

SAN LUIS OBISPO COLLEGE OF LAW

TORTS

MIDTERM EXAMINATION

FALL 2024

PROF. E. Ulz

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

SLO
Torts
Fall 2024
Professor E. Ulz

ESSAY 1

Penelope's new girlfriend Geraldine wanted to play a prank on Penelope's friend Denise. Penelope, who was eager to introduce Geraldine to her friends, reluctantly agreed. Geraldine didn't share the details of her plan, but assured Penelope it would be really funny.

Denise and Penelope met at an outdoor café. While they were enjoying their cappuccinos, Geraldine ran up and pretended to steal Penelope's handbag which was draped across the back of her chair. The strap got stuck and Penelope's chair was yanked out from under her, causing her to fall and hit her head against the cafe table. Penelope began bleeding profusely from her forehead and promptly fainted.

Denise—who recently began training as an MMA fighter—ran after Geraldine. Denise quickly tackled Geraldine and put her into a one-handed choke hold. Denise began punching Geraldine in the face with the other hand, screaming "You messed with the wrong women, I'm going to beat the crap out of you."

That evening, Penelope broke up with Geraldine over text message. Geraldine spent the night in jail and went home with two black eyes. Denise broke her hand and had to miss the rest of the MMA season. She has been having nightmares and is considering counseling. All three women are very upset and none of them is speaking to the others.

What intentional tort claims can be raised by Penelope against Geraldine? Geraldine against Denise? Denise against Penelope and/or Geraldine? Are there any defenses to those claims? Discuss.

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ESSAY 2

Lloyd and Opal purchased an old farmhouse on several acres of land. The only neighbors within walking distance are an elderly couple, Ed and Shirley.

At the far end of the property are the remains of an in-ground swimming pool. The concrete is cracked the whole pool area is covered in moss and algae.

Lloyd and Opal learned it would cost \$20,000 to remove the pool, so they decided to put it off for a while. Meanwhile, Lloyd erected a fence and posted signs saying KEEP OUT: PRIVATE PROPERTY around the pool.

In July, Ed and Shirley's thirteen-year-old twin grandsons, Percy and Patrick, unexpectedly came to visit for a few days. Lloyd and Opal were traveling when the boys arrived.

On the second day of their grandsons' visit, Ed and Shirley left Percy and Patrick home alone while they attended an event at the senior center.

After quickly running out of things to do, Percy and Patrick decided to explore. They saw Lloyd's KEEP OUT signs but crawled through a hole in the fence anyway. The boys were thrilled to discover the old swimming pool.

Patrick carefully climbed down inside the mostly empty pool. Percy began bouncing on the old diving board, which was very slippery because of the moss and algae. Percy lost his footing and fell headfirst into the deep end of the pool, landing right next to Patrick. He sustained serious injuries.

Percy and Patrick bring suit against Lloyd and Opal on theories of negligence and negligent infliction of emotional distress. Discuss the viability of their claims, along with any defenses.

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ESSAY 3

Devon moonlights as an independent contractor for a rideshare app. On Thursday night, Devon had a hot date planned. That afternoon, Devon got dressed up for the date in advance, donning a mini dress and platform heels, before heading back to drive for a few more hours.

Pedro, a nationally ranked ballroom dancer, ordered a ride around 6 pm. Devon picked up Pedro outside his dance studio a few minutes later.

About halfway to Pedro's destination, Devon was distracted by a text message flashing across the car's console screen. By the time Devon looked up, another car had entered the upcoming intersection. Devon managed to avoid the other car and instead drove onto the sidewalk, sideswiping a telephone pole. Even though Devon's car barely tapped the phone pole, it cracked in half and landed on the passenger area of the vehicle, crushing Pedro.

An investigation recently revealed that the phone company had failed to maintain and repair its poles for years, resulting in multiple recent accidents.

A new state law makes it illegal to drive wearing high heels or platform shoes.

Pedro's leg has to be amputated, ending his competitive dancing career. Ava, his ballroom dance partner (and his girlfriend) also suffers a significant career setback.

Pedro and Ava come to your office to find out whether Pedro can sue Devon and/or the rideshare app Devon drives for. Ava wants to know whether she has grounds for a lawsuit as well. How would you advise them?

ESSAY 1 ANSWER OUTLINE

I. **Penelope v. Geraldine**

A. *Battery*

When Geraldine pulled the bag off the back of Penelope's chair, she caused the chair to fall over and Penelope to hit her head against the table. Geraldine may argue that she did not intend to cause contact between Penelope and the table, neither did she have substantial certainty that pulling the bag off the chair would cause such contact. There is also an argument that the bag was being held close enough to Penelope's person that contacting it also constitutes battery.

B. *Assault*

There are not enough facts to determine whether Penelope reasonably apprehended the harmful contact (either with her bag or with the table) before it occurred. Students may raise assault, but will likely dismiss it.

C. *Trespass to Chattels*

Geraldine pretended to steal Penelope's bag in which she had a present possessory interest. It is unclear whether or what damages Penelope suffered due to the dispossession.

D. *Conversion*

The facts do not explain whether the bag was damaged, or how severely.

E. *Defense: Consent*

Geraldine will argue that she told Penelope about the prank and got her consent ahead of time. Penelope can argue that her consent was ineffective due to the lack of material facts about what the prank would involve.

II. **Geraldine v. Denise**

A. *Battery*

Denise tackled Geraldine, pinned her to the ground with a choke hold, and punched her in the face.

B. Assault

While Geraldine may not have seen Denise coming up from behind her, by the time she was pinned to the ground, she saw the fists coming at her. Denise also yelled threats about beating Geraldine up while demonstrating the present ability to do so.

C. False Imprisonment/Arrest

After tackling Geraldine, Denise put her in a choke hold, restraining her movement.

D. Defense: Defense of Others

Denise will argue that she reasonably believed that Geraldine was attacking Penelope when she grabbed the bag. Because Penelope would have had the right to defend herself, Denise has the right to defend her using proportional force. Geraldine will argue that (1) the force was excessive in light of Denise's MMA training and (2) by the time Denise tackled her, Geraldine was already running away therefore no force was necessary to prevent any imminent physical harm.

E. Defense: Defense of Property (Hot Pursuit Doctrine)

Denise tackled Geraldine moments after Geraldine apparently stole Penelope's bag, while Geraldine was still fleeing the scene. Geraldine will argue that Denise did not first ask her to return the property and that the force was nonproportional, particularly in light of Denise's training.

F. Defense: Authority (misdemeanor committed in presence)

Geraldine apparently committed a crime (classification will vary based on value of the bag) in front of Penelope and Denise. Whether Denise is permitted a mistake will vary based on the jurisdiction. Geraldine will argue that in any case, Denise's use of force exceeded that which was reasonably necessary to apprehend her.

III. Denise v. Geraldine and Penelope

A. IIED

Since the incident, Denise has suffered from nightmares and may need counseling. This suggests severe emotional distress. She will argue that the type of prank planned by Geraldine (and Penelope) was extreme and outrageous and exceeded the bounds of decency.

ESSAY 2 ANSWER OUTLINE

I. **Percy v. Lloyd and Opal**

A. *Negligence*

1. *Duty of Landowner/Occupier to Unknown Trespassers*

Lloyd and Opal were traveling when the boys arrived to stay with Ed and Shirley. They will argue that they had no way to know the boys were trespassing on their land. The boys may argue that the posting of Keep Out signs shows that Lloyd and Opal had reason to anticipate trespassers in that area and that because the pool is an artificial condition, they had a duty to post a reasonably warning of the dangers, namely that it was very slippery. Depending on the jurisdiction, the boys may also argue that the traditional division of trespasser/licensee/invitee has been abrogated and a duty of reasonable care is owed regarding latent dangers existing on the land.

2. *Breach*

The burden of removing the pool is a high financial cost. Lloyd and Opal will argue that it exceeded the fairly remote risk given how few people live near them. On the other hand, adding a warning about how slippery the area surrounding the pool has become would be a small imposition since the signs already exist.

3. *Actual Causation*

But for the pool still being there, and the lack of warning signs, the boys would not have been injured. They may need to argue that they benefit from the heeding presumption (this is introduced with product liability) to counter Lloyd and Opal's argument that the boys would likely have ignored the warning signs just like they ignored the fence and keep out signs.

4. *Proximate Causation*

Lloyd and Opal will argue that trespassers are, by definition, not foreseeable.

5. *Damages*

Percy sustained serious injuries. He will likely have special damages including medical bills, and if there is any permanent damage, perhaps a reduced earning capacity later in life. General damages will also be available for pain and suffering and loss of enjoyment/function. There are no facts giving rise to punitive damages.

B. *Attractive Nuisance*

An empty pool is the type of artificial condition that could easily attract children who might not appreciate the risks. Lloyd and Opal will argue that their only neighbors were an elderly couple so they had no reason to expect child trespassers. Further, they will argue they took adequate precautions by putting up a fence and posting signs. Removing the pool entirely has a high financial cost. The boys will counter that the warning was insufficient to apprise them of the true risks.

II. **Patrick v. Lloyd and Opal**

A. *Negligent Infliction of Emotional Distress*

Patrick, Percy's brother, was standing in the bottom of the pool when his brother fell off the diving board and sustained serious injuries. If Patrick can show severe emotional harm, he may be able to recover as a closely related contemporaneous observer.

III. **Defenses**

A. *Assumption of Risk*

Lloyd and Opal will argue that the boys assumed the risk of playing in an abandoned pool when they trespassed despite the fence and keep out signs. The boys will argue that they did not know how slippery the pool was because there were no adequate warnings.

B. *Comparative/Contributory Negligence*

Percy and Patrick will be held to the standard of care of reasonable children of their age and experience. If they were adults, they could be charged with the general knowledge that

abandoned pools are dangerous. Percy bouncing on the diving board is more risky than Patrick climbing carefully down.

ESSAY 3 ANSWER OUTLINE

I. **Pedro v. Devon**

A. *Negligence*

1. *Duty*

Pedro is a reasonably foreseeable plaintiff because he was a passenger in Devon's car. Further, duty may also be established by the rideshare app contract when Pedro booked the ride and Devon accepted it.

2. *Breach*

Devon failed to act as a reasonable driver when they got distracted by a text message and looked away from the road.

3. *Actual Causation*

If Devon hadn't looked down to read the text message, they would have been able to stop in time to avoid the other car entering the intersection and thereby avoided hitting the telephone pole.

4. *Proximate Causation (superseding cause)*

Devon will argue that the phone company's failure to maintain the phone poles over a number of years was not foreseeable and cuts off causation. Pedro will argue that an injury causing car accident—including an accident where others may also be at fault—is the very risk that made Devon's acts negligent and therefore foreseeable, even if the precise mechanism is unusual.

5. *Damages*

Pedro has significant special damages for medical bills and loss of his dancing career. He also has general damages for pain and suffering and loss of the ability to dance/disfigurement.

B. *Negligence Per Se*

Pedro will point to Devon's violation of the new law regarding driving with platform/high heeled shoes to establish a presumption of breach. Devon will point out that even though the statute was likely meant to protect passengers (and others) from car accidents, there is no causal nexus since the accident occurred when they looked down at a text message and therefore had nothing to do with footwear.

II. *Pedro v. Rideshare App*

A. *Vicarious Liability*

Devon is an independent contractor. The Rideshare App will argue that they have no liability for the negligence of independent contractors due to the lack of control. Pedro may attempt to argue either that Devon had apparent authority if the rideshare app held Devon out as an employee or that ensuring the safety of passengers is a nondelegable duty.

III. *Ballroom Dance Partner's Rights*

A. *Loss of Consortium*

Ava is Pedro's girlfriend as well as his dance partner. She may attempt to argue that she has lost the happiness she enjoyed while dancing with Pedro. Devon will counter that the type of relationship interest protected by loss of consortium has not really been affected since her emotional relationship with Pedro is still largely intact. Because Ava is not Pedro's spouse, it is unlikely that she can recover for loss of consortium, but it may depend on the jurisdiction.

B. *Recovery for pure economic loss*

Ava may also attempt to recover for her significant career setback after losing her dancing partner. However, she has not suffered any physical or property injury. This is a purely economic loss not generally compensable in tort.

1)

PENELOPE v. GERALDINE

ASSAULT

Assault is an intentional act causing reasonable apprehension of imminent harmful or offensive contact. Mere words or threats of future harm are insufficient to constitute assault; an overt act is required.

Excellent rule statement plus refining sentence that speaks to the facts.

Here, Geraldine intentionally ran up and pretended to steal Penelope's purse. The act of running up to someone and reaching out for their purse may place a reasonably prudent person under the same conditions in reasonable apprehension of imminent harmful or offensive contact, especially if the person is not aware of their true intentions. While Penelope may have reluctantly agreed to Geraldine playing a prank on her friend, Denise, Geraldine did not share the details of her plan, which means Penelope did not know what to expect when Geraldine ran up to her. The act of running towards someone may also serve as evidence to establish the element of imminence, meaning the harmful or offensive contact was going to happen right there and then.

great analysis!

★ Therefore, Penelope can assert a claim of assault against Geraldine.

*Conclusion!
good!*

BATTERY

Battery is the intentional infliction of harmful or offensive contact. Contact is harmful if it results in any kind of physical injury to the plaintiff. Contact is offensive if it is found offensive to a reasonably prudent member of civilized society. Contact may be direct or indirect. Battery includes contact with the plaintiff and anything attached to the plaintiff's person.

Excellent + Comprehensive rule

Here, Penelope was sitting in a chair and her purse was draped over the back of the chair. When Geraldine went to grab Penelope's purse, the purse got stuck and yanked Penelope's chair out from under her body. Because the purse was attached to the chair, Geraldine's intentional contact with the purse and consequently the chair resulted in harmful contact to Penelope. She suffered a head injury as a result of the chair being yanked out from under her.

✓ Therefore, Penelope can assert a claim of battery against Geraldine.

good, but don't forget to tell me she hit her head on the table.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED)

IIED is the intentional infliction of severe emotional distress by extreme and outrageous conduct. Conduct is extreme and outrageous if it exceeds all bounds of decency.

common

in society

what is outrageous in one place may not be in others

Here, Penelope could assert a claim of IIED if she can prove that she suffered severe emotional distress as a result of the incident. She wouldn't have to show any physical injuries as evidence of the distress she suffered, she only needs to show the severity of the emotional distress she suffered. Penelope would also need to prove that Geraldine's conduct exceeded all bounds of decency. It could be argued that Geraldine's conduct did exceed all bounds of decency for taking the prank too far if a reasonably prudent person under the same circumstances would not have acted as Geraldine did.

This is negligence language

✓ Therefore, Penelope could assert a claim of IIED against Geraldine.

TRESPASS TO CHATTELS / CONVERSION

Trespass to chattels is the intentional interference with the personal property of another. Conversion is the intentional interference with the personal property of another, where dominion and possession over the control is so severe that it results in the loss or damage to the property.

I have mixed feelings about combining these - it is elegant + efficient but some graders might miss that you did hit both

Here, Geraldine would likely be liable for trespass to chattels and not conversion because Geraldine did not permanently deprive Penelope of the purse and there is not enough evidence to determine if any damage had been done to the property. However, Geraldine did deprive Penelope at least temporarily of possession over her purse when Geraldine took it off the back of her chair and ran off with it. The interference was only temporary because Denise was able to run after Geraldine to stop her from getting away with the purse. While it is unknown by the facts as to whether or not Geraldine intended to permanently deprive Penelope of her purse, it can be reasonably inferred that Geraldine meant to at the very least temporarily deprive her of possession.

Therefore, Penelope could assert a claim of trespass to chattels against Geraldine.

Penelope would not be able to assert a claim of conversion against Geraldine.

DEFENSES

CONSENT

Consent may be asserted as a defense when a person intentionally and knowingly gives permission to another to act in a manner that may be otherwise viewed as tortious. Here, consent cannot serve as a defense for Geraldine because she did not share the details of her plan to prank Denise with Penelope. Even though Penelope consented to Geraldine playing a prank, she did so reluctantly. Penelope also did not know any of the plan's details, which means she had no way of consenting to or knowing of what was going to happen.

✓ Therefore, Geraldine cannot assert consent as a defense to her tortious conduct.

GERALDINE v. DENISE

ASSAULT

See above. ✓

Here, Geraldine may not be able to assert a claim of assault against Denise because there are not enough facts to suggest Geraldine knew or had reason to know Denise was going to tackle her and put her in a chokehold. Assault may only be asserted if the defendant placed the plaintiff in reasonable apprehension of imminent injury. Given that Geraldine was running away from Penelope and Denise, it can be reasonably inferred that her back was turned to them and she did not see Denise running after her.

✓ Therefore, Geraldine may not assert a claim of assault against Denise.

— what about
Denise's verbal
statements?!

BATTERY

See above. ✓

Here, Denise intentionally inflicted harmful contact upon Geraldine. She intentionally tackled Geraldine, put her in a one-handed chokehold, and punched her in the face with her other hand. All three contacts would constitute as harmful contact to the plaintiff, especially if physical injury results from the contact. Geraldine received two black eyes, presumably from being punched in the face by Denise.

✓ Therefore, Geraldine can assert a claim for battery against Denise.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

See above. ✓

Here, Geraldine would likely be successful because, given the totality of the circumstances, Denise's conduct exceeded all bounds of decency. Given that Denise was training as an MMA fighter, it would be reasonable to infer that she

good job approaching other topics to make sure you got a
full response even while running short on time

DEFENSES

SELF-DEFENSE / DEFENSE OF OTHERS

A person may use reasonable force as a means to reasonably protect themselves or others from any imminent threats of harm; however, force must be proportionate to the force the person is met with. Here, Denise may argue that she was acting in self-defense of herself and of her friend, Penelope. However, the force Denise used against Geraldine was not proportionate to the force she was met with. — why not?

- ✓ Therefore, Denise would not be able to assert self-defense or defense of others as a valid defense.

RECAPTURE OF CHATTELS

A person may use reasonable force as a means to recover personal property in "hot pursuit." Deadly force may never be used. Here, it can be inferred Denise ran after Geraldine in an attempt to recover Penelope's handbag. She was in "hot pursuit" because she ran after Geraldine immediately after she stole Penelope's purse. However, the force she used was disproportionate to the force she was met with. why? was it potentially deadly?

- ✓ Therefore, Denise would not be able to assert recapture of chattels as a defense.

DENISE v. GERALDINE

ASSAULT

- ✓ See above.

Nice! Here, Denise may have been placed in reasonable apprehension of imminent harmful or offensive contact when Geraldine ran up to her and Penelope at the cafe. The overt act of

Geraldine running up to them is enough to constitute reasonable apprehension to a reasonably prudent person under the same circumstances.

✓ Therefore, Denise can assert a claim of assault against Geraldine.

IIED

✓ See above.

Good! Here, Denise may be able to assert a claim for IIED because she has been having nightmares as a result of the incident. While a physical reaction is not necessary, it could help prove that Geraldine's actions were so extreme and outrageous that she was having a physical reaction as a result.

✓ Therefore, Denise can assert a claim for IIED.

DEFENSES

✓ There are no defenses available to Geraldine.

END OF EXAM

Fantastic work
- well organized
- great subs
- thoughtful analysis
- well written and easy to read

2)

A. Percy vs. Lloyd and Opal

NEGLIGENCE

An individual has a duty to act within an applicable standard of care in order to prevent damage or injury. Breach of this duty to meet a standard of care, causing harm or injury, is deemed as negligence.

1. DUTY can be established via (1) Affirmative act (2) RFP (3) Special Relationship (4) Statute

1.1 Affirmative Act

Defendant might have a duty imposed via affirmative act if their act puts plaintiff in position of peril or if defendant happens upon a plaintiff in an emergency, initiates rescue of plaintiff, then abandons or aggravates the condition of plaintiff.

Therefore, there is no duty imposed on Lloyd and Opal via affirmative act.

1.2 Reasonably Foreseeable Plaintiff (RFP) ✓

I see it now!

Here, Lloyd and Opal owed a duty of care via reasonably foreseeable plaintiff standard.

While Percy and Patrick were technically trespassers, and no duty is owed to undiscovered trespassers, they are also children. The theory of attractive nuisance can be used as a defense to the "no duty owed to trespassers rule". To have a successful claim of attractive nuisance duty, one must satisfy these 4 elements: (1) Landowner must be aware of the danger on their property (2) children are foreseeable plaintiffs and frequently trespass (3)

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Child is unable to appreciate the risk of injury (4) Learned Hand Formula - burden is slight compared to magnitude of risk.

Don't forget to analyze attractive nuisance elements

of adequate precautions / make safe / remove nuisance

Therefore, Lloyd and Opal had a duty imposed via RFP

what about balancing though? how expensive would it be to make safe?

1.3 Special Relationship

While Lloyd and Opal were neighbors with Ed and Shirely, there were unaware of their grandchildren visiting and the facts are devoid of any evidence that there was a special relationship between Lloyd and Opal and Percy and Patrick.

Therefore, there is no duty imposed on Lloyd and Opal via special relationship.

1.4 Statute

The facts are devoid of any mention of statute.

Therefore, there is not duty imposed on Lloyd and Opal via statute.

2. SOC can be established via (1)RPP (2)custom or habit (3)statute

2.1 Reasonably Prudent Person Standard

Here, Lloyd and Opal had a duty to adhere to a standard of care established via Reasonably Prudent Person Standard (RPP). This standard provides that a reasonable standard of care given the context of the circumstances, must be adhered to in a manner that a reasonably prudent person under the same circumstances would do so. In this case, Lloyd and Opal knew that it would cost \$20,000 to have the dangerous pool removed. The facts state that the couple erected a fence and placed numerous signs around the fence saying KEEP OUT: PRIVATE PROPERTY. The facts are devoid of any evidence that \$20,000 was beyond Lloyd and Opals means, but it can be reasonably inferred that

since they decided "to put it off for a while", they were unable to pay for the removal of the pool.

good - this goes to the balancing under atractive guidance as well

2.2 Custom or habit

There is no mention in the fact pattern of custom or habit of practice within the area where Lloyd and Opal live.

Therefore, there is no standard of care imposed on Lloyd and Opal via custom or habit.

2.3 Statute

There is no mention of statute in the fact pattern

Therefore, there is no standard of care imposed on Lloyd and Opal via Statute.

3. BREACH can be tested via (1) RPP (2) Hand Formula (cost to remove pool is \$20,000 compared to magnitude of risk of injury) (3) Negligence per se

3.1 Reasonably Prudent Person Standard

A reasonably prudent person in a similar circumstance would have either paid to have the pool removed, if financially able, or acted similarly to Lloyd and Opal by making the danger known and closing it off by erecting a fence around area, intended to prevent trespassers from injury.

3.2 Learned Hand Formula

Here, the cost(burden) of repairing the pool was \$20,000 compared to the magnitude of risk of injury. Lloyd and Opal took precautions to secure the danger behind a fence and made the danger well known with visible posted signage.

Don't forget to finish the argument to its conclusion.

Is the sign a reasonable solution to ameliorate the risk?

3.3 Negligence per se - When breach of statute results in injury to the class of person that the statute intends to protect.

The facts are devoid of any mention of statute.

Therefore, there was no breach of duty or standard of care via negligence per se (statute).

4. CAUSATION - A defendant's conduct must be the actual cause in fact and proximate cause of the plaintiff's injuries.

4.1 Actual Causation can be determine via the "but for" test or in the case of multiple defendants, the "substantial factor" test.

Here, but for Lloyd and Opal's inability to remove the dangerous pool from their property, Percy would not have been severely injured.

4.2 Proximate - foreseeability - unforeseeable superseding event , foreseeable intervening event

Here, since Lloyd and Opal live near other individuals of their age group, it is reasonably foreseeable that grandchildren might explore the grounds near their house. The foreseeability can also be inferred from Lloyd's erecting a fence and posting signs around the pool. If Lloyd and Opal did not foresee that there would be children or adults at risk of injury from the dangerous pool, they would not have enacted such efforts to make the risk know. *What about the acts of Percy and Patrick?*

Therefore, Lloyd and Opal were the proximate cause of Percy's injuries.

4.3 res ipsa loquitur - "the thing speaks for itself"

not applicable here.

5. DAMAGES

5.1 general - pain and suffering - p must be cognitive of pain and suffering

Here, Percy fell head first into the pool and was severely injured. The facts do not clarify whether Percy was conscious afterwards but, if he was, then he could recover for pain suffering due to his injuries. *good!*

5.2 specific - loss of wages, medical bills, life-work expectancy

Here, Percy suffered severe injuries that he most likely had to go to a hospital for. Percy can recover for his medical bills. Percy is 13 years old and it is likely that he does not have a job. If Percy can prove that due to his injuries, his life-work expectancy for his future has been effected, then he may be able to recover for life work expectancy. *good!*

5.3 punitive-malicious or reckless conduct by def.

Here, Lloyd and Opal did not act recklessly or maliciously.

Therefore it is unlikely that Patrick will recover punitive damages. *excellent!*

6. DEFENSES

6.1 Contributory

Here, Lloyd and Opal could claim (if there live in a jurisdiction that permits contributory negligence) that some fault lies on Ed and Shirely for not supervising the two young boys. If successful, Percy and Patrick would not be able to recover if their grandparents (locos parentis) were in any way negligent and therefore partially at fault for the emotional harm and injuries sustained. *7 This would be multiple tortfeasors. Only Percy or Patrick's actions would bar under contributory negligence rules. Ed + Shirley's negligence is not attributed to their grandsons.*

6.2 Assumption of Risk

- But could Lloyd + Opal sue Ed + Shirley for contribution?

Here, Lloyd and Opal could claim assumption of risk as a defense since Percy and Patrick are both 13, and it is reasonable to infer that they are able to read signage. *good!*

6.3 Comparative

Here, if they reside in a jurisdiction which utilizes comparative negligence as a defense, Lloyd and Opal may claim that they are only liable for whatever percentage of fault actually falls onto them. They could argue that some fault lies with Ed and Shirely for not adequately supervising their grandchildren, therefore breaching their duty to standard of care to the boys, and engaging in negligent behavior. *They need to be implicated*

B. Patrick vs. Lloyd and Opal

NEGLIGENCE

An individual has a duty to act within an applicable standard of care in order to prevent damage or injury. Breach of this duty to meet a standard of care, causing harm or injury, is deemed as negligence.

1. DUTY can be established via (1)Affirmative act (2)RFP (3)Special Relationship (4)Statute

1.1 Affirmative Act

Defendant might have a duty imposed via affirmative act if their act puts plaintiff in position of peril or if defendant happens upon a plaintiff in an emergency, initiates rescue of plaintiff, then abandons or aggravates the condition of plaintiff.

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Lloyd and Opal knew that it would cost \$20,000 to have the dangerous pool removed. The facts state that the couple erected a fence and placed numerous signs around the fence saying KEEP OUT: PRIVATE PROPERTY. The facts are devoid of any evidence that \$20,000 was beyond Lloyd and Opals means, but it can be reasonably inferred that since they decided "to put it off for a while", they were unable to pay for the removal of the pool.

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The facts are devoid of any mention of statute.

Therefore, there was no breach of duty or standard of care via negligence per se (statute).

4. CAUSATION - A defendant's conduct must be the actual cause in fact and proximate cause of the plaintiff's injuries.

4.1 Actual Causation can be determine via the "but for" test or in the case of multiple defendants, the "substantial factor" test.

Here, but for Lloyd and Opal's inability to remove the dangerous pool from their property, Percy would not have been severely injured and Patrick would not have witnessed the traumatic event.

4.2 Proximate - foreseeability - unforeseeable superseding event , foreseeable intervening event

Here, since Lloyd and Opal live near other individuals of their age group, it is reasonably foreseeable that grandchildren might explore the grounds near their house. The foreseeability can also be inferred from Lloyd's erecting a fence and posting signs around the pool. If Lloyd and Opal did not foresee that there would be children or adults at risk of injury from the dangerous pool, they would not have enacted such efforts to make the risk know.

Therefore, Lloyd and Opal were the proximate cause of Patrick's emotional distress.

5. DAMAGES

5.1 general damages- pain and suffering - p must be cognitive of pain and suffering

Here, if Patrick succeeds in his claim of NIED against Lloyd and Opal, me might be able to recover for pain and suffering.

5.2 specific damages- loss of wages, medical bills, life-work expectancy

→ Focus on NIED rule in particular and analyze that rather than plain negligence

Here, Patrick is 13 and likely did not have a job. He also did not suffer any injuries that would require him to go to the hospital.

Therefore, it is unlikely that he would recover for special damages.

Punitive damages-malicious or reckless conduct by def.

Here, Lloyd and Opal did not act recklessly or maliciously.

Therefore it is unlikely that Patrick will recover punitive damages.

6. DEFENSES

6.1 Contributory

Here, Lloyd and Opal could claim(if there live in a jurisdiction that permits contributory negligence) that some fault lies on Ed and Shirely for not supervising the two young boys. If successful, Percy and Patrick would not be able to recover if their grandparents (locos parentis) were in any way negligent and therefore partially at fault for the emotional harm and injuries sustained.

6.2 Assumption of Risk

Here, Lloyd and Opal could claim assumption of risk as a defense since Percy and Patrick are both 13, and it is reasonable to infer that they are able to read signage.

6.3 Comparative

Here, if they reside in a jurisdiction which utilizes comparative negligence as a defense, Lloyd and Opal may claim that they are only liable for whatever percentage of fault actually falls onto them. They could argue that some fault lies with Ed and Shirely for not

adequately supervising their grandchildren, therefore breaching their duty to standard of care to the boys, and engaging in negligent behavior.

✓ 7. NIED - contemporaneous, presence at time of the event, closely related with victim, suffer physical and or emotional damages. *good!*

Here, Patrick and Percy are both grandsons of Ed and Shirely, however, the facts do not give clarity to the relationship between the young boys. Given they share grandparents, they could either be brothers or cousins. This satisfies the "closely related" requirement for NIED. Patrick was down at the bottom of the pool when Percy fell in, and it can be reasonably inferred that Patrick saw Percy fall into the pool head first and suffer severe injuries. A reasonably prudent person would assume that witnessing such an even would cause severe emotional distress.

Therefore, if Patrick can prove that he suffered emotional damage from watching his family member, Percy fall head first into the pool and get severely injuries, then he could be successful in a claim of NIED.

END OF EXAM

Great work! you have a great command of the rules and the organization is easy to follow - Focus on releasing your inner litigator and really arguing the facts (both ways of course) and explain where they should logically conclude.

3)

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NEGLIGENCE

A prima facie case for negligence requires the elements of duty, breach, causation and damages.

DUTY

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Duty is the defendant's legal obligation to keep others from harm. Duty can be established by reasonably foreseeable plaintiffs in the zone of danger created by the defendant, statute and special relationship. A car creates a wide zone of danger to drivers, passengers and pedestrians. Here, Devon's duty is significant.

Devon's duty is to all reasonably foreseeable plaintiffs, including other drivers, passengers and pedestrians.

STANDARD OF CARE

The defendant's standard of ^{Care}~~duty~~ can be established by the standard of the reasonably prudent person, special relationship and statute.

Custom + Standards
The reasonably prudent standard is best measured by what the RPP would act in similar circumstances. Here, the standard of care is a reasonably prudent driver. A reasonably prudent driver would not attend to any text messages, even if the display was on the console. Here, the facts say Devon was distracted and not necessarily reading the message. — heightened because Devon was a professional?

must conform to
Devon could be ~~liable for negligence under~~ the reasonably prudent person standard of care.

RESPONDENT SUPERIOR/PRINCIPAL-CONTRACTOR

An employer can be found liable for an employee's negligent act committed within the scope of employer under the doctrine of respondent superior. Generally, a principal is not liable for the damages of an independent contractor, unless the contractor is presented to the public as an actual employee of the company. The facts state that Devon moonlights as an independent contract for a rideshare app.

The rideshare app likely does not owe Pedro a duty of care.

BREACH

Reasonably Prudent Person

The reasonably prudent driver would take extra care driving with a passenger. Here Devon could have disabled her car's console screen in order to not be distracted while driving.

Devon could be liable for breach by not acting as a reasonably prudent driver.

Negligence Per Se

Negligence per se is measured by breach of a statute intended to prevent the type of harm that happened to the plaintiff, the plaintiff is in the class of people the statute is designed to protect and the violation is the cause of the harm. Here, there was a new state law that made it illegal to drive wearing high heels or platform shoes. The statute is designed to prevent harm to other drivers, passengers and pedestrians. Devon wore platform heels. However, her shoes were not the cause of the accident. She was distracted by a text message.

Devon is unlikely to be found ~~guilty~~ of negligence per se.

CAUSATION

CAUSATION is proven by actual (factual) cause and proximate (legal) cause. Actual cause is measure by the "but-for" test. But for Devon's distracted driving, Pedro would not have been crushed and his leg would not have needed to be amputated. When the actual cause is uninterrupted and directly causes the injury, it is also the proximate or legal cause. Here there were several intervening causes leading to Pedro's injury. Intervening acts are unforeseeable events that limit causation. Examples of intervening causes can be other acts committed by multiple tortfeasors. Supervening causes are intervening causes that sever liability for negligence, such as acts of God. Here, another car entered the upcoming intersection. Devon managed to avoid the other car but ran into a telephone pole that snapped due to the phone company's failure to maintain and repair its poles for years. The company's telephone poles had caused multiple recent accidents.

Devon is the actual cause of Pedro's injury and could be considered the proximate cause.

The other car is a concurrent cause of Pedro's injuries but is unlikely to be found liable.

The telephone company is the proximate cause of Pedro's injuries and could be found liable for Pedro's injuries if Pedro and Ava pursue that negligence claim.

DAMAGES

Damages are required for a claim of negligence. Damages are classified by general (hedonic) damages, special (pecuniary) damages and ~~XXX~~ future. Here, Pedro lost his leg which likely cause severe emotional distress and entitles him to damages. The injury ended his career as competitive dancer which entitles him to general damages and special damages, including pain and suffering during his recovery and possibly longer, significant immediate and ongoing medical expenses, and likely a lifetime of lost wages. Dancing likely caused him enjoyment outside of his career.

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Ava, his girlfriend, might be entitled to loss of consortium damages, though these damages are generally only available to spouses. Ava is unlikely to recover any damages from her career setback as Pedro's dance partner. *Good!*

*→ why not?
(pure economic loss)*

DEFENSES

The rideshare app will argue that they are not liable for the damages caused by Devon because she is a contractor, not an employee.

The rideshare app's defense will likely be successful.

Devon does not have many defenses available. She was not reading the text from her cell phone in her hand or reading it from the car's console screen. But her distraction

END OF EXAM