

SAN LUIS OBISPO COLLEGE OF LAW

TORTS

MIDTERM EXAMINATION

FALL 2023

PROF. R. ALLEN

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

San Luis Obispo College of Law

Torts Examination

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Prof. R. Allen

QUESTION 📌 |

Debbie lives in San Francisco, California on a street with a very steep incline. When she parked facing downhill she tried to always turn her wheel to the right. She knew that if her brakes failed, then her large truck would be stopped by the curb. One day, she had to park on the other side of the street. Out of habit, she turned her wheel to the right. As fate would have it, a moderate earthquake occurred during the night and the brakes on her large truck released. Because the wheel was turned to the right, gravity pulled the truck out into the street and then down the hill. The truck eventually began to hit other vehicles and within a few minutes several cars and trucks were careening down the hill.

At the bottom of the hill the cars and trucks crashed through the home of Bobbie. The avalanche of vehicles destroyed the home and severely injured the home-owner Bobbie. A few minutes after the crash, Bobbie's husband, Peter, returned home from work and saw the bloody body of his wife under a pile vehicles and timber.

In an attempt to save her life, Bobbie was placed into medically induced coma from which she has yet to recover. Medical experts have opined that even if she comes out of the coma, the brain damage will prevent her from walking, communicating, or even thinking. It is unknown whether she will feel, hear, or see.

Peter is devastated. He wants to pursue a civil action for the injuries to Bobbie.

Identify and discuss the legal issues with:

[a] Bobbie's cause of action against Debbie for her losses

[b] Peter's own cause of action against Debbie to recover for Loss of Consortium and Negligent Infliction of Emotional Distress.

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Question 2

Pablo and Priya are artists who rent a shared living/studio space from their friend Audrey in a rural area. Audrey, who lives about 100 miles away in a big city, hired Dillard to do some maintenance work on her rural property. Unbeknownst to Audrey, Dillard is a rival artist who resents the success of Priya's recent gallery show and has been posting on social media falsely accusing Priya of copying his own work.

One night, Pablo and Priya are woken up by shouting and banging outside their studio. Pablo opens the door and discovers Dillard, waving a shotgun. Dillard spits in Pablo's face, hitting him square in the eyes, and yells "Priya better end her show tomorrow or I'll shoot holes through all her paintings." At that moment, Priya appears in the doorway, holding a baseball bat that she keeps under her bed. Priya races past Pablo—who is still wiping the spit out of his eyes—and swings the bat at Dillard. She misses Dillard but knocks the shotgun out of his hands.

Surprised and humiliated by Priya's attack, Dillard grabs several potted succulents that Audrey left outside and throws them into the back of his truck before driving off.

(1) What intentional torts, if any, can Pablo, Priya, and/or Audrey bring against Dillard?

(2) What intentional torts, if any, can Dillard bring against Priya? What defenses are available to Priya?

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ANSWER OUTLINES

Q1

Issue	Rule	Analysis	Concl'n	Points Allotted
Pablo/Priya v Dillard				
Trespass to Land (2 points)	Intentional, willful enter onto real property of another; damage? (2 points)	D spits in Pablo's face; indirect trespass? (2 points)	(1 pt)	/7
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	Spit in eye of Pablo (2 points)	(1 pt)	/7
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	Shouting/banging; waving shotgun; spit in eye of Pablo; conditional threat to Priya's property? (2 points)	(1 pt)	/7

IIED (2 points)	Intentional reckless, extreme and outrageous conduct that causes severe emotional distress, direct or indirect victim (2 points)	Shouting/banging; waving shotgun; spit in eye of Pablo; conditional threat to Priya's property? (2 points)	(1 pt)	/7
Audrey v Dillard				
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points)	* took potted succulents hers, but in possession of P/P (2 points)	(1 pt)	/7
Conversion (2 points)	Will, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points)	* took * hers, so ok that in possession of P/P * unknown if returned (2 points)	(1 pt)	/7
Dillard v. Priya				

Assault (2 points)	See above	Swung bat at D, missed (2 points)	(1 pt)	/5
Battery (2 points)	See above	Swung bat, missed	No (1 pt)	/5
IIED (2 points)	See above	Swung bat, missed	(1 pt)	/5
Trespass to Chattel (2 points)	See above	Hit shotgun with bat (2 points)	(1 pt)	/5
Conversion (2 points)	See above	Hit shotgun with bat (2 points)	(1 pt)	/5
Self-defens e (2 points)	Reasonable force to defend self against reasonable belief in imminent threat (2 points)	Shouting/banging; waving shotgun; threatened property (2 points)	(1 pt)	/7
Defense of Others (2 points)	Reasonable force to defend other against reasonable belief in right to defense; majority v. minority views (2 points)	Shouting/banging; waving shotgun at Pablo; spit on Pablo (2 points)		/7

Defense of Property (2 points)	Reasonable, non-deadly, force to protect property (2 points)	Conditional threat to paintings (2 points)	No (1 pt)	/7
Extra Credit Damages (2 points)	General Special Punitive (2 points)	Pain and suffering from spit in the eye; Cost of succulents; Reprehensible conduct to be punished (6 points)	(1 pt)	/11
Total points possible				/89

Q2

Issue	Rule	Analysis	Concl'n	Points Allotted
B v Debbie				
Negligence (2 points)	Over-arching Negligence elements (2 points)			/4
Duty (2 points)	All reasonably foreseeable plaintiffs (2 points)	Parked on street, so all other parked cars and owners (2 points)	(1 pt)	/7
SOC (2 points)	RPP (2 points)		(1 pt)	/5

Breach (2 points)	<u>Blyth; Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points)	Burden of turning the correct way less than risk (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For (2 points)	But For failure to turn to curb (2 points)	(1 pt)	/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	Reasonably foreseeable? USA: earthquake (4 points)	(1 pt)	/9
Res Ipsa Loquitor (2 points)	D in control of instrumentalities; Injury does not occur in the absence of negligence; P is blameless (2 points)	Not exactly sure why brake released during earthquake (2 points)	(1 pt)	/7
Damages (2 points)	General: Carla's emotional distress and pain and suffering; Loss of Consortium; Special; Punitive: reprehensible? (4 points)	Carla in coma: can she feel pain and have emotional suffering; Punitive: no malice (4 points)	(1 pt)	/11
Peter v Debbie				

Loss of Consortium (2 pts)	Loss of companionship and sex	Bobbie in a coma		/7
NIED Indirect victim (2 points)	<u>Thing v. LaChusa</u> Californian jurisdiction elements (2 points)	Not in zone of danger; not present when occurred (2 points)	(1 pt)	/7
Conclusion		Yes or no negligence and ability to recover	(1 pt)	/1
Total points possible				/72

Q3

Issue	Rule	Analysis	Concl'n	Points Allotted
Chris v. Del				
Negligence (2 points)	Over-arching Negligence elements (2 points)			/4
Duty (2 points)	LOLO Duty: Duty to known trespassers re artificial conditions; Attractive Nuisance to child; All reasonably foreseeable plaintiffs (<u>Roland v. Christian</u>) Non-delegable duty?	Chris was known and frequent; too young to appreciate danger? (2 points)	(1 pt)	/11

	(6 points)			
SOC (2 points)	Warn of latents (historical); RPP (Attractive Nuisance; <u>Rowland v. Christian</u>) (2 points)		(1 pt)	/5
Breach (2 points)	<u>Blyth; Carroll Towing</u> ; Hand Balance Test (2 points)	Burden of warning licensees and invitees of construction on pool less than risk (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For (2 points)	But For failure to warn (2 points)	(1 pt)	/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts: possible negligence of Aqua Fun does not cut off liability to D (2 points)	Reasonably foreseeable? Intervening Act: LOLO has non-delegable duty re repairs and maintenance (2 points)	(1 pt)	/7
Damages (2 points)	General: pain and suffering; Specials: medical, past and future; wages; enjoyment of life; Punitive: reprehensible? (2 points)	Chris may have serious life-long injuries and (2 points)	(1 pt)	/7

Defenses (2 points)	For Del: Chris is a Trespasser; he was contributory or comparatively negligent; he assumed the risk. (2 points)	Chris jumped in pool that was empty of water (2 points)	(1 pts)	/7
Paramedic v Del				
Duty (2 points)	LOLO duty to Privileged Entrants; RFP (<u>Rowland v. Christian</u>) Non-delegable duty (2 points)	Responding to emergency, not warned of hazards	(1 pt)	/7
SOC (2 points)	Warn of latents (historical; RPP (<u>Rowland v. Christian</u>) (2 points)			/5
Breach	See above	Burden of making area safe by clearing equipment (2 points)	(1 pt)	/5
Actual Causation	See above	But for clearing area (2 points)	(1 pt)	/5
Proximate Causation (2 points)	See above	Reasonably foreseeable? Foreseeable that paramedic would respond to Chris's injury	(1 pt)	/5

1)

QUESTION 1

A. **Bobbie v. Debbie**

Negligence

A prima facie case for negligence is established when the plaintiff establishes that the defendant had (1) a duty to conform to (2) a standard of care that was (3) breached, (4) causing (5) damages, (6) without defense.

1. Duty

Duty can be imposed upon a defendant by (1) a reasonably foreseeable plaintiff (RFP) in the zone of danger created by the defendant's act; (2) an affirmative act; (3) a special relationship; and (4) by statute.

1.1 Reasonably Foreseeable Plaintiff

As established by Cardozo's majority opinion in *Palsgraf v. Long Island R.R.* (1928), a defendant has a duty to reasonably foreseeable plaintiffs (RFPs) that are in the zone of danger created by the allegedly negligent act. Notably, Andrews, writing for the dissent, argued that everyone owes a duty to the world at large. Here, Debbie indeed had a duty imposed via RFP because the failure of her truck's brakes, which she feared would occur (as evidenced by her practice of turning her wheels against the curb), thus creating a zone of danger that included the area where her truck was likely to roll. Any persons falling within this danger zone would constitute RFPs.

Therefore, Debbie had a duty established by RFP.

1.2 Affirmative Act

An affirmative act can similarly impose a duty on a defendant, such as when a defendant causes the peril (*Montgomery*), interferes with a rescue (*Soldano*), and begins then abandons a rescue. Here, while Debbie's negligent act eventually created the peril, Debbie did not at the time commit an affirmative act that bestowed upon her a duty.

Therefore, Debbie did not likely have a duty established by an affirmative act.

1.3 Special Relationship

A special relationship can impose a duty on a defendant where, for example, they are employer-employee-customer, land owner, and teacher-student. Here, Debbie did not have a special relationship with Bobbie or Peter; indeed, the couple was at the bottom of the hill, so they did not even constitute neighbors.

Therefore, Debbie likely did not have a duty imposed via statute.

1.4 Statute

Statutes can also impose a duty on a defendant. Here, there is no statute evident in the fact pattern.

Therefore, Debbie likely did not have a duty imposed via statute.

2. Standard of Care

A Standard of Care (SOC) can be established by (1) reasonably prudent person (RPP); (2) custom or industry habit; and (3) statute.

2.1 Reasonably Prudent Person

The reasonably prudent person (RPP) SOC requires that the defendant have acted as a RPP would in the same or similar circumstances. RPP is the default SOC, and the defendant must fall no lower than this standard. Notably, SOC can be raised above RPP by, for example, the defendant having expertise or professional knowledge (e.g., doctor). Here, Debbie had the SOC of behaving as a reasonably prudent driver. A reasonably prudent driver would, for example, know to turn the wheels against the curb when parking on "a very steep incline" (para. 1), as Debbie usually did. An RPP would similarly ensure that their vehicle's brakes were in good order. That Debbie feared her brakes might fail may suggest that her truck's brakes were below standards and required maintenance; alternatively, Debbie could merely be attentive to the careful, preventative measures drivers should embrace. Whatever her motivation, Debbie did have an SOC of RPP.

Therefore, Debbie had the SOC of RPP.

2.2 Custom/Industry Habit

The facts do not suggest that Debbie had an SOC imposed by custom/industry habit.

2.3 Statute

The facts similarly do not suggest that there was a statute that imposed SOC on Debbie.

Therefore, Debbie did not have an SOC established by a statute.

3. Breach

When a defendant fails to conform to a SOC imposed by a delegated duty, breach occurs. Breach can be measured by (1) the Hand Formula; (2) *Blyth v. Birmingham's* reasonably prudent person requirement; and (3) negligence per se (NPS).

3.1 The Hand Formula

As Learned Hand established in *Carroll Towing*, breach can be measured when the burden or benefit of reducing or removing the risk of injury is less than the probability of injury and the severity of injury (or, $B < PL$). Here, Debbie's burden would be to ensure that her truck's brakes were in good order and that she turned her truck's wheels against the curb when parking on a steep incline. The probability of injury and severity of injury were fairly high, particularly since Debbie's truck is quite large and heavy, and parked on a steep incline. Debbie's burden of maintaining her truck's brakes and ensuring that the truck's wheels were against the curb to prevent rolling was certainly less than the probability and severity of injury created by a large truck careening down a steep incline where other residences were located.

Therefore, Debbie breached her duty's SOC via the Hand Formula.

3.2 Reasonably Prudent Person

As established in *Blyth v. Birmingham*, breach occurs if a defendant did something an RPP would not do, or failed to do something an RPP would do. Here, Debbie's negligent turning her truck's wheels the wrong way was something an RPP would not do. An RPP might even double-check that the wheels were turned the correct way since the potential for injury loomed large.

Therefore, Debbie breached her duty by *Blyth's* formula as well.

Although there are no statutes mentioned in the fact pattern, negligence per se arises when a statute is breached if (1) the plaintiff belongs to the class protected by the statute; (2) the injury is the sort the statute aims to prevent; and (3) there is a nexus between the violation of the statute and the harm. When NPS is established in a majority jurisdiction, then a conclusive presumption of negligence arises. When, however, in a minority

jurisdiction, a rebuttable standard of negligence arises, thus shifting the burden of proof to the defendant to prove their innocence by a preponderance of the evidence. Here, however, no breach via statute occurred.

Therefore, Del did not breach his SOC via statute.

4. Causation

To prove causation for a prima facie case of negligence, the plaintiff must establish that the defendant was (1) the actual cause and (2) the proximate cause of the resulting injuries. Where the plaintiff cannot establish a direct link between the defendant's alleged negligence and the plaintiff's harm, *res ipsa loquitur* (RIL) acts as a way of establishing causation by looking to circumstantial evidence.

4.1 Actual Cause

Actual cause asks whether the defendant was the cause-in-fact (i.e., factual cause) of the plaintiff's injuries, using, as the circumstances require, (1) the but-for test; (2) the substantial factors test; (3) alternative liability; and (4) market share liability to do so. Because Debbie is the only defendant in play, the but-for test will suffice for the present discussion. Thus, *but for* Debbie turning her truck's wheels the wrong way so they were not resting against the curb, the truck would not have careened down the steep incline, the other cars and trucks would not have been carried along with it, the car-avalanche would not have struck Bobbie's house, and Bobbie's injuries would not have occurred.

Therefore, Debbie is the actual cause of Bobbie's injuries.

4.2 Proximate Cause

Proximate cause, as a liability limiting device, asks whether the defendant is the legal cause of the resulting damages, turning on whether the harm was reasonably foreseeable and if intervening acts occurred to potentially break the chain of causation. If direct harms result from the defendant's act, then liability attaches if the harm was foreseeable (*In re Polemis*). If, however, intervening acts exist that potentially break the chain of causation, then liability turns on whether the acts are reasonably foreseeable acts (RFAs) or unforeseeable superseding acts (USA). In the former, liability attaches (*Wagonmound II*); in the latter, liability is barred. Indeed, if a harm is not reasonably foreseeable, then liability does not attach (*Wagonmound I*). Here, after Debbie parked her truck, negligently turning the wheels the wrong way, an earthquake occurred, presumably causing the truck's brakes to fail. Ordinarily, an earthquake would be considered a USA since it can be considered an "act of God." However, Debbie lives in San Francisco, a city notorious for its frequent earthquakes, as is the state of California. Furthermore, the earthquake was "moderate" (para. 1), rather than a severe one, possibly suggesting that the truck's brakes were on the way out anyway. Thus, earthquakes are arguably reasonably foreseeable given the context presented in the fact pattern.

Therefore, the chain of causation stemming from Debbie's negligent act is not likely cut off from the earthquake, making Debbie the proximate cause of Bobbie's injuries.

4.3 Res Ipsa Loquitur

Res ipsa loquitur exists as a way to establish causation where there is only circumstantial evidence rather than concrete evidence. RIL, following the Prosser Test, can establish causation if (1) the harm does not occur absent negligence; (2) the plaintiff is blameless; and (3) the defendant has control over the instrumentality in question. The facts do not give rise to RIL, so its discussion ends here.

5. Damages

A prima facie case of negligence requires more than nominal showing of damages, which can include (1) general (non-pecuniary); (2) special (pecuniary; compensatory); and (3) punitive. Wrongful death and loss of consortium (LOC) can also be brought.

5.1 General Damages

General damages include emotional damages and hedonic damages (i.e., loss of enjoyment of life). Bobbie will likely not be able to recover for emotional damages, since cognitive awareness is required for recovery. Here, Bobbie is still in a "medically induced coma from which she has yet to recover" (para. 3). Furthermore, Bobbie has extensive and likely permanent brain damage that will "prevent her from walking, communicating, or even thinking" (para. 3).

Therefore, Bobbie is not likely to recover for emotional damages.

5.2 Special Damages

Special damages include loss of income, medical expenses, and loss of work-life expectancy. Bobbie will likely recover for medical expenses, which will undoubtedly be extensive. If Bobbie had a job, she could also recover for loss of income and loss of work-life expectancy. If Bobbie was, for example, a stay at home mother, then she would similarly be able to recover. However, the facts do not specify what Bobbie's career was, if she had one.

Therefore, Bobbie will likely recover for special damages, the very least being medical expenses.

5.3 Punitive Damages

Punitive damages are awarded when the defendant's act was reckless, malicious, and reprehensible. Following the guideposts/factors established by *BMW v. Gore*, punitive damages consider (1) the degree of reprehensibility of the defendant's actions; (2) the disparity between the potential and actual harms the plaintiff experiences and the punitive damages awarded, and (3) the differences between comparable civil case penalties awarded and the punitive damages awarded. Here, Debbie's act was not likely reprehensible.

Therefore, punitive damages will likely not apply.

6. Defenses

The defenses available to Debbie include (1) contributory negligence; (2) comparative negligence; and (3) assumption of risk. None of the defenses are likely viable because Bobbie was presumably sitting in the supposed safety of her own home minding her own business. Contributory negligence and comparative negligence both require that the plaintiff have contributed in some way to their damages or assumed the risk by noting the risk and proceeding anyway; however the facts do not establish Bobbie's actions that night. It is likely, however, that she was not negligent.

Therefore, Debbie likely does not have any defenses available to her.

Conclusion

Given the discussion above, Bobbie likely has a strong cause of action against Debbie.

B. Peter v. Debbie

As Debbie's negligence has been established above, the discussion regarding Peter's cause of action will continue with his ability to recover for loss of consortium (LOC) and negligent infliction of emotional distress (NIED).

1. Loss of Consortium

Loss of Consortium allows the plaintiff to recover for loss of companionship. Here, Peter has effectively lost his wife, as she is still in a medically-induced coma and is likely to be unable to communicate or even think if she awakens. Although jurisdictional splits exist regarding who may recover for LOC (e.g., some jurisdictions allow children to recover while others do not; some jurisdictions allow long-time partners to recover while others do not), Peter, as Bobbie's husband, will likely recover LOC.

Therefore, Peter will likely be successful in advancing LOC.

2. NIED

Traditionally, NIED would only apply when there was impact, which would then allow parasitic emotional damages to attach (*Amaya/Engler*). The majority now holds that impact is not required, instead allowing emotional damages under Reasonably Foreseeable Harms (*Dillon v. Legg*) and the Bright Line Rule (*La Chusa v. Thing*). Following *Dillon*, a plaintiff can recover for NIED where (1) plaintiff was near the scene where the direct victim was injured; (2) plaintiff was a contemporaneous observer; and (3) plaintiff had a close relationship with the direct victim. Here, Peter was not present in the house when Bobbie was injured; however, he arrived "a few minutes later" (para. 3), and saw the "bloody body of his wife under a pile of vehicles and timber" (para. 3). Peter was then, arguably, near the scene of the crime, though he was not a contemporaneous observer.

It is therefore unlikely that Peter will recover for NIED unless he can establish that he was, in fact, a contemporaneous observer.

Conclusion

In conclusion, Peter will likely be successful in his pursuits of LOC and NIED.

END OF EXAM

Issue	Rule	Analysis	Concl'n	Points Allotted
B v Debbie				
Negligence (2 points)	Over-arching Negligence elements (2 points)			4/4
Duty (2 points)	All reasonably foreseeable plaintiffs (2 points)	Parked on street, so all other parked cars and owners (2 points)	(1 pt)	7/7
SOC (2 points)	RPP (2 points)		(1 pt)	5/5
Breach (2 points)	<u>Blyth; Carroll Towing</u> ; Hand Balance Test (2 points)	Burden of turning the correct way less than risk (2 points)	(1 pt)	7/7
Actual Causation (2 points)	But For (2 points)	But For failure to turn to curb (2 points)	(1 pt)	7/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts? (2 points)	Reasonably foreseeable? USA: earthquake (4 points)	(1 pt)	9/9

Res Ipsa Loquitor (2 points)	D in control of instrumentalities; Injury does not occur in the absence of negligence; P is blameless (2 points)	Not exactly sure why brake released during earthquake (2 points)	(1 pt)	6/7
Damages (2 points)	General: Bobbie's emotional distress and pain and suffering; Loss of Consortium; Special; Punitive: reprehensible? (4 points)	Bobbie in coma: can she feel pain and have emotional suffering; Punitive: no malice (4 points)	(1 pt)	11/11
Peter v Debbie				
Loss of Consortium (2 pts)	Loss of companionship and sex	Bobbie in a coma		7/7
NIED Indirect victim (2 points)	<u>Thing v. LaChusa</u> Californian jurisdiction elements (2 points)	Not in zone of danger; not present when occurred (2 points)	(1 pt)	7/7
Conclusion		Yes or no negligence and ability to recover	(1 pt)	0/1
Debbie's Defenses: Extra Credit				1

Total points possible				71/72
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Comments: Virtually perfect response. Not only did it earn the points in the grading rubric, but it was beautifully organized and clearly written. 99

2)

PABLO, PRIYA, AND ASHLEY V. DILLARD

BATTERY:

Battery is a willful, intentional, and non-consensual act that causes harmful or offensive touching with no defenses.

Here, Dillard committed battery against Pablo. He did not commit battery against Priya and Audrey.

Dillard committed battery against Pablo when he spit in Pablo's face and hit him square in the eyes. Dillard willfully and intentionally engaged in this conduct as soon as Pablo opened the door. Pablo did nothing to provoke Dillard. Spitting in someone's face and hitting them right in between their eyes constitutes harmful and offensive contact. Pablo did not consent to being spit on or hit in the face. Thus, all of the elements of battery are met.

Pablo can bring a battery claim against Dillard.

ASSAULT:

Assault is a willful and intentional act that causes reasonable apprehension of an imminent harmful or offensive touching with no defenses.

Here, Dillard committed assault against Pablo and Priya. He did not commit assault against Audrey.

Dillard committed assault on both Pablo and Priya when they were awoken out of their sleep by shouting and banging outside their studio. It is expected that Pablo and Priya had

reasonable apprehension that an imminent harmful or offensive touching was about to occur when they heard commotion directly outside of their studio. Dillard acted intentionally and their reasonable apprehension was valid because a harmful and offensive touching did, in fact, occur immediately thereafter.

Dillard committed another assault on Pablo as soon as Pablo opened the door and Dillard was waving his shotgun around. Waving a shotgun as soon as someone opens the door is sure to cause reasonable apprehension of imminent danger. Dillard went to the studio intentionally and probably waved his shotgun around intentionally to instill fear. Dillard's conduct with the shotgun as soon as Pablo answered the door satisfies the elements of assault. Dillard's conduct in spitting in Pablo's face and hitting him in the face that meet the elements of battery also meet the elements of assault. Pablo was engaged in intentional conduct to instill imminent fear in Pablo.

Dillard's statement that "Priya better end her show tomorrow or I'll shoot holes through all her paintings" does NOT satisfy the elements for assault. Threat of future harm is not sufficient; the threat and fear must be imminent. By making a threat based on what could occur tomorrow, Priya could not have had reasonable apprehension of an imminent harmful or offensive touching.

Pablo can bring an assault claim against Dillard for shouting and banging outside the studio, waving his shotgun around, spitting in his face, and hitting him in the face. Priya can only bring an assault claim for being awoken out of her sleep by Dillard's loud banging and shouting outside the studio.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

IIED is intentional or reckless, extreme or outrageous conduct that causes severe emotional distress to a direct or indirect victim with no defenses.

Here, Priya and Pablo could possibly have claims for IIED, depending on whether they suffered severe emotional distress. Audrey does not have a claim for IIED.

The chaos that ensued from Dillard's visit to their studio resulted in a number of intentional torts that would probably cause most people some degree of emotional distress. Dillard's conduct was intentional, reckless, extreme, and outrageous. However, whether Priya and Pablo suffered emotional distress that rises to the level of severity needed to meet the threshold for an IIED claim is unknown at this time.

Priya and Pablo could possibly bring a claim for IIED against Dillard if it is determined that they suffered severe emotional distress from Dillard's conduct. Audrey cannot bring a claim for IIED.

FALSE IMPRISONMENT:

False imprisonment is the willful and intentional restraint of another to a confined area without their consent with no defenses.

Here, although Dillard went to Priya and Pablo's studio and attacked them mostly through the doorway, there is no indication that he intentionally restrained them to the doorway or the inside of their studio. At one point, Priya actually ran past Pablo to strike Dillard with a baseball bat, which indicates that she had some degree of freedom of movement. The facts do not indicate that Priya, Pablo, or Audrey were false imprisoned.

Neither Priya, Pablo, nor Audrey can bring a claim for false imprisonment against Dillard.

TRESPASS TO LAND:

Trespass to land is the willful and intentional, direct or indirect entry onto the land of another without authorization with no defenses.

Here, Dillard committed trespass to land against Priya, Pablo, and Audrey.

Dillard committed a direct trespass when he went to the studio that was owned by Audrey and occupied by Priya and Pablo. His conduct rose to the level of trespass when he was outside of the studio loudly banging and shouting. His trespass went further when he engaged in other intentional torts after Pablo opened the door. Dillard did not have authorization to be on the property from Priya, Pablo, or Audrey. Audrey's absence from the events do not prevent her from bringing a trespass to land claim. As the owner of the house, Dillard would be liable to Ashley for any damage he caused to the property from his unauthorized trespass. As occupiers of the studio, Dillard is liable to Priya and Pablo for his unauthorized entry onto their land for disrupting their exclusive possession of the studio.

Priya, Pablo, and Audrey can all bring claims for trespass to land against Dillard.

TRESPASS TO CHATTEL:

Trespass to chattel is the willful and intentional interference with the chattel of another in possession that causes damage or diminution in value with no defenses.

Here, Audrey, Pablo, and Priya can all bring a claim for trespass to chattel against Dillard.

On Dillard's way out, he grabbed several potted succulents that Audrey left outside and threw them into the back of his truck before driving off. Dillard intentionally took the property that was owned by Audrey and in the possession of Pablo and Priya because the plants were on the property where they lived. It can be inferred that the succulents' value was diminished, at a minimum, and the potted succulents were likely damaged because Dillard threw them into the back of his truck.

Audrey, Pablo, and Priya can all bring a claim for trespass to chattel against Dillard.

CONVERSION:

Conversion is the willful and intentional interference with the chattel of a possessor or owner that causes such serious and substantial damage that amounts to complete loss or destruction.

Here, Audrey, Pablo, and Priya can all bring a claim for conversion against Dillard.

On Dillard's way out, he grabbed several potted succulents that Audrey left outside and threw them into the back of his truck before driving off. Dillard intentionally took the property that was owned by Audrey and in the possession of Pablo and Priya because the plants were on the property where they lived. It can be inferred that the Dillard' taking of the plants amounts to complete loss, because there is no indication that Dillard ever planned to return them. Further, because Dillard threw them into the back of his truck, they likely were destroyed and permanently damaged.

Audrey, Pablo, and Priya can all bring a claim for conversion against Dillard for his taking and likely complete destruction of the potted succulents.

DILLARD'S DEFENSES:

Dillard cannot bring defenses of consent, privilege, self-defense, defense of others, defense of property, or necessity for his conduct. He was not provoked by Pablo or Priya in any way and he was not defending himself or others.

CONCLUSION: Pablo can bring claims against Dillard for battery, assault, trespass to land, trespass to chattel, conversion, and possibly IIED. Priya can bring claims against Dillard for assault, trespass to chattel, trespass to land, conversion, and possibly IIED. Audrey can bring claims against Dillard for trespass to land, trespass to chattel, and IIED.

DILLARD V. PRIYA

BATTERY:

Battery is a willful, intentional, and non-consensual act that causes harmful or offensive touching with no defenses.

Here, Dillard can argue that Priya committed battery against him when she swung a baseball bat at him and missed but knocked the shotgun out of his hands. Battery can be committed via transferred intent; there is not a requirement that the battery be committed by one person physically contacting another person's body. Someone can hold an object and strike an item that is on another's person, such as a backpack, or make contact with an item that they are holding, such as a gun, to constitute battery. Here, Priya's contact between her baseball bat and Dillard's shotgun may meet the elements of battery. Priya did act intentionally and Dillard did not consent to the contact. Priya's defenses must be taken into consideration (discussed below) to determine whether Dillard would prevail on his claim. However, in looking only at Priya's contact between her baseball bat and Dillard's gun, the event could meet the elements of battery.

Dillard could bring a claim for battery against Priya.

ASSAULT:

Assault is a willful and intentional act that causes reasonable apprehension of an imminent harmful or offensive touching with no defenses.

Dillard can argue that he had reasonable apprehension that an imminent harmful or offensive touching was about to occur when Priya ran past Pablo toward Dillard and swing her baseball bat at him, knocking is gun from his hand. Objectively, it is likely that someone running with a baseball bat toward another person and swinging it at them

would cause reasonable apprehension of imminent danger. Priya did act intentionally (discussed in her defenses below). Again, her defenses must be taken into consideration to determine whether Dillard would prevail on an assault claim, but a claim can be brought based on Priya's conduct with the baseball bat.

Dillard can bring a claim for assault against Priya.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:

IIED is intentional or reckless, extreme or outrageous conduct that causes severe emotional distress to a direct or indirect victim with no defenses.

Dillard was "surprised and humiliated" by Priya's attack. Priya did run toward him and swing her bat intentionally, and it could be argued that swinging a bat at someone is extreme and outrageous. If Dillard's surprise and humiliation rose to the level of severe emotional distress, he may be able to bring a claim for IIED as a direct victim.

Dillard can bring a claim for IIED against Priya.

FALSE IMPRISONMENT:

False imprisonment is the willful and intentional restraint of another to a confined area without their consent with no defenses.

There is no indication that Dillard was falsely imprisoned by Priya. He cannot bring a claim for false imprisonment.

TRESPASS TO LAND:

Trespass to land is the willful and intentional, direct or indirect entry onto the land of another without authorization with no defenses.

There is no indication that Priya trespassed onto Dillard's land. Dillard cannot bring a claim for trespass to land.

TRESPASS TO CHATTEL:

Trespass to chattel is the willful and intentional interference with the chattel of another in possession that causes damage or diminution in value with no defenses.

Dillard may be able to bring a claim for trespass to chattel because Priya knocked Dillard's gun from his hands. Dillard left immediately thereafter, and it is unclear whether he retrieved his shotgun before leaving. If Dillard lost his gun in the events that occurred with Priya or Priya gained possession of it, Dillard could possibly have a claim for trespass to chattel for his deprivation of the firearm.

Dillard could possibly have a claim for trespass to chattel.

CONVERSION:

Conversion is the willful and intentional interference with the chattel of a possessor or owner that causes such serious and substantial damage that amounts to complete loss or destruction.

Dillard may be able to bring a claim for conversion because Priya knocked Dillard's gun from his hands. Dillard left immediately thereafter, and it is unclear whether he retrieved his shotgun before leaving. If Dillard lost his gun in the events that occurred with Priya or Priya gained possession of it, and there is no indication that Dillard will ever have the gun returned to him, Dillard could possibly have a claim for conversion for his deprivation of the firearm.

PRIYA'S DEFENSES:

SELF-DEFENSE:

3

Priya can claim assert a claim of self-defense because Dillard had been targeting her and posting on social media false accusing her of copying his work. This alone does not give rise to a self-defense claim, but this conduct, coupled with Dillard's visit to her studio likely placed Priya in imminent fear that she was in serious danger and needed to defend herself. Further, Dillard visited the studio with a deadly weapon. Although he was waving the shotgun at Pablo, Priya was the target, and it would be reasonable for her to believe that she was being faced with deadly force, especially because Pablo was just hit in the face and wiping spit from his eyes, giving Dillard a chance to attack Priya unless she got to him first.

DEFENSE OF OTHERS:

Priya can assert a defense of others claim for defending Pablo. Pablo was faced with an unexpected visitor waving a shotgun in his face, hitting him between the eyes, and spitting on him. Priya's utilization of a baseball bat to defend Pablo and herself was reasonable. Her use of the baseball bat that knocked the gun out of Dillard's hands successfully prevented further harm.

CONCLUSION: Dillard can try to bring claims against Priya for battery, assault, IIED, trespass to chattel, and conversion, but Priya's defenses will likely absolve her of liability.

END OF EXAM

Issue	Rule	Analysis	Concl'n	Points Allotted
Pablo/Priya v Dillard				
Trespass to Land (2 points)	Intentional, willful enter onto real property of another; damage? (2 points)	D spits in Pablo's face; indirect trespass? (2 points)	(1 pt)	7/7
Battery (2 points)	Willful and intentional act causing harmful or offensive touching, direct or indirect (2 points)	Spit in eye of Pablo (2 points)	(1 pt)	7/7
Assault (2 points)	Willful and intentional act causing reasonable apprehension of immediate harmful or offensive touching (2 points)	Shouting/banging; waving shotgun; spit in eye of Pablo; conditional threat to Priya's property? (2 points)	(1 pt)	7/7
IIED (2 points)	Intentional reckless, extreme and outrageous conduct that	Shouting/banging; waving shotgun; spit in eye of Pablo; conditional	(1 pt)	7/7

	causes severe emotional distress, direct or indirect victim (2 points)	threat to Priya's property? (2 points)		
False Imprisonment Extra Credit				5
Audrey v Dillard				
Trespass to Chattel (2 points)	Willful and intentional interference with the personal property of possessor causing damage or diminution of value (2 points)	* took potted succulents hers, but in possession of P/P (2 points)	(1 pt)	6/7
Conversion (2 points)	Will, intentional act causing destruction or substantial interference with dominion and control of owner or possessor (2 points)	* took * hers, so ok that in possession of P/P * unknown if returned (2 points)	(1 pt)	7/7

Dillard v. Priya				
Assault (2 points)	See above	Swung bat at D, missed (2 points)	(1 pt)	5/5
Battery (2 points)	See above	Swung bat, missed	No (1 pt)	5/5
IIED (2 points)	See above	Swung bat, missed	(1 pt)	5/5
Trespass to Chattel (2 points)	See above	Hit shotgun with bat (2 points)	(1 pt)	5/5
Conversion (2 points)	See above	Hit shotgun with bat (2 points)	(1 pt)	5/5
Self-defense (2 points)	Reasonable force to defend self against reasonable belief in imminent threat (2 points)	Shouting/banging; waving shotgun; threatened property (2 points)	(1 pt)	7/7
Defense of Others (2 points)	Reasonable force to defend other against reasonable belief in right to defense; majority v.	Shouting/banging; waving shotgun at Pablo; spit on Pablo (2 points)		6/7

	minority views (2 points)			
Defense of Property (2 points)	Reasonable, non-deadly, force to protect property (2 points)	Conditional threat to paintings (2 points)	No (1 pt)	0/7
Extra Credit Damages (2 points)	General Special Punitive (2 points)	Pain and suffering from spit in the eye; Cost of succulents; Reprehensible conduct to be punished (6 points)	(1 pt)	0/11
Total points possible				84/89

1. False Imprisonment was not on the matrix. However, you did such a wonderful job of expressing why False Imprisonment had not occurred, I felt compelled to give you extra credit.
2. The facts regarding the succulents were included in the hypothetical to see if the student could differentiate between the possessor of property and the owner of property vis-a-vis Trespass to Chattel and Conversion. You will likely recall, only the possessor of the property has a claim for Trespass to Chattel, but the owner or possessor has a claim for conversion.
3. Excellent exploration of the issues of Self-Defense and Defense of Others. Two things, however: one, be sure to explain that deadly force may only be used where there

is a reasonable fear of death or great bodily injury to the person using the self-defense. Two, be sure to explain that there is a dichotomy between jurisdictions when it comes to mistake when defending others. In some jurisdictions, a person that is mistaken as to the right of the defended person to use self-defense will be held liable for the battery against the perceived aggressor. Here, it becomes an interesting question. Although Dillard was waving a shotgun, he used non-deadly force against Pablo. Should Priya be able to use deadly force in response? Probably.

Overall: simply wonderful work.

San Luis Obispo College of Law

Torts Examination

Fall 2023

Prof. R. Allen

Question 3

Del owned a home with a built in swimming pool in his backyard. He noticed from time to time the neighbor boy, Chris, would jump over the fence and swim in the pool. Del did not mind. Chris was a good young kid that mowed lawns in the neighborhood during the summer to earn extra money. When Chris was done with a lawn mowing job, he would cool himself off by jumping into Del's pool.

Late in the year Del decided to have his pool resurfaced. He hired Aqua Fun Inc. to remove the old surface and put in a new surface.

Chris was unaware that the pool was being resurfaced. As he had many times before, Chris jumped the fence wearing only his bathing suit and ran directly toward the pool. He was mid-air before he realized there was no water in the pool. When Chris landed on the bottom of the pool, he fractured several vertebrae in his neck and lost consciousness. Chris's long-term prognosis is unknown, but recovery will be slow and painful.

Del came running out in a panic. Saw Chris at the bottom of the pool and immediately called for help. When emergency paramedics arrived, they scrambled to get to Chris. Paramedic, in his rush, tripped over equipment left behind by Aqua Fun repairmen. Paramedic suffered injuries to his left shoulder and arm. He was placed on leave and eventually had to retire because of this injury.

If Chris and Paramedic pursue negligence causes of action against Del, what is the likely result?

3)

Chris v. Del/ Negligence

Negligence is the actions of one party that have a legal duty to another that form a standard of care that is proper to act upon to avoid harm to the other party which is breached and caused (actual and proximately) injury to the party which can recover for damages from the harm that occurred.

Duty is the legal relationship to another that is established by the proper standard of care in order to avoid harm to the other party. Duty is established by the Reasonable foreseeable plaintiff, special relationships, affirmative acts/rescuer (placing plaintiff in peril or a worse condition), or statutes. Here, duty can be set by Reasonable foreseeable plaintiff because it is foreseeable that a young kid may see a pool in the neighborhood and sneak into it, but duty can also be set through special relationships. The special relationship here is land owner/land occupier where the land occupier is a trespasser and the land owner owes a duty to a trespasser is that they must make known and warn of non-obvious, highly dangerous, artificial conditions. Here, Chris is a trespasser and The swimming pool is an artificial condition that was being redone that Del failed to make safe or warn Chris about. The attractive nuisance doctrine also creates a duty onto Del under the same special relationship. The attractive nuisance doctrine states that the Land owner has a duty to a child trespasser if (1) the owner knows that children frequently trespass onto the land, (2) the land owner knows that there is a dangerous artificial condition, (3) the child cannot appreciate the risk of that condition and (4) the burden of fixing the condition is less than the utility or risk of the condition creates. Here, the land owner (Del) noticed from time to time that the neighbor Chris would jump over the fence and swim in the pool. Therefore the first element has been met since Chris trespass was known. The second element is met because the facts state that Del decided to have his pool resurfaced

good!

in which Chris was unaware. The third element had been met because the facts indicate the Chris is a young kid. Young kids do not have the ability to assume any risks that could occur from a potentially dangerous condition. Chris is a young kid who sees a pool and jumps in it not thinking or being able to realize that something bad could happen. The fourth element has been met because the burden of communicating to Chris one day that the pool is being worked on and he cannot swim in it is very low. Del couldve also placed a fence around the pool with signs all around the fence warning chris about the dangers of the pool and not to swim in it. These burdens are very low compared to the risk of injury occurred by Chris. Thus, Del has a duty since its foreseeable that children will jump in his pool, and Del has a duty via special relationships (duty to trespassers and under the attractive nuisance doctrine)

Standard of care is the proper care that one with a duty to another must follow in order to avoid harm to the other party. Standard of care is established by Reasonable prudent person standard, industry habits/customs, or statutes. Here, the standard of care would be set by the reasonable prudent person standard. A reasonable prudent person would communicate the pool resurfacing to anyone who they know is likely ro access the pool. Since Chris came over frequently to use the Pool, Del shoulve communicated with Chris as a reasonable prudent person would have to tell Chris that the pool is under construction and cannot be used. Thus, the standard of care is set by the reasonable prudent person standard.

Breach is the violation of the proper standard of care which is established by the Blythe v. Birmingham reasonable person standard, the Leaned Hand Formula from U.S. v. Carroll Towing (B<PL), or negligence per se. Blythe v Birmingham standard says that the defendant didnt do what a reasonable person would do or the defendant did do what a reasonable person wouldnt do. Under this standard, Del didnt do what a reasonable person would have done, and this is warning Chris that the pool is under

construction. Therefore, according to this formula set by *Blythe v. Birmingham* it shows that Del breached the standard of care. Another way to show breach is through **The learned Hand formula $B < PL$** . This formula states that the burden or benefit of the act of the defendant must be less than the probability of the act occurring and the likelihood that the act would cause severe harm. Here, the burden of placing a fence around the pool would cost some money to Del, but Del could've taken other precautions to warn Chris about the reconstruction of the pool without their being much of a burden. ~~The risks~~ of a young child jumping into an empty pool is much greater. The likelihood that this could occur is very high since Del is aware that Chris jumps into the pool all the time, and the probability of it causing severe harm is also very high since it is likely that young children like to jump into pools and since it's empty he could be severely injured since that is likely 5 or more feet drop onto cement. Thus, the burden is low to warn Chris about the pool, and the injuries are much higher than that burden. Therefore the hand formula shows that Del breached his standard of care to Chris.

Causation is the actual and proximate cause of the defendant's act or omission and the harm that occurred to the plaintiff.

Actual causation is the "but for" formula. But for the defendant's act or omission, the harm would not have occurred to the plaintiff. But for Del warning Chris about the pool, Chris got injured when he jumped into the pool like he has before. Thus, Del is the but for cause of Chris's injuries.

Proximate Causation is the acts of the defendant that directly harm the plaintiff as long as they are foreseeable and not an uncontrolled supervening act which would then cut the liability off to the original tortfeasor. Here, Del is the direct harm to Chris's injuries since it was strictly because of Del's actions/ omissions that Del got injured. The harm occurring from Del not warning Chris is foreseeable. Calling Aqua Fun to resurface the pool would contribute to the direct harm since it was done by Del. It is not a superseding act since it

was done by del, and del shouldve warned chris about this resurfacing being done to his pool. Thus, Del is the proximate Cause to Chri's injuries.

Damages

are those that generally do not have monetary value such as loss of enjoyment of

General

life and severe and emotional suffering. Here, Chris endured lots of pain and may have pain for the rest of his life due to fracuturing several vertebrae in his neck. Chris could

recover for the ~~loss of enjoyment~~ of life since he may forever has pain in his neck that limit his ability to do certain activities. Also the pain may have caused emotional suffering since it was extremely painful. Thus Chris could recover general damages from Del.

are those that do have monetary value such as medical expenses, imputed

Special

income, loss of wages. Chris could recover for his medical expenses.

Punitive

are monetary punishments that the tortfeasor must pay if their acts are reprehensible and the court finds that deterrance is needed as a form of punishment so people in the future do not do the same act.


Defenses

negligence is in a minoirty of jurisdictions where it doesnt recognize

Contributory

comparative negligence isnt availble as a defense. Contributory negligence is where the plaintiff cannot recover damages if they in any way contributed to the liability of the negligent conduct. If the plaintiff contributed to the negligence in any way, it is a complete bar to recover and the plaintiff cannot recover.

Comparative negligence apportions liability according to the percentage of liability. Comparative negligence comes in two forms: pure and partial. **pure** Comparative negligence is the minority of jurisdictions for comparative negligence the damages are apportioned according to fault, but in **partial comparative** jurisdictions it is split between **Individual** and **Aggregate** systems. In an individual partial comparative jurisdiction, the plaintiff can recover only if they are less liable than a single defendant, but in Aggregate partial comparative jurisdictions all can recover. the plaintiff just has to be 50 percent liable or less liable than a defendant.

Assumption of the risk limits liability of the tortfeasor if the plaintiff could see the risk of their act, but continues to do it anyway. Here, since Chris is a young child, he cannot assume the risk. 

Overall Conclusion

Here, Chris would be able to recover from Del due to Del being liable for Negligence. and Chris could recover for General and special damages due to the injuries he faced from Dels Negligent act.

Paramedic v. Del/ Negligence

Negligence is the actions of one party that have a legal duty to another that form a standard of care that is proper to act upon to avoid harm to the other party which is breached and caused (actual and proximately) injury to the party which can recover for damages from the harm that occurred.

Duty is the legal relationship to another that establishes the proper standard of care in order to avoid harm to the other party. Duty is established by the Reasonable foreseeable plaintiff, special relationships, affirmative acts/rescuer (placing plaintiff in peril or a worse condition), or statutes. The duty established here would be Reasonable foreseeable plaintiff and special relationships. It is foreseeable that when there are objects on the ground, people will trip over them when they are trying to put another out of harms way because the person saving the other person does not have time to rationally think to step over the object on the ground when another person needs attention due to their injury. Also, there is a special relationship between land owner and land occupiers. The paramedic is considered a licensee. A licensee is a person occupying the land through personal invitation or someone who is responding to an emergency. There is a duty to warn, make safe conditions that are obvious to the land owner. Here, this was an obvious condition so the landowner could've picked it up before the paramedics arrived or warned the paramedic about it. Thus, Del had a duty to the paramedic.

Standard of care is the proper care that one with a duty to another must follow in order to avoid harm to the other party. Standard of care is established by Reasonable prudent person standard, industry habits/customs, or statutes. The standard of care that would apply here is reasonable prudent person. Under this standard, A reasonable prudent person must act in a way that that someone in same or similar circumstances would have acted. Here, a reasonable prudent person would most likely pick up anything in the way from a paramedic being able to effectively save someone. thus, Del had a standard of care under.

Breach is the violation of the proper standard of care which is established by the Blythe v. Birmingham reasonable person standard, the Leaned Hand Formula from U.S. v. Carroll Towing (B < PL), or negligence per se. **Blythe v Birmingham** standard says that the defendant didn't do what a reasonable person would do or the defendant did do what a

reasonable person wouldn't do. Here Del didn't do what a reasonable person would do. Here, Del didn't pick up the equipment that a reasonable person would pick up knowing that a paramedic needed to come into that area to save someone. Thus, under this standard Del breached the standard of care. =Another way to show breach is through The learned Hand formula $B < PL$. This formula states that the burden or benefit of the act of the defendant must be less than the probability of the act occurring and the likelihood that the act would cause severe harm. here, the Burden of Del picking up the equipment is a very low burden compared to the very high risk of injury that could occur from the paramedic tripping over it. This a very likely harm to occur. Thus, there has been a breach since Del's burden is very low compared to the high risk of the injury and the high risk of probability of the event occurring. Thus, there has been a breach of the standard of care.

Causation is the actual and proximate cause of the defendant's act or omission and the harm that occurred to the plaintiff.

Actual causation is the "but for" formula. But For the defendant act or omission, the harm would not have occurred to the plaintiff. But for Del not picking up the equipment, the paramedic tripped and got hurt. Thus, Del is the actual cause of the paramedic's harm.

Proximate Causation is the acts of the defendant that directly harm the plaintiff as long as they are foreseeable and not an uncontrolled supervening act which would then cut the liability off to the original Tortfeasor. here Del could be considered to be the foreseeable harm that directly caused the paramedic's injury but there is a superseding act here. the superseding act is that Aqua fun left out there equipment which caused the paramedic to trip. this is a foreseeable act since Aqua fun was working in this area and wasn't finished yet. It is foreseeable they left there stuff out for the next days work therefore liability will not be cut off to Del. Thus, Del is the proximate cause of the paramedic's injury.

Damages

General damages are those that generally do not have monetary value such as loss of enjoyment of life and severe and emotional suffering. Here, paramedic could likely recover for loss of enjoyment of life since he couldn't enjoy the pleasures of making money and working to his full potential. It can be inferred that if he couldn't work due to his injuries then they probably prohibited him from doing other pleasures in life. Also, it can be inferred that if he had prolonged injuries from this accident, he probably suffered pain still from these injuries and could recover as well. Thus, The paramedic could recover for general damages. sp.

Special damages are those that do have monetary value such as medical expenses, imputed income, loss of wages. here, the paramedic would be able to recover for medical expenses, lost wages for having to go on leave, and any future lost wages for having to retire early, Thus, Paramedic could recover for special damages.

Punitive damages are monetary punishments that the tortfeasor must pay if their acts are reprehensible and the court finds that deterrance is needed as a form of punishment so people in the future do not do the same act.

Defenses

Contributory negligence is in a minority of jurisdictions where it doesn't recognize comparative negligence isn't available as a defense. Contributory negligence is where the plaintiff cannot recover damages if they in any way contributed to the liability of the negligent conduct. If the plaintiff contributed to the negligence in any way, it is a complete bar to recover and the plaintiff cannot recover.

Comparative negligence apportions liability according to the percentage of liability. Comparative negligence comes in two forms: pure and partial. **pure** Comparative negligence is the minority of jurisdictions for comparative negligence the damages are

apportioned according to fault, but in **partial comparative** jurisdictions it is split between **Individual** and **Aggregate** systems. In an individual partial comparative jurisdiction, the plaintiff can recover only if they are less liable than a single defendant, but in Aggregate partial comparative jurisdictions all can recover. the plaintiff just has to be 50 percent liable or less liable than a defendant.

Assumption of the risk limits liability of the tortfeasor if the plaintiff could see the risk of their act, but continues to do it anyway. Here, since **Chris** is a young child, he cannot assume the risk. It can be said that a paramedic assumes the risk of injury due to the job itself. here, tripping over pool equipment exceeds the scope of injuries that a foreseeable to happen on the job. Therefore, it would not be a sufficient defense for Del to get out of being **Liabe** or to limit Dels liability of the negligence act.

Overall Conclusion

Del would likely be found **Liabe** for negligence and paramedic could recover for **General** and special damages due to the injuries he faced from **Dels Negligent** act.

END OF EXAM

Issue	Rule	Analysis	Concl'n	Points Allotted
Chris v. Del				
Negligence (2 points)	Over-arching Negligence elements (2 points)			4/4
Duty (2 points)	LOLO Duty: Duty to known trespassers re artificial conditions; Attractive Nuisance to child; All reasonably foreseeable plaintiffs (<u>Roland v. Christian</u>) Non-delegable duty? (6 points)	Chris was known and frequent; too young to appreciate danger? (2 points)	(1 pt)	10/11
SOC (2 points)	Warn of latents (historical); RPP (Attractive Nuisance; <u>Rowland v. Christian</u>) (2 points)		(1 pt)	4/5
Breach (2 points)	<u>Blyth; Carroll Towing</u> ; Hand Balance Test (2 points)	Burden of warning licensees and invitees of construction on pool less than risk (2 points)	(1 pt)	7/7

Actual Causation (2 points)	But For (2 points)	But For failure to warn (2 points)	(1 pt)	7/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts: possible negligence of Aqua Fun does not cut off liability to D (2 points)	Reasonably foreseeable? Intervening Act: LOLO has non-delegable duty re repairs and maintenance (2 points)	(1 pt)	6/7
Damages (2 points)	General: pain and suffering; Specials: medical, past and future; wages; enjoyment of life; Punitive: reprehensible? (2 points)	Chris may have serious life-long injuries and (2 points)	(1 pt)	6/7
Defenses (2 points)	For Del: Chris is a Trespasser; he was contributory or comparatively negligent; he assumed the risk. (2 points)	Chris jumped in pool that was empty of water (2 points)	(1 pts)	6/7
Paramedic v Del				
Duty (2 points)	LOLO duty to Privileged Entrants; RFP (<u>Rowland v. Christian</u>)	Responding to emergency, not warned of hazards	(1 pt)	5/7

	Non-delegable duty (2 points)			
SOC (2 points)	Warn of latents (historical; RPP (<u>Rowland v. Christian</u>) (2 points)			5/5
Breach	See above	Burden of making area safe by clearing equipment (2 points)	(1 pt)	5/5
Actual Causation	See above	But for clearing area (2 points)	(1 pt)	5/5
Proximate Causation (2 points)	See above	Reasonably foreseeable? Foreseeable that paramedic would respond to Chris's injury USA: negligence of Aqua fun? (2 points)	(1 pt)	4/5
Damages (2 points)	See above	Shoulder and arm pain; Medical expenses; lost wages; Punitive damages? (2 points)	(1 pt)	5/5

Defenses	AOR (Fireman's Rule) (2 points)	Firemen know of risk and voluntarily accept risk of entering home v. not the risk contemplated by response (2 points)	(1 pt)	6/7
Conclusion		Yes or no negligence and ability to recover	(1 pt)	1/1
Total points possible				86/95

1. You are being too conclusory re this element. Chris is a young kid, but he also has a lawn mowing business. Thus, he is old enough to appreciate obvious dangers like spinning blades and hot motors. Should we not also conclude that he is able to appreciate the danger of an empty pool?
2. The hypothetical was seeking an exploration of the historical duty owed by a LOLO to known trespassers that come upon an artificial condition like a swimming pool. Modernly, LOLOs are held to the duty of a RPP by virtue of Rowland v. Christian.
3. Here, it would have been good to explain that Aqua Fun is not liable for the injury because repair and maintenance is a non-delegable duty of the LOLO.
4. Should the acts of Del be deemed reprehensible?
5. This statement is too conclusory. Could it not be argued that a person that jumps into a pool empty of water is contributing to his own injury? And whether they

are in a Contrib Neg or Comparative Neg jurisdiction, this defense should warrant some attention?

6. A paramedic is likely going to be a Privileged Entrant, historically Duty has viewed under the umbrella of the Licensee. So, you are absolutely tracking this issue. However, a Licensee is owed a duty to be warned of latent defects. Later, after Rowland v. Christian, LOLO owed a duty of reasonable care. It could be argued that the paramedic was not owed a duty re open and obvious dangers. Moreover, the LOLO cannot simply claim that independent contractor, Aqua Fun, was to blame because repairs and maintenance are non-delegable duties to the LOLO. See, Colemenares Vivas v. Sun Alliance Insurance.

7. The negligence of Aqua Fun might have been an unforeseeable superseding act, however, repairs and maintenance of independent contractors are non-delegable duties. Thus, Del's liability will not be cut off.

8. Use the given facts from the hypothetical. After you provide the various categories of damages, I should read "Here, paramedic suffered from injuries to his left shoulder and arm. He was placed on leave and eventually had to retire because of this injury." Then you can explain how he can be compensated for his pain and suffering, his lost wages, and his future earnings and loss of enjoyment of life as a result of those facts.

9. The hypothetical was looking forward to a discussion of the Fireman's Rule. Does a Paramedic assume the risk of injury from tripping and falling over stuff when he enters a property to provide aid? In other words, is this the type of injury that was contemplated by the profession when responding to an emergency?

Overall: this was a masterful job. You exemplified great test-taking generalship, you had control of the law and the facts, and you explored nuanced issues. At times you

were too conclusory, so in the future use your facts to make your argument and be open to the other side's argument. 95