SAN LUIS OBISPO COLLEGE OF LAW
TORTS
MIDTERM EXAMINATION
FALL 2025
Professors E. Ulz & R. Allen

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

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QUESTION 1

Diane and Peter had been married a few years and their arguments began to become physical in nature. Recently, during an argument over who should clean the dinner dishes, Diane picked up a dirty plate and whizzed it toward the head of Peter. Peter successfully ducked out of the way and it crashed into the wall behind him. Peter was not hurt, but he did become very anxious and fearful.

Diane then grabbed Peter's cell phone. She screamed that she knew he was cheating on her with someone, and began to scroll through the messages on his phone. Peter, who was not unfaithful, impulsively grabbed for the phone and Diane's hands. The phone dropped and broke. It was later determined to be unusable. The phone contained Peter's contacts, schedules, and notes regarding upcoming business adventures. Without his phone, he was lost.

Afraid of how he would respond, Peter grabbed some clothes and tried to leave Diane blocked his way. She professed her undying love and begged Peter to stay. Peter pushed Diane aside, left through the front door, and screamed that Diane had "mental health problems" that she should address.

After the couple filed for divorce, Peter sued Diane for the intentional torts he thinks he suffered. Discuss the torts he could bring against Diane and possible defenses she could raise.

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QUESTION 2

Pammie was a college student at Aldea University. After her last class, Pammie would take the City Bus home. On Tuesdays she had to stay on campus until 9:30 pm. Last Tuesday, after getting on the City Bus, she was so tired she fell asleep. When she awoke, she was made to leave the bus. Pammie did not know where she was or what direction was home. She was scared to get off the bus, but Dan Driver, a City employee, told her to just walk "that way." He then insisted that she get off the bus.

She could have called an Uber, but she didn't want to spend the money. Instead, Pammie decided to walk. Walking in the direction Dan Driver had pointed, Pammie noticed the people on the streets looked hard and mean. When she reached a dark and isolated section of the neighborhood, two young men approached her, grabbed her and dragged her into an alley. In the alley the two unknown assailants beat her severely and raped her. She was left in the alley way.

Sam, a drunk homeless man, stumbled upon her. He told her he would get her some help and would be right back. Pammie waited and waited, but Sam never returned. Because of the delay in getting medical treatment, Pammie now has partial paralysis in her right leg, a traumatic brain injury, and post-traumatic stress disorder. She cannot sleep, work, or leave her apartment.

Pammie calls you and wonders if she has a legal case against any of the persons or entities involved.

Discuss her possible Negligence causes of action.

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QUESTION 3

Pyper just passed the state bar exam after graduating at the top of their law school class. Pyper's success was particularly poignant because they worked their way through law school washing dishes for minimum wage at the local pancake house. Everyone agreed that Pyper could look forward to a prosperous legal career.

After the bar exam results were announced, Pyper and their boyfriend Marcus went out to celebrate. Marcus was driving them home in Pyper's car when Dorcas ran a red light and crashed head-on into the passenger side. Dorcas, who had been drinking, immediately sped off. Pyper's car was totaled.

The police located Dorcas the next morning, thanks to footage from a traffic camera. It turns out Dorcas had three prior convictions for DUI and was traveling 40 miles over the speed limit at the time of the accident.

Pyper, who took the brunt of the impact from the crash, was severely injured. They suffered a traumatic brain injury that affected cognition and memory. It is unlikely Pyper will ever practice law. Instead, they will require assistance with day-to-day tasks for the remainder of their life. There is a small silver lining—Pyper cannot remember the accident and does not seem to be aware of the significant changes that have taken place in their life.

Marcus was relatively uninjured. However, since the accident, he has experienced terrible nightmares and now sees a counselor for depression. Marcus is adapting to his new role as Pyper's caregiver, but he misses their old life as a couple, going on dates, playing tennis together, and planning for the future.

Marcus comes to your office and wants to know (1) what damages Pyper could recover from Dorcas, and (2) whether he can bring any claims against Dorcas on his own behalf.

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SLOCL Torts Exam Question 1 Outline
Professors Allen & Ulz
Fall 2025
QUESTION 1 MATRIX

Issue	Rule	Analysis	Concl'n	Points Allotted
Intentional Torts				
Battery (2 pts)	Battery is willful and intentional act that causes harmful or offensive touching (3 pts)	D threw a plate at P, but missed (4 pts)	No (1 pt)	/10
Assault (2 points)	Assault is the willful and intentional act that causes reasonable apprehension of imminent harmful or offensive touching (3 points)	D threw plate, but missed (4 points)	Probably (1 pt)	/10
IIED Direct Victim (2 points)	Intentional or reckless, extreme and outrageous, act that causes severe emotional distress (3 points)	D threw plate and missed. P was anxious and fearful. Not clear that we have severe emotional distress (4 pts)	Probably not 1 pt)	/10
Trespass to Chattel (2 points)	Possessor of property is dispossessed of property property is damaged (3 points)	D broke plate but likely CP; broke phone but doesn't seem intentional (4 points)	Probably not (1 pt)	/10
Conversion (2 points)	Substantial dispossession or loss such that the	See above. Facts do not indicate intentional. (4 points)	Probably not (1 pt)	/10

	property is a complete loss (3 points)			
False Imprisonment (2 points)	Intentional confinement without reasonable means of escape (3 points)	Diane would not let Peter leave, but he was able to escape in reasonable period of time (4 points)	Close call (1 pt)	/10
Possible Defenses				
Consent (2 points)	Consent can be implied by acts of P where objectively P would appear to be consenting to act of D. (3 points)	Their arguments had gotten physical before. Perhaps there was implicit consent to the battery. (4 points)	Probably not (1 point)	/10
Mental Health (2 points)	Usually not a defense, unless D had no warning and D unable to control act (3 points)	Diane might have unaddressed mental health issues, but had warnings and had volitional control (4 points)	Probably not (1 point)	/10
Self-Defense (2 points)	A person may use a reasonable amount of force to protect himself or a third party from an aggression (3 points)	The arguments had become physical. It is certainly possible Peter could have been physical. He was worried about how he would respond if he stayed in the home.	Probably not (1 point)	/10
Total Possible Points				/110

SLOCL Torts Exam Question 2 Outline
Professors Allen & Ulz
Fall 2025
QUESTION 2 MATRIX

Issue	Rule	Analysis	Concl'n	Points Allotted
Pammie v. City/Dan				
Negligence (2 points)	Over-arching Negligence elements (3 points)			/5
Vicarious Liability (2 points)	An employer can be responsible for the acts of an employee that are done during the course and scope of his employment (2 points)	Dan was working as a bus driver for City Bus at the time of the act (2 points)	Yes (1 pt)	/7
Duty (2 points)	RFP (Palsgraf v. LIRR) Special Relationship Affirmative Act (6 points)	Pammie is a customer of a City Bus The driver forced her to get off the bus and pointed her into a dangerous area (2 points)	(1 pt)	/11
SOC (2 points)	RPP (2 points)	Bus driver act as a reasonable bus driver under the circumstances? (2 points)	(1 pt)	/7

Breach (2 points)	Blyth; Carroll Towing; Hand Balance Test (2 points)	Burden of allowing Pammie to stay on bus until a safe plan is created balanced against the probable risk of serious injury (2 points)	(1 pt)	/7
Actual Causation (2 points)	But For (2 points)	But For forcing Pammie off bus, there would be no injury (2 points)	(1 pt)	/7
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts: do the criminal acts of the unknown men cut off liability back to City Bus and Dan? Sam the Rescuer (6 points)	Reasonably foreseeable? Intervening Act: is the possible danger of the rapists the reason City Bus and Dan are negligent? Failure of Rescuers are generally reasonably foreseeable intervening acts that do not cut off liability back to the original tortfeasor. (2 points)	(1 pt)	/11

Damages (2 points)	General damages: pain and suffering; Special Damages; future wages; therapy; medical costs; Punitive Damages: reprehensible conduct that needs to be punished. (6 points)	Pammie suffered partial paralysis in her right leg, traumatic brain injury; PTSD; she cannot sleep or work. She has become agoraphobic (2 points)	(1 pt)	/11
Defenses (2 points)	Contributory negligence; comparative negligent; assumed the risk. (8 points)	Pammie had agency over her decision to walk; how and where she walked (3 points)	(1 pt)	/14
Pammie v Sam				
Duty (2 points)	Duty of Rescuer Majority and Minority opinion (2 points)	No duty in most jurisdictions; no duty without reasonable reliance by Pammie's, which is not mentioned in the hypo. (2 points)	No duty of care (1 pt)	/7
Extra Credit for continuing negligence discussion				/10

to conclusion				
Total points possible				/85

SLOCL Torts Exam Question 3 Outline
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I. Pyper v. Dorcas
   a. Negligence
      i. Dorcas owes a **duty of care** to other drivers/passengers on the road because they are reasonably foreseeable plaintiffs.
      ii. The **standard of care** is set by reasonably prudent person driving as well as by statutes contained in the vehicle code regarding red lights, speeding, and driving under the influence.
      iii. Dorcas **breached** the standard of care by failing to act as a reasonably prudent driver and by violating the vehicle code
         1. Negligence per se analysis earns extra credit
      iv. Dorcas's negligence was the direct "but for" **actual cause** of Pyper's injuries.
      v. Because Dorcas' negligence was the direct cause, it is also the **proximate cause**. The injury resulted from the very risk that made her conduct wrongful, therefore it was foreseeable harm.
      vi. Damages
         1. **Property** – Pyper's car was totaled
         2. **General** – can Pyper recover for pain and suffering/loss of enjoyment/hedonic loss if they don't remember the accident or understand the nature of their injuries?
         3. **Special** – past medical expenses, future medical care/assistance, lost wages based on expected career as an attorney (not past as a dishwasher)
         4. **Punitive** – Dorcas was speeding and driving under the influence for the fourth time, showing reckless and wonton behavior. Within constitutional limits, punitive damages may be appropriate in this case.

II. Marcus v. Dorcas
   a. Negligent Infliction of Emotional Distress
      i. Marcus was in the **zone of danger** because he was inside the car when it was hit (modernly, this isn't required)
      ii. Marcus was a **contemporaneous observer** of the accident.
      iii. He is **closely related to victim**, though there may be a question as to whether a boyfriend is "related"

iv. Marcus suffered no physical injury, however his nightmares and depression show **significant emotional distress beyond that of an ordinary observer**

b. Loss of Consortium

i. **Loss of services,** e.g., Pyper's income as a lawyer or contributions to the household shared with Marcus

ii. **Loss of felicity** as Marcus is now Pyper's caregiver rather than their partner and mourns the loss of the relationship

iii. There is a question of whether Marcus has **standing** to claim loss of consortium as Pyper's boyfriend. This may vary depending on the jurisdiction. Many have expanded to include parents and children, but most still limit recovery to spouses as opposed to unmarried partners.

1)

Peter (P) v. Diane (D)

Intentional Torts

Assault

Assault is a willful and intentional act that causes another person in reasonable apprehension of immediate harmful or offensive contact. D must be know of the harm. Intent may be transferred from the D to the P.

Here there was a willful act by D when D picked up the plate and threw it at P. This act was intentional as D knew with substantial certainty the dish would hit P. Having a dish thrown at P would cause injury had P not ducked out of the way. The dish crashed behind D, this result is offensive in nature as the crash would startle a reasonable person. Though the contact is not P physically touching D the intent is transferred from the dish to P's person. Although P was not injured he has developed anxiety because of this incident.

cause apprehension

Yes, D is liable for assault.

Battery

Battery is a willful and intentional act that places that causes harmful or offensive touching. Intent may be transferred from the D to the P.

Here D intentionally grabbed P's phone because she was wanting to look through the phone in an effort to prove D was being unfaithful. The facts do not show whether the phone was in the possession of P to constitute a touching. If this was the case then D's

act of grabbing an item that was in the hands of P this would constitute an indirect touching that falls within transferred intent. However this is not present in the facts. The facts do mention the the arguments between P and D have gotten physical but no specifics are mentioned to rise to the level of battery. 2.

No, D is not liable for battery.

Intentional Infliction of Emotional Distress (IIED)

1 intentional or reckless, 3.

IIED is the extreme and outrageous conduct that exceed the bounds of human decency that causes severe emotional distress to another.

Here D's action of throwing a plate at P is a intentional act that is outrageous in nature as throwing plates is not a socially acceptable behavior. A home a space for safety and vulnerability and for D to throw a plate as a response to an argument exceeds the bounds of what is socially acceptable. D act caused P to become anxious and fearful although this is emotional distress it is not severe as there have not been any physical manifestations that would result in intervention or life long impacts. The facts do not show P needing therapy or suffering as a result of this incident. 4.

No, D is not liable for IIED.

False imprisonment

False imprisonment is the intentional confinement of another, without their consent, where there is no reasonable means of escape. The person being confined must know they are confined. good

Here, D attempted to confine P when D blocked P from being able to leave. D was intentional in her act of confinement as it was a response to P's action of packing things

in an attempt to leave. D knew he was being confined as P shared her intentions for D to stay, by D's act of begging P to stay. Because P was able to push D aside to leave this shows that P has a reasonable means to escape. P had free movement to be able to move D aside and leave.

No, D is not liable for False Imprisonment.

Trespass to land

Trespass to land is the unwelcome entrance of the land of anther. Damage to the land is not needed for trespass to have occurred. Trespass can be the physical trespass of the D or can be transferred intent through a physical object in the possession of the D.

Here, there are no facts to show there was a trespass to land as both parties are within their land.

No, D is not liable for Trespass to Land.

Trespass to chattel

Trespass to chattel is the willful act of the D that causes interference with the dominion of another's chattel. The chattel must be in the P possession. Chattel is the property of another or someone is in lawful possession of the property (owner or possessor).

Here D acted willfully when grabbing P's cellphone. Because D grabbed P's phone P reacted and attempted to take back his property. At which point P's phone fell and broke, it is unknown if the phone was dropped by P or D but the phone nevertheless was damages as a result of D's interference. D also interfered with P's possession of the dish that D threw at P in the initial argument. P is unable to use the dish as it crashed into the wall; however the damage of the dish is unknown.

Yes, D is liable for Trespass to chattel.

Conversion

Conversion is the intentional act by the D causing ~~severe~~ substantial interference or diminuation of value to another's chattel. If liable for conversation D may be liable for the cost of the conversion. Chattel is the property of another or someone is in lawful possession of the property (owner or possessor). – good

Here D acted intentionally when grabbing P's phone because D suspected P was being unfaithful. D's motivation is known by D's act of scrolling through P's messages when holding P's phone making D's conduct willful and intentional. P's phone had all his contacts and schedules regarding business, this will substantially interfere with P's future earnings. The value of the phone may be recovered; the potential loss of earning may need to be calculated to ascertain P's possible recovery. D also interfered with P's possession of the dish that D threw at P in the initial argument. P is unable to use the dish as it crashed into the wall; however the damage of the dish is unknown. 5

Yes, D is liable Conversion.

Therefore, P can bring claims for Assault, Trespass to Chattel, and Conversion.

Defenses

Consent Rule?

D may claim they had lawful possession of the plate barring P's recovery for trespass to chattel. There is not enough facts to show possession from either party.

Yes, D may use consent.

Self defense Rule

D may claim self defense for the assault, but there are not enough facts showing D was using equal force.

No, D would not be able to use the self defense. b.

Therefore D has no viable defenses.

END OF EXAM

QUESTION 1 MATRIX

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Assault (2 points)	Assault is the willful and intentional act that causes reasonable apprehension of imminent harmful or offensive touching (3 points)	D threw plate, but missed (4 points)	Probably (1 pt)	/10 10
IIED Direct Victim (2 points)	Intentional or reckless, extreme and outrageous, act that causes severe emotional distress (3 points)	D threw plate and missed. P was anxious and fearful. Not clear that we have severe emotional distress (4 pts)	Probably not 1 pt)	/10 9
Trespass to Chattel (2 points)	Possessor of property is dispossessed of property property is damaged (3 points)	D broke plate but likely CP; broke phone but doesn't seem intentional (4 points)	Probably not (1 pt)	/10 10
Conversion (2 points)	Substantial dispossession or loss such that the property is a complete loss (3 points)	See above. Facts do not indicate intentional. (4 points)	Probably not (1 pt)	/10 9

False Imprisonment (2 points)	Intentional confinement without reasonable means of escape (3 points)	Diane would not let Peter leave, but he was able to escape in reasonable period of time (4 points)	Close call (1 pt)	/10 10
Possible Defenses				
Consent (2 points)	Consent can be implied by acts of P where objectively P would appear to be consenting to act of D. (3 points)	Their arguments had gotten physical before. Perhaps there was implicit consent to the battery. (4 points)	Probably not (1 point)	/10 7
Mental Health (2 points)	Usually not a defense, unless D had no warning and D unable to control act (3 points)	Diane might have unaddressed mental health issues, but had warnings and had volitional control (4 points)	Probably not (1 point)	/10 0
Self-Defense (2 points)	A person may use a reasonable amount of force to protect himself or a third party from an aggression (3 points)	The arguments had become physical. It is certainly possible Peter could have been physical. He was worried about how he would respond if he stayed in the home.	Probably not (1 point)	/10 3
Total Possible Points			64	~~110~~ 90

71

1. Obviously, this makes no sense. Perhaps you were thinking about touching of something intimate to the TT, like a cane. We know there was reasonable apprehension because TT ducked.

2. Is throwing the dish a battery? If not, why not?

3. Tighten up your IIED Barf.

4. Use the facts: Δ whizzed the plate toward TT's head. That is extreme and outrageous conduct. I agree that the facts are insufficient for "severe emotional distress."

5. Does Δ need to intend to cause substantial interference? The damage seems accidental. Is Δ still liable for conversion?

6. Your defenses need rules. Use the facts.

2)

PAMELA v. DAN DRIVER (DD)

Negligence is the failure to exercise the degree of caution and care of a reasonable prudent person (RPP) in the same or similar circumstance. Negligence requires duty, standard of care, breach, causation and damages.

DUTY

Duty is the D's legal obligation to keep other's from harm. Duty can be established by a reasonable foreseeable plaintiff (RFP) in the zone of danger caused by D's conduct, statute, special relationship, ~~statute~~, an affirmative act, and potentially a contract.

In this case, duty can be established by Pamela being a RFP in the zone of danger caused by D's conduct, when the CBD insisted that Pamela get off the bus and to just walk "that way" late in the evening. Even then a special relationship is made between a driver and passenger. The driver has a duty to keep their passengers and those on the road from harm and should not conduct themselves in a way that would lead to them facing harm.

Thus, the DD has a duty to Pamela.

STANDARD OF CARE (SOC)

SOC is established by a RPP (person or professional) standard, custom or habit, and statute.

Here a the RPP standard can be used to establish a standard of care. A RPP would not leave a woman alone to walk the streets late in the evening where they could potentially be taking advantage of or at least inform her of where she is in town. Even so, one can

assume that it is City Bus's custom or habit to simply have individuals get off the bus once they reach what is presumed the end of the route. The fact pattern does not inform us if City Bus had a different custom for instances that occur late in the evening. Yet, SOC can be established through the RPP standard.

Thus, DD owed a standard of care towards Pamela.

BREACH

Breach of duty is when D fails to act in a way that a RPP would in the same or similar circumstance. This may arise when a person does something an RPP would not do or fail to do something an RPP would do. Liability depends on whether adequate precaution is less than the probability multiplied by the gravity of the injury.

As mentioned under SOC, the DD owed a SOC towards Pamela under the RPP standard. The CBD did not act in a way where a RPP would in which they should have at least told Pamela where she was in town before having her get off the bus. The DD failed to act in a way that a RPP would. The DD did not take the adequate precaution to prevent the possibility of Pamela being injured. For liability adequate precaution has to be less than the probability multiplied by the gravity of the injury, and by forcing Pamela to get out of the bus in a place where she does not even know where she is late into the night, produced a high probability of Pamela being injured and that being said, the injury was substantial.

Thus, DD breach his duty in regard to Pamela.

CAUSATION

Causation shows the causal link between D's breach and P's injury. The D must be the actual and proximate cause of P's injury. Actual cause is shown by either the "but-for" test

or the substantial factor test. The "but-for" test is but-for the D's negligence, the P would not have been injured. The substantial factor test takes in the totality of circumstances and checks whether D's conduct was a substantial factor in P's injury. Proximate cause shows that P's injury was a foreseeable result of D's breach. Foreseeability is whether is is equitable to make D liable. This can be shown whether the conduct was a dependent, foreseeable, superseding factor which does not break the chain of causation nor sever liability. Where independent, unforeseeable, superseding factor which does break the chain of causation and does sever liability.

Actual causation can be proven by the "but-for" test and substantial factor test, "but-for" the DD making Pamela leave the bus, Pamela would not have been assaulted by two young men. The substantial factor test takes in the totality of circumstances to see whether the DD's conduct was a substantial factor in causing Pamela's injury, if the DD never made Pamela get off the bus, Pamela would not have needed to walk in the direction that the DD pointed her to which lead to her walking into a dark and isolated section of the neighborhood where two young men proceeded to assault her in an alley.

Rule before analysis: IRAC

Proximate cause asks whether Pamela's injury was a foreseeable result of the DD's breach. By making Pamela get off the bus and dropping her off in a location where she did not even know where she was and giving her a simple direction that the town was in a certain direction late in the evening, it is foreseeable that Pamela could be injured. If Pamela was never made to get off the bus, she would not have been assaulted by the two men. Even though the men committed a tortious act against her, which can be considered an independent factor, not all tortious acts sever liability which does not sever liability for the DD. The tortious conduct from the young men don't break the chain of causation since Pamela would have never been there in the first place if she was not made to get off the bus.

Thus, the DD is both the actual and proximate cause of Pamela's injury.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (NIED)

NIED is a personal injury claim where the claimant suffer emotional distress caused by D's negligence that results in a physical manifestation. This can be shown through the Amaya test where the P must be in a zone of danger of physical harm that causes the P to be ~~fearful that~~ results in emotional distress.

not applicable

DAMAGES (5)

1 2 = same

Damages can be categorized into three types such as general, special and pecuniary. General damages are those where the P faces anguish ~~as a~~ result of the incident and has a loss of enjoyment for life that they used to have prior to the incident. Special damages are those related to economic loss such as lost wages of the past and future, loss ~~of earning~~ potential, past and future medical expenses incurred related to the accident. Punitive damages are those that are awarded because of the D's wanton and reckless behavior that the P was subject to. 3

Pamela may be able to get general damages since she is not able to enjoy the things she used to enjoy prior to the incident. Pamela cannot sleep, work, or leave her apartment due to her injuries and PTSD. She is no longer able to live the life she used to live. Pamela may be able to get special damages for economic loss, since she is not able to leave her apartment, she is no longer able to work and she has incurred medical expenses and will require medical care for the future.

Thus, Pamela will be able to collect general and special damages.

what about punitive damages? why / why not?

DEFENSES

CONTRIBUTORY NEGLIGENCE (6.)

Contributory negligence is where the D must prove that the P conduct was at least partially negligent that led to their injury.

Here, the DD may claim that Pamela could have called an Uber and prevented the situation as a whole, yet we can infer that Pamela being a college student that rides a public transit system does not have the economic means to order an Uber. In addition, Pamela did not know where she was in town and depending on the locality of which she was made to leave the bus from, it could have been far from her home and could potentially be an expensive Uber. She followed the directions of the DD to go towards the town.

Thus, the DD cannot raise contributory negligence against Pamela.

PAMELA v. CITY BUS

VICARIOUS LIABILITY

you need to improve the rule

Vicarious liability occurs when a person is responsible for another's tortious act through a special relationship. A special relationship can be interpreted as employer/employee.

City Bus may be liable for DD's conduct. Since a special relationship is present between an employer (city bus) and the employee (DD), City Bus will share liability because of vicarious liability.

PAMELA v. SAM

Negligence is the failure to exercise the degree of caution and care of a reasonable prudent person (RPP) in the same or similar circumstance. Negligence requires duty, standard of care, breach, causation and damages.

DUTY

Duty is the D's legal obligation to keep other's from harm. Duty can be established by a reasonable foreseeable plaintiff (RFP) in the zone of danger caused by D's conduct, statute, special relationship, ~~statute~~, an affirmative act, and potentially a contract.

Here, Sam established a duty to Pamela through an affirmative act by telling her that he would get her some help and would be right back. Pamela became dependent on Sam because of the affirmative act he made and inserted himself into the situation.

Thus, Sam has a duty to Pamela.

Is there a duty to rescue?. majority v. minority jurisdictions.

STANDARD OF CARE (SOC)

SOC is established by a RPP (person or professional) standard, custom or habit, and statute.

SOC is established by a RPP standard since Sam committed an affirmative act and told Pamela that he would get her some help, we would assume that a RPP would follow through with the promise to get Pamela assistance.

Thus, Sam owed a SOC towards Pamela.

BREACH

Breach of duty is when D fails to act in a way that a RPP would in the same or similar circumstance. This may arise when a person does something an RPP would not do or fail to do something an RPP would do. Liability depends on whether adequate precaution is less than the probability multiplied by the gravity of the injury.

Here, Sam failed to act in a manner that a RPP would in the same or similar circumstance. A RPP that tells a victim that they will get them some help and be right back, one would assume that they would follow through and find help for the individual and come back for them. Sam failed to act like an RPP by not getting help and coming back to assist Pamela.

Thus, Sam breached his duty towards Pamela.

CAUSATION

Causation shows the causal link between D's breach and P's injury. The D must be the actual and proximate cause of P's injury. Actual cause is shown by either the "but-for" test or the substantial factor test. The "but-for" test is but-for the D's negligence, the P would not have been injured. The substantial factor test takes in the totality of circumstances and checks whether D's conduct was a substantial factor in P's injury. Proximate cause shows that P's injury was a foreseeable result of D's breach. Foreseeability is whether is is equitable to make D liable. This can be shown whether the conduct was a dependent, foreseeable, superseding factor which does not break the chain of causation or sever liability. Where independent, unforeseeable, superseding factor which does break the chain of causation and sever liability.

Actual cause can be shown by the "but-for" test, but-for Sam telling Pamela that he would look for help and come back, Pamela would not have waited in getting medical treatment and have partial paralysis in her right leg. Sam played a substantial factor in Pamela's injury, because if Pamela did not depend on Sam looking and bringing help back, her injuries would not have resulted to the degree that they did. Sam's conduct was also the proximate cause of Pamela's injuries as it is a foreseeable result of injuries worsening when not getting the adequate and timely medical treatment. Since Pamela relied on Sam finding help, she waited and waiting in hopes that he would come back.

Thus, Sam is the actual and proximate cause of Pamela's injuries.

DAMAGES

Damages can be categorized into three types such as general, special and pecuniary. General damages are those where the P faces anguish as a result of the incident and has a loss of enjoyment for life that they used to have prior to the incident. Special damages are those related to economic loss such as lost wages of the past and future, loss of earning potential, past and future medical expenses incurred related to the accident. Punitive damages are those that are awarded because of the D's wanton and reckless behavior that the P was subject to.

Pamela may be able to recover general damages due to the injuries she incurred from the delay of medical treatment based on her reliance of Sam finding and returning with help since she is no longer able to sleep, work or leave her apartment. Her injuries may not allow her to enjoy the things in life that she did prior to the incident. She faces an emotional anguish since being diagnosed with PTSD and could be reason on why she can no longer enjoy life like she used to prior to the incident. Pamela may be able to recover special damages since she is no longer able to work and had incurred medical expenses from the accident and will require treatment in the future. Pamela should be owed all lost wages after the accident and future wages including potential earning potential since she was in the midst of pursuing a college degree. She faced medical expenses associated with her partial paralysis, TBI and therapy for PTSD. Pamela may also receive special damages since Sam's behavior can be considered reckless and wanton for telling Pamela that he would look and return for help and was reckless to make such promise and not fulfill it.

Thus, Pamela will be awarded general, special and punitive damages.

END OF EXAM

QUESTION 2 MATRIX

Issue	Rule	Analysis	Concl'n	Points Allotted
Pammie v. City/Dan				
Negligence (2 points)	Over-arching Negligence elements (3 points)			/5 5
Vicarious Liability (2 points)	An employer can be responsible for the acts of an employee that are done during the course and scope of his employment (2 points)	Dan was working as a bus driver for City Bus at the time of the act (2 points)	Yes (1 pt)	/7 7
Duty (2 points)	RFP (Palsgraf v. LIRR) Special Relationship Affirmative Act (6 points)	Pammie is a customer of a City Bus The driver forced her to get off the bus and pointed her into a dangerous area (2 points)	(1 pt)	/11 11
SOC (2 points)	RPP (2 points)	Bus driver act as a reasonable bus driver under the circumstances? (2 points)	(1 pt)	/7 7
Breach (2 points)	Blyth; Carroll Towing; Hand Balance Test (2 points)	Burden of allowing Pammie to stay on bus until a safe plan is created	(1 pt)	/7 7

		balanced against the probable risk of serious injury (2 points)		
Actual Causation (2 points)	But For (2 points) substential factor +2	But For forcing Pammie off bus, there would be no injury (2 points). discussion +2	(1 pt)	/7 11
Proximate Cause (2 points)	Direct Harm or RFH? Intervening Acts: do the criminal acts of the unknown men cut off liability back to City Bus and Dan? Sam the Rescuer (6 points)	Reasonably foreseeable? Intervening Act: is the possible danger of the rapists the reason City Bus and Dan are negligent? Failure of Rescuers are generally reasonably foreseeable intervening acts that do not cut off liability back to the original tortfeasor. (2 points)	(1 pt)	/11 6
Damages (2 points)	General damages: pain and suffering; Special Damages; future wages; therapy; medical	Pammie suffered partial paralysis in her right leg, traumatic	(1 pt)	/11 11

	costs; Punitive Damages: reprehensible conduct that needs to be punished. (6 points)	brain injury; PTSD; she cannot sleep or work. She has become agoraphobic (2 points)		
Defenses (2 points)	Contributory negligence; comparative negligent; assumed the risk. (8 points)	Pammie had agency over her decision to walk; how and where she walked (3 points)	(1 pt)	/14 8
Pammie v Sam				
Duty (2 points)	Duty of Rescuer Majority and Minority opinion (2 points)	No duty in most jurisdictions; no duty without reasonable reliance by Pammie's, which is not mentioned in the hypo. (2 points)	No duty of care (1 pt)	/7 2
Extra Credit for continuing negligence discussion to conclusion				/10 10
Total points possible			85	/85

100

1. Interesting way to frame the Hand test. (US v. Carroll Towing). I think it is safer to use the traditional formation, however, B < PL. Burden on the defendant that is less than the probability of serious injury.

2. I do not understand the difference between "D" and "DD." If none, then please only use one designation.

3. The substantial factor test should be employed if a determination of whether the D's conduct was a "substantial factor" or a trivial factor in the causal connection to the injury. What other factors were at play in Ps injury? Ps conduct? criminals conduct? et ceteras.

4. Your proximate causation analysis should center on whether the criminal conduct of independent actors is what made driver's conduct negligent. If so, then your conclusion would be correct.

Also, the proximate cause section is where you should have discussed the rescuer, "Sam."

5. Separate out each damages discussion into their own section

6. Contributory negligence is one possible defense, if TT is in a contrib jurisdiction. What about comparative negligence or assumption of risk?

92
well done!

3)

PYPER v. DORCAS

Excellent

Negligence is the failure to exercise the degree of caution and care of a reasonable prudent person (RPP) in the same or similar circumstance. Negligence requires duty, standard of care, breach, causation and damages.

DUTY

Duty is the D's legal obligation to keep other's from harm. Duty can be established by a reasonable foreseeable plaintiff (RFP) in the zone of danger caused by D's conduct, statute, special relationship, statute, an affirmative act, and potentially a contr! ct. Nice

Here, Dorcas had a legal obligation to keep other's from due to statute and RFP in the zone of danger. As a driver on the road, Dorcas had a duty to keep other's from harm and be a safe driver. Pyper was a RFP in the zone of danger caused by Dorcas driving under the influence, speeding on the road, and driving past a red light. Dorcas violated three statutes.

Good analysis

Thus, Dorcas had a duty towards Pyper.

STANDARD OF CARE (SOC)

SOC is established by a RPP (person or professional) standard, custom or habit, and statute.

Here, SOC can be established by statute. Given the fact pattern, Dorcas should not have been driving on the road and was likely to have a suspended license due to his prior convictions. Dorcas was also driving under the influence, speeding on the road, and drove

in violation of standards established by statute

past a red light. A RPP would not have driven under a suspended license, driven under the influence, sped on the road nor drive past a red light.

nice focus on what RPP would do

Thus, Dorcas owed a SOC towards Pyper.

BREACH

Breach of duty is when D fails to act in a way that a RPP would in the same or similar circumstance. This may arise when a person does something an RPP would not do or fail to do something an RPP would do. Liability depends on whether adequate precaution is less than the probability multiplied by the gravity of the injury.

nicely stated rule

Dorcas breached his duty when he failed to act in a way that a RPP would in the same or similar circumstance. A RPP would not have driven if they had a suspended license. Even if a RPP did not have a suspended license, they would not drive under the influence, speed on the road and run a red light. Dorcas conducted himself in a way that an RPP would not act given the circumstances.

Is this a cause of the accident though?

Thus, Dorcas breached his duty towards Pyper.

NEGLIGENCE PER SE

Negligence per se is when a violation of a statute constitutes negligence since the breach of statute resulted in an injury to a class in which the statute was meant to protect.

recall that only statutes protecting safety invoke NPS

Here, Dorcas violated four statutes that resulted in injury in which the statutes are meant to protect the class of people which are those that also on the road. Dorcas violated the statutes and caused injury against Pyper due to his conduct.

be sure of conclusory analysis. Use the facts!

Thus, negligence per se is present in this case.

Separate headings for actual + proximate ensure that a bar grader will see you addressed both

CAUSATION

Causation shows the causal link between D's breach and P's injury. The D must be the actual and proximate cause of P's injury. Actual cause is shown by either the "but-for" te3t or the substantial factor test. The "but-for" test is but-for the D's negligence, the P would not have been injured. The substantial factor test takes in the totality of circumstances and checks whether D's conduct was a substantial factor in P's injury. Proximate cause shows that P's injury was a foreseeable result of D's breach. Foreseeability is whether is is equitable to ~~make~~ D liable. This can be shown whether the conduct was a dependent, foreseeable, ~~superseding~~ factor which does not break the chain of causation or sever liability. Where independent, unforeseeable, superseding factor which does break the chain of causation and sever liability.

Excellent!

Superseding would sever liability

Dorcas was both the actual and proximate cause of Pyper's injury. But-for Dorcas not running the red light and driving under the influence, Pyper would not have been injured due to the crash. In addition, Dorcas's conduct played a substantial factor in Pyper's injury. Pyper's injury is a foreseeable result of Dorcas's breach. By Dorcas driving under the influence and running a red light, it was foreseeable that Dorcas would run into someone or something due to his conduct. His conduct of driving under the influ%nce, driving 40mph over the speed limit and runni. g a red light all serve as a dependent, foreseeable, ~~superseding~~ factors in causing Pyper's injury.

"In re Polemis" — direct cause = foreseeable

Thus, Dorcas is both the actua, and proximate cause of Pyper's injury.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (NIED)

NIED is a personal injury claim where the claimant suffer emotional distress caused by D's negligence that results in a physical manifestation. This can be shown through the

Amaya test where the P must be in a zone of danger of physical harm that causes the P to be fearful that results in emotional distress.

Pyper will likely not be able to raise NIED against Dorcas. Under the Amaya test, Pyper was put in the zone of danger of physical harm when Dorcas ran the red light and hit the passenger side of her car and that she was fearful due to Dorcas's conduct but it does not appear to have caused her emotional distress since she suffered a TBI that affected her cognition and memory and cannot even remember the accident.

NIED was not in the outline for Pyper — okay to raise but unnecessary where you have primary physical injury

Thus, Pyper will not be able to raise NIED against Dorcas.

DAMAGES

Excellent

□amages can be categorized into three types such as general, special and pecuniary. General damages are those where the P faces anguish as a result of the incident and has a loss of enjoyment for life that they used to have prior to the incident. General damages require cognitive awareness. Special damages are those related to economic loss such as lost wages of the past and future, loss of earning potential, past and future medica, expenses incurred related to the accident. Punitive damages are those that are award%d because of the D's wanton and reckless behavior that the P was subject to. — purpose to punish / example to others — constitutional limits

Great!

Pyper will be able to recover damages. Pyper is not likely to recover general damages even though she may not enjoy the things she used to enjoy in her life prior to the accident, due to the TBI she sustained she cannot remember the accident nor is she aware of the significant changes that have occurred in her life. Since Pyper does not express any sort of anguish due to the accident, she will not be able to recover general damages. Pyper will be able to recover special damages since she faces an economic loss due to the accident. Pyper should be able to recover past and future wages including earning potential since she recently passed the state bar exam after graduating at the top of her class. Pyper also

what might Dorcas argue about Pyper's wages in light of their part job during law school?

incurred medical expenses due to the accident and will require medical treatment in the future. Pyper needs assistance with day-to-day tasks for the remainder of her life and should be compensated for the expenses related to that. In addition, she should be able to recover monies for the damage incurred on her car since the car had been totaled. Pyper will also be able to recover punitive damages since Dorcas's conduct was both intentionally reckless and wanton and subjected Pyper to it. Constitutional limits?

Thus, Pyper will be able to recover special and punitive damages.

MARCUS v. DORCAS

Negligence is the failure to exercise the degree of caution and care of a reasonable prudent person (RPP) in the same or similar circumstance. Negligence requires duty, standard of care, breach, causation and damages.

Duty, SOC and Breach would be the same for Marcus as it was for Pyper.

CAUSATION

Causation shows the causal link between D's breach and P's injury. The D must be the actual and proximate cause of P's injury. Actual cause is shown by either the "but-for" test or the substantial factor test. The "but-for" test is but-for the D's negligence, the P would not have been injured. The substantial factor test takes in the totality of circumstances and checks whether D's conduct was a substantial factor in P's injury. Proximate cause shows that P's injury was a foreseeable result of D's breach. Foreseeability is whether is is equitable to make D liable. This can be shown whether the conduct was a dependent, foreseeable, superseding factor which does not break the chain of causation or sever liability. Where independent, unforeseeable, superseding factor which does break the chain of causation and sever liability.

Marcus was relatively uninjured from the accident but experienced terrible nightmares. Actual cause of this can be shown by the "but-for" test, but for Dorcas not running the red light and hitting the car, Marcus would not have terrible nightmares due to the accident. It is a foreseeable result of Dorcas's breach that Marcus would have nightmares due to the accident.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (NIED)

Good! the facts raise NIED for Marcus

NIED is a personal injury claim where the claimant suffer emotional distress caused by D's negligence that results in a physical manifestation. The Amaya test is best served to analyze NIED for the victim but in the case for third parties the Dillon Test is best used. The Dillon Test requires that the individual be near the scene of the incident, that they be a contemporaneous observer of the incident and that they have a special relationship with the victim.

Excellent

Here, the Dillon Test applies since Marcus was in the same vehicle as Pyper putting him at the place of the incident, Marcus was a contemporaneous observer since he saw the Dorcas's car come towards them and he had a special relationship with Pyper as he is her boyfriend.

Thus, Marcus would be able to raise NIED.

DAMAGES

Damages can be categorized into three types such as general, special and pecuniary. For third parties, they can receive damages through loss of consortium. Loss of consortium refers to the loss of companionship between individuals but it requires a special relationship, and in partnerships it requires that the couple be married.

Good!

M Many states but not all

Marcus will not be able to recover through loss of consortium because he is not married to Pyper. Even though he faces a loss of companionship and is no longer able to do the things they used to be able to do prior to the accident, he will not be able to recover since they are not married.

END OF EXAM