice—duty & breach(10 points)
- standard of care in med mal (5 points),
- battery (no informed consent from a minor) (5 +(5) points)
- Trespass—but unimportant because Cheryl and Ron were not property owners (10 points)

TOTAL POSSIBLE POINTS: 100

1)

Andrew v. John

Did John commit an assault on Andrew?

Assault - intentional act by D that causes immediate apprehension or fear that a harmful or offensive contact is about to occur.

Here John intentionally acted by lighting and throwing firecrackers in the the room. When the firecrackers blew up they made a loud and startling noise that scared Andrew causing him to have a heart attack. Here the fear/apprehension element must be reasonable, that can be demonstrated that a group of children in the room also ran out creaming implying that there was fear or apprehension or both. Although, John may not be responsible for Andrew's heart condition D's is liable for harm caused and must take P as he found him "thin skulled" victim is not a defense. Lastly, John's actions caused Andrew to have a heart attack, Andrew could collect present and future economic damages including, medical expenses, lost wages, and emotional distress.

Respondent could raise a defense that John is just a child and was behaving as one, the Plaintiff's counsel would be likely to defeat that argument assuming that John is old enough that infancy would not be a defense. John also did not have consent to throw fire crackers into a room full of students, nor did John acted in self defense, defense of others or out of necessity.

Andrew would likely prevail in him claim against john.

Did John commit IIED against Andrew?

IIED - D intentionally commits and extreme and outrageous act that causes P emotional distress.

Here John intentionally lit and threw firecrackers into the room. Causing fear and extreme emotional distress to all students in the room including Andrew. Modern trends of tort law do not require a physical manifestation of emotional distress. But does require that the P prove some sort of injury. In this case, aside from the heart attack above, Andrew could have

? to Andrew, yes

psychological issues, fear of loud noises, anxiety, depression, and a general loss and enjoyment of life. Here John would be liable for both economic and non economic damages including therapy sessions/ medical fees and emotional distress.

Respondent could raise a defense that John is just a child and was behaving as one, the Plaintiff's counsel would be likely to defeat that argument assuming that John is old enough that infancy would not be a defense. John also did not have consent to throw fire crackers into a room full of students, nor did John acted in self defense, defense of others or out of necessity.

Andrew would likely prevail in him claim against john.

Did John commit battery on Andrew?

Battery - an intentional act committed by D that causes offensive contact with or injury to P resulting in damages.

good Here John intentionally lit and threw firecrackers into the room. Causing fear and extreme emotional distress to all students in the room including Andrew. However, based on the fact pattern there was no physical contact. Andrew's counsel could argue that the physical injury still occurred, but rebuttal from respondent would likely be lack of physical contact does not permit Andrew to recover in this case.

John would overcome the claim of battery on Andrew.

Andrew v. Billy

Did Billy commit trespass to chattels?

Trespass to chattels - is intentional interference with ownership interest of another's personal property, causing damages

Here Billy intentionally rifled through Andrews backpack knowing that Andrew could not stop him, by doing so he interfered with Andrew's ownership of a backpack aside from committing conversion (will address below). Andrew had ownership interest in keeping his backpack and its contents and assuming that he would be able to identify that the backpack and the property within it was his.

Respondent's counsel could argue that Billy did not cause any damages to the backpack, but Billy did steal Andrew's wallet. Defense could argue that Billy was looking for medicine to help Andrew in an emergency which could make it a necessity defense, or that he had consent. But based on the fact pattern it is unlikely that defense would succeed and Billy would be found liable for any economic present and future damages (value of the valet if there were credit cards or cash) and non economic damages (what if the wallet had a significant sentimental value emotional damages or cause Andrew panic?) emotional distress.

Andrew would likely prevail in his claim against Billy.

Andrew v. Billy

Did Billy commit conversion?

Conversion - an intentional act by D that substantially interferes with P's chattel or destroys the aforementioned chattel or substantially devalues the chattel. D would be responsible to the full value of the chattel.

Here Billy intentionally rifled through Andrews backpack and stole Andrew's wallet knowing that Andrew could not stop him, by doing so he substantially interfered with Andrew's ownership of his chattel. On the other hand based on the fact pattern it is unclear what happen to the wallet after Billy stole it. If in fact Billy did later converted the wallet by selling it to someone else or damaged it/lost it permanently kept it Billy would be liable to Andrew for conversion.

There is not enough facts to say with certainty that Billy is liable for conversion.

Andrew v. Billy

Did Billy cause Andrew IIED?

IIED (please see the rule above)

Question at best
Here the fact pattern does not indicate whether Andrew was even aware of Billy stealing the wallet, but if he was it could to reasonable to argue that the wallet was of sentimental value to Andrew and the loss of the wallet caused him emotional distress. However, while getting a wallet stolen may not be a pleasant experience I doubt that it would give rise to extreme emotional distress.

John v. Timmy

Did Timmy commit battery on John?

Battery (please see the rule above)

✓ Here Timmy ran up to John and intentionally punched him in the nose, breaking it. Here all elements are satisfied for John to have a valid claim of battery. Timmy on the other hand could argue self-defense and defense of others. Timmy was attempting to stop John from throwing any more fire crackers in the room because firecrackers are dangerous and could cause injury to Timmy and other students. also this not really and assault claim because the harmful or offensive contact did occur and P did sustain injuries.

Here Timmy would have a valid defense against John and Timmy could to prevail.

Timmy's Dad v. John's Dad.

Did John's dad commit trespass?

Trespass- intentional act that causes entry onto P's land, does not have to cause damages P can be awarded nominal damages.

✓ Here John's dad intentionally come onto the land and kicked the door in to the home. In this case he caused damages to the door. John's dad is likely to be hold liable for trespass, he does not have any realistic defenses; there is no necessity, no self-defense or defense of others.

John would likely be hold liable for trespass.

✓ *false imprisonment*
No IIED for Timmy's dad pattern does not infer that he was in extreme emotional distress. the fact pattern support Timmy's dad was not scared of john's dad.

✓ maybe assault because any reasonable person would be likely to assume that when someone kicks in your door an offensive or harmful contact was about to occur and P does not have to be in fear just immediate apprehension is enough.

Timmy's mom v. John's dad

Did John's dad commit IIED?

See rule above

Here, John's dad kicked in the door which most people would consider extreme and outrageous conduct that caused Timmy's mom extreme emotional distress as it would for an average reasonable person, and she fainted causing her to hit her head on the table. Here John's dad may be liable for both Assault and IIED because she could also, unlike Timmy's dad, be scared of John's dad and that he could offensively touch her or physically injure her.

Again John's dad does not have a realistic defense and likely will be found liable for economic and non-economic damages.

Did John's dad commit false imprisonment?

False imprisonment- intentional act by D to keep P bounded to an area using force, threats, or obstacles, without P's consent or a valid shopkeeper's defense

Here John's dad kicked the door in and yelled "nobody's leaving here until Timmy gets home." Here John's dad intentionally kept Timmy's parents in a bounded area and they did not consent.

Timmy's parents have a valid claim for false imprisonment against John's Dad.

Dad didn't believe he was confined

2)

Robert's and Melissa v. Tammy

Negligence

Negligence requires duty, breach, both actual and proximate cause, and damages.

Duty

↓ All defendants have a duty of care to those within their zone of danger, this is based on Cardozo's opinion in *Polsgraf*. There also may be a duty owed to all foreseeable plaintiff's which is based on Andrew's dissent. They are required to act as a reasonable person would act under like or similar circumstances.

Here, it could be argued that drivers have a duty of reasonable care to all other occupants of the road.

Tammy had a duty of a reasonably prudent driver and owed a duty to all pedestrians, drivers, and other parties of the road.

Thus, Tammy owed a duty of care to Melissa and Robert.

Breach

A breach of duty occurs when a defendant falls short of the requisite duty imposed on them.

↓ Here, Tammy was driving a large truck her 2020 Ford F100 and while doing so she was putting her sun shade down and not looking. A reasonably prudent driver would be looking at the road at all times and would not be distracted this way.

Thus, Tammy breached her duty of care.

Causation

In a negligence claim the defendant must be the actual and proximate cause of the plaintiff's injuries or harm.

Actual Cause

Actual cause is defined through the "but for" test. "But for" the defendants actions the harm on the plaintiff would not have happened.

But for Tammy driving, putting down her shade, not looking ahead she would not have clipped Robert's bike.

Thus, Tammy is the actual cause of Robert and Melissa's broken bones.

Proximate Cause

The proximate cause is based on the foreseeability of defendants actions.

Here, it is foreseeable that Tammy putting her shade down and not looking ahead, would cause her to run into other occupants of the road. The other side may argue that the sun may have broken the chain of events however, this is unlikely.

Therefore, Tammy was the proximate cause of Robert and Melissa's broken bones.

Damages

A defendant will be held liable for all of the plaintiffs damages. A plaintiff has a duty to mitigate their damages.

Here, Tammy caused Robert and Melissa's broken bones. Tammy will likely be responsible for all of Robert and Melissa's past, present, and future medical expenses, their pain and suffering and loss of income.

Tammy, will have to pay Robert and Melissa's damages.

Defenses

AOR

An assumption of risk is taken when the plaintiff is aware of or should be aware of harm and decides to act anyway or they verbalize their agreeance with the defendants conduct. This will bar Plaintiffs recovery.

Here Tammy could argue that Robert and Melissa assumed the risks of the road when they decided to bike on a heavily trafficked road and when the road was filled with branches. However, they were not aware of Tammy's behavior and the facts dont indicate theyre from the city to be able to know

AOR doesn't generally apply to people lawfully using a roadway, like pedestrians or bicyclists. Since so many people "assume the risk" even when we just get in our cars. It would apply if they were, say, in a bicycle race because racing

about how much the streets are unkept. But the road is typically quiet and lack of maintenance is not usually a problem.

Assumption of risk is not likely to be a good defense.

Comparative Negligence

✓ Comparative negligence is based on the idea that no matter how negligent the plaintiff may have been they can still be awarded some damages if the defendants are found to be negligent as well.

Here Tammy could argue that Robert and Melissa were comparatively negligent when they continued to bike on a heavily trafficked road. This may be true, but depending on how negligent the fact finder finds the other parties to be, everyone can still walk away with being awarded some type of damages. The facts indicate that Tammy tried to avoid the cyclists but despite her actions she still clipped them.

Thus, it is likely that Tammy may be awarded damages for her truck and her broken neck. And Melissa and Robert will be awarded the damages Tammy will likely be responsible for all of Robert and Melissa's past, present, and future medical expenses, their pain and suffering and loss of income minus however much the fact finder finds them to be negligent.

Conclusion

It is likely that Tammy will be found negligent in this case.

Robert and Melissa v. the City

Negligence

Duty

All defendants have a duty of care to those within their zone of danger, this is based on Cardozo's opinion in *Polsgraf*. There also may be a duty owed to all foreseeable plaintiff's which is based on Andrew's dissent.

Here, the City is held to a higher standard of care like that of a common carrier or an inn keeper. They are required to care for the residents and all those who are in their surrounding area. The City is required to act as a reasonably prudent City would act under like or similar circumstances. The city

had an Apple Festival going on so they had a duty to ensure that the roads were maintained for their guests.

Thus, the City owed a duty of care to Robert and Melissa

Breach

Breach is defined the same as above.

Here the City breached their duty of care when they were aware of the old tree branches falling into the roadway. They stopped sending workers to trim the trees and clean the debris resulting in the roads increase of branches on the road.

The city breached their duty of care.

Causation

Causation is defined the same as above.

Actual Cause

The actual cause is defined the same as above.

Here "but for" the city stopping their maintenance on the road the harm inflicted to Melissa and Robert would not have occurred. Melissa and Robert swerved in the opposite lane to avoid the branches.

Thus, the City was the actual cause of the harm to the plaintiffs.

Proximate Cause

Proximate cause is defined the same as above.

It was foreseeable that due to the lack of maintenance of the trees harm to occupants of the road would have resulted. It was foreseeable that drivers and other occupants of the road would swerve around the trees.

Thus, the City was the proximate cause of the plaintiff's harm.

Damages

Damages are defined the same as above.

A defendant will be held liable for all of the plaintiffs damages. A plaintiff has a duty to mitigate their damages.

Here, the City caused Robert and Melissa's broken bones. The City will likely be responsible for all of Robert and Melissa's past, present, and future medical expenses, their pain and suffering and loss of income.

The City, will have to pay Robert and Melissa's damages.

Conclusion

The City will be held negligent.

Defenses

AOR

An assumption of risk is taken when the plaintiff is aware of or should be aware of harm and decides to act anyway or they verbalize their agreeance with the defendants conduct.

Here the City could argue that Robert and Melissa assumed the risks of the road when they decided to bike on a heavily trafficked road and when the road was filled with branches. The city knew of the branches being in the road and decided not maintain it properly.

Assumption of risk is not likely to be a good defense.

Comparative Negligence

Comparative negligence is based on the idea that no matter how negligent the plaintiff may have been they can still be awarded some damages if the defendants are found to be negligent as well.

Here the City could argue that Robert and Melissa were comparatively negligent when they continued to bike on a heavily trafficked road. This may be true, but depending on how negligent the fact finder finds the other parties to be, everyone can still walk away with being awarded some type of damages. However, the facts dont indicate that they attempted to fix the issue at all.

Thus, it is likely that Melissa and Robert will be awarded the damages and the City will likely be responsible for all of Robert and Melissa's past, present, and future medical expenses, their pain and suffering and loss of income minus however much the fact finder finds them to be negligent.

Conclusion

It is likely that the City will be found negligent in this case.

Tammy v. Robert and Melissa

Negligence

Duty

The actual duty here would be to act as a reasonable person forced with a similar emergency, for both Tammy and the cyclists!

Duty is defined the same as above. The cyclists were expected to act as Reasonably prudent people and cyclists under same or similar circumstances.

Cyclists have a duty to protect themselves and other occupants of the road as well.

The cyclists owed Tammy a duty.

Breach

Breach is defined the same as above.

It could be argued that Reasonably prudent cyclists would not have gone biking due to the traffic. They would have gotten off the road when they were confronted with the branches.

However, absent additional facts that they tried to avoid the branches and get off the road, the bikers did not breach their duty.

Causation

Defined the same as above

Actual Cause

Actual cause is defined the same as above.

The cyclists didnt breach their duty of care.

Thus, they were not the actual or but for cause to harm inflicted on Tammy.

Proximate Cause

Proximate cause is defined the same as above.

The cyclists didnt beach their duty of care.

Thus, they were not the proximate cause of harm.

Damages

Defined the same as above

Tammy suffered a broken neck and her truck rolled over. If the defendants were found to be negligent they would have been responsible for her past, present, and future medical expenses, their pain and suffering and loss of income.

Conclusion

Robert and Melissa will not be held negligent.

Defenses

AOR

AOR is defined the same as above.

The cyclists could try to argue that Tammy assumed the risks to the injuries she had sustained when she failed to put on her seat belt.

This could be seen as a defense.

Comparative Negligence

Comparative negligence is defined the same above.

The cyclists may be found to be comparatively negligent if the fact finder found them to be and their damages as well as Tammy's would be reduced to however much they were assigned percentage wise.

Thus, the fact-finder may find them to be comparatively negligent absent other facts.

Conclusion

Robert and Melissa will not be held negligent.

Tammy v. The City

Negligence

Duty

Duty is defined the same as above

This would be the same analysis and conclusion as that of Robert and Melissa v. The City.

Breach

Breach is defined the same as above.

This would be the same analysis and conclusion as that of Robert and Melissa v. The City.

Causation

Causation is defined the same as above.

This would be the same analysis and conclusion as that of Robert and Melissa v. The City.

Damages

Damages are defined the same as above

This would be the same analysis and conclusion as that of Robert and Melissa v. The City.

Tammy could be awarded damages for her loss of income, pain and suffering, truck damages, past, present and future medical bills.

Conclusion

The city could be held negligent.

Defenses

AOR

Defined the same as above

City could argue that Tammy assumed the risks of her injuries when she failed to put on a seatbelt, put her sun shade down and not look ahead.

Thus, it could be argued that Tammy assumed the risks.

Comparative Negligence

Defined the same as above

City could argue that Tammy was comparatively negligent when she failed to put on a seatbelt, put her sun shade down and not look ahead.

Thus, if the fact finder finds Tammy to be contributorily negligent whatever her damages would have been they would reduce that to whatever percentage they found her to be negligent.

3)

Paul vs. Cheryl, Ron, Cub Scouts, Dr. Martinson

• **Negligence**

- A person is liable for negligence when they owe a duty to another, they breach that duty, and the breach of duty is the actual and proximate cause of another's damages.
 - **Duty** - A defendant owes a duty of care to all foreseeable plaintiffs.
 - *Standard of Care* (Cheryl & Ron) - the general standard of care owed to all persons is that of a reasonably prudent person.
 - Here, Cheryl and Ron owed a duty to be reasonably prudent hunters armed with shotguns.
 - *Standard of Care* (Cub Scouts) - a caretaker for a minor with developmental disabilities has a duty of care similar to that of parents for their children
 - Here, the Cub Scout troop owed a duty to Paul to be extra vigilant to ensure that he would not get hurt.
 - Attractive Nuisance doctrine
 - *Standard of Care* (Dr. Martinson) - a medical professional's standard of care is that of a someone in their field with similar skill and experience, in good standing.
 - **Breach** - A defendant breaches their duty to another when they fail to conform by their standard of care.
 - Here Cheryl and Ron breached their duty as reasonably prudent hunters "happily firing away" without being cautious of their surroundings.
 - The Cub Scouts breached their duty of care owed to Paul as his caretakers during the camping trip by not being extra vigilant of him, especially by planning their camping trip over the first weekend of dove hunting season.
 - Dr. Martinson breached his duty of care owed to Paul by not properly evaluating him as a patient with diminished capacity, and properly evaluating all aspects of the injury before ordering the MRI.

- *Res Ipsa Loquitur* - the thing speaks for itself. When a plaintiff cannot determine the exact breach that led to the injury, the fact that the injury could have only occurred as a result of Defendant's negligence, and that Defendant had full control of instrumentality leading to the injury.

You don't need RIL when you can prove causation directly

- The metal pellets being pulled through Paul's heart could have only occurred through the doctor's negligence.

- **Actual Cause (Factual cause)** - But for the defendants' actions, the harm to plaintiff would not have occurred. In a case with multiple defendants, the substantial factor test would be used to determine which defendant's action was a substantial factor resulting in the plaintiff's injury.

Summers

Tie - where there are two people and you know one of them caused the injury the burden shifts

- The Cub Scouts not being properly vigilant over Paul led to Paul walking away towards danger. Had Paul not walked away from his group and crossed into the forbidden area marked with "No Trespassing" sign, he would not have entered into the dove hunting zone, leading to Cheryl and Ron shooting him.

- **Proximate Cause (Legal cause)** - Any foreseeable, direct/indirect consequences caused by defendant's actions that would bring about the plaintiff's injuries.

- Any medical malpractice is a foreseeable consequence of an injury caused by another.
- Dr. Martinson's negligence was a foreseeable harm to the injury that Paul suffered.

- **Damages** - any harm to a plaintiff's property or personal injury brought upon by defendant's negligent actions.

- **Defenses**

- Dr. Martin was a novice doctor, having been a recent graduate.
- Cub Scouts repeated warnings to Paul

END OF EXAM