

Torts
Prof. Carr
Spring 2011
Empire School of Law

FINAL EXAM ANSWER OUTLINE
Question 1

Al's estate v. RaTech Neg. (define) Assuming this jurisdiction has adopted a survival statute, Al's estate would likely bring a successful C/A against RaTech for negligence. Note that the heart rate monitor RaTech manufactured and marketed was not a defective product; it worked properly and did not itself cause injury to Al. It was the online product instruction sheet that RaTech employee Paul intentionally altered to give erroneous instructions that was an actual cause of Al's excessively high—and fatal—heart rate induced by reliance on the heart rate reading. While Paul's act was intentional, it was not a battery, as no substantial certainty that it would cause harmful/offensive touching. Arguable as to whether it was reckless so as to make punitive damages appropriate. Did RaTech breach a duty of care in re-hiring Paul, who had committed this same wrongful act before? If so, was that breach an actual cause of Al's injury. If we agree that it was, was it the proximate cause? Question of whether it is foreseeable that Paul's misdirection on setting the monitor's rate would cause injury to a monitor's user. Even if we argue that it was a natural consequence, personal trainer Nora overrode the cardiologist's specific instructions. If Al had not followed Nora's direction but instead had followed the cardiologist's order, his heart rate--even relying on the wrongly-set monitor readings--would still have not been over the fatal 150 BPM rate. Likely therefore that Nora's later act was a superseding cause—at least of Al's collapse, more on his actual demise *infra*-- that would relieve RaTech of liability, or at least reduce the level of RaTech's culpability to that of a joint tortfeasor. In a pure comparative negligence jurisdiction, each would be liable only for the respective share of liability and damages as determined by the jury. 7 points

Al's estate v. Nora (Neg.) Expert testimony would establish whether Nora's orders to Al about his heart rate and her reaction to his extreme exertion and collapse met the standard of care. If not, her conduct was an actual and, as discussed above, proximate cause of his collapse, if not his eventual death. Nora's anticipated defense that Al assumed the risk is refuted by the fact she was a professional upon whose direction Al reasonably relied. May be a joint tortfeasor with RaTech (unlikely), Nurse Jim (probably not) and/or bystander and paramedic wannabe Don (probable). If not held to be an IC—as FitNow will allege she was—then FitNow likely to be held to answer for damages under respondeat superior. 3 points

Al's Estate v. Nora Battery (define) Was Nora's slapping Al a reasonable act to rouse him from unconsciousness or further personal trainer brutality? 2 points

Al's estate v. Don (Neg) As there was no evident special relationship between Don & Al, nor did Don contribute to Al's emergency peril, Don was under no duty to assist Al. However, Don's act of shoving Nurse Jim aside and commencing a poor mimicry of CPR was a clear undertaking of assistance and required Don to then exercise due care; he didn't. A question of expert medical opinion and proof as to whether Don's conduct—or Nora's-- was an actual cause of Al's death. If so, was Don's conduct--clearly an intervening act—sufficient to constitute a superseding cause so as to relieve Nora (an RaTech, if we argue that it was jointly liable) of liability? If not, a jury in a comparative negligence jurisdiction might still allocate a portion of liability to Don for what looks to be an indivisible injury. 4 points

Al's estate v. Nurse Jim (Neg) Facts suggest that Nurse Jim had not commenced any attempt to care for Al, so no obligation to follow through. While Jim's apparent indifference thereafter to Al's plight might make a mockery of Jim's professional ethics, there is no civil duty for him to act to save Al; no cause of action against Jim. 3 points

Al's estate v. Kim Conversion (define) If she didn't soon return a relatively intact heart monitor; Trespass to Chattel if it was only a temporary deprivation. 2 points

Al's Survivor's v. all of the above Assuming this jurisdiction has enacted a wrongful death statute, Al's dependants would have their own independent C/A for any damages caused to them by Al's death. Liability questions would be the same as Al's estate's suits. 3 points

Bystander v. Nora Battery define Nora's grabbing of the cell phone from the good Samaritan could be found to have been offensive by an objective community standard, or possibly a trespass to chattel (define) if retained for more than an inconsequential period of time. 2 points

Nurse Jim v. Don Battery Same question as to whether Don's having intentionally "pushed Jim aside" would constitute an offensive touch. 2 points

Dr. Smith v. Nora Defamation (define) The slander per se by Nora to Al about his cardiologist, an evident private figure plaintiff, suggesting Smith wasn't competent to perform to the standards of his profession, qualifies as defamation if it was false; damages presumed in cases of slander per se. For the issue of the true-but-misleading claim that he had been disciplined by the state medical board, see C/A for false light, below. 4 points

Dr. Smith v. Nora False light (define) While part of her criticism to Al of Dr. Smith was true—Dr. Smith had once been disciplined by the state medical board—it clearly implied a current relevance that the 25 year old case, for a simple oversight regarding filing notice of a business name change, did not have, which acted to put Dr. Smith in a false light. 3 points

Dr. Smith v. reporter Kim Defamation/false light As Kim quoted Nora's overheard comments "exactly" in her story, same issues as *Smith v. Nora*, above, but noting that Kim and Newspaper (below) are media defendants so *NY Times* standard would apply to this arguably public concern. 3 points

Dr. Smith v. Newspaper Defamation The headline clearly attributes Al's death to Dr. Smith's error, a statement both false and injurious. The *Gertz* standard would apply to this private figure plaintiff, though a matter of possible public concern. 4 points

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FINAL EXAM ANSWER OUTLINE
Question 2

Liz & Tom v. Joe Conversion/Trespass to Chattel (define/distinguish) That he was owed money didn't justify Joe's taking the knives. His later decision to return the knives if he got the money was conditional and therefore not mitigating. His intent appeared to be to permanently deprive (conversion) but if the deli got the knives back it would be mere trespass to chattel, with damages depending on the time the plaintiffs were denied use of the tools. 5 points

Poisoned customers v. Luke Negligence (define) While Luke's precise age isn't given, we're told he's a junior high school student, so he is a minor of about 12-14 years. Children are liable for their torts, and usually evaluated as to whether they met the standard of others of like age and knowledge. However, a strong argument could be made that while employed in the deli Luke was engaged in adult activity, which would impose an adult standard of care and the commensurate duty to ensure he wasn't putting lye in the potato salad. This argument is bolstered by the statute which requires that all employees of this state be at least 16 years old "to ensure responsible and competent employees..." As Luke is clearly an (illegal) employee, not an independent contractor, the doctrine of respondeat superior would likely make deli owners Liz and Tom liable for the tort; see next Cause of Action. 8 points

Poisoned customers v. Liz & Tom Negligence Plaintiffs would invoke the statute to prove negligence per se on the part of Liz & business partner Tom. Are both elements of the doctrine satisfied? Statute has stated dual purposes: prevent child labor abuses and "ensure responsible and competent employees" which very clearly wasn't the case when young Luke thought any white powder would substitute for salt in potato salad, the very type of risk that "irresponsible and incapable" employees would pose. More problematic is question of whether the plaintiffs were among the class of persons the statute was enacted to protect; best argument is that all consumers and patrons of businesses in the state are necessarily encompassed within the broad language of the statute. 8 points

Luke v. Tom Assault (define) Luke had a reasonable basis to anticipate an imminent battery when Tom rushed at him. Tom's conduct not unreasonable in defense of property if Luke had been the thief Tom thought he was, but this mistake of fact won't excuse the assault. 4 points

Joe & Tom v. Nan's estate Assault A different standard applies to a police officer who is authorized to detain persons for reasonable investigation or to threaten/use deadly force to stop an apparent unlawful use of deadly force by others. Nan wasn't mistaken when she pulled her gun on Joe & Tom; she was acting to stabilize what may have been a life-threatening situation. A question of fact as to whether she was still acting reasonably when she shot at Tom, believing she was being attacked. No assault C/A for Joe; may be argued by Tom as to the shooting. 5 points.

The related issue of sheriff's department/local government liability if Tom's action successful will depend on the jurisdiction's statutory modification of the traditional immunity of local government entities. Her conduct was clearly within the scope of Nan's duties, so sheriff's dept may be liable for Tom's limited damages if Tom proves the assault. 4 points

Nan's estate v. Joe Battery (define) Under a survival statute, Nan's estate could sue Joe for his intentional act which caused Nan's death. Joe will argue his conduct was reasonable self-defense: he was unaware she was a sheriff's deputy because she was not in uniform and in the immediate confusion didn't identify herself. Joe's throwing the knife at her gun hand was arguably reasonable. 4 points

Nan's survivors v. Joe Wrongful death (define) Separate tort for damages Nan's death caused her dependents. Same issues as above; differing damages. 4 points