

Blue Book 1/3

NAME \_\_\_\_\_

SUBJECT TORTS

INSTRUCTOR Gould

EXAM SEAT NO. SECTION

DATE 12-15-11 GRADE

Question ①

Joe v. SAM

## ASSAULT

ASSAULT is placing another in reasonable apprehension of a harmful or offensive touching without consent or privilege with the present ability to do so.

When SAM approached Joe ~~at~~ with his fist raised he put Joe in apprehension of being battered.

The apprehension was imminent and SAM had the ability to do so.

SAM will argue that it was in self-defense but

it will fail. The facts do not show that Joe went

to attack SAM

SAM will be liable for ASSAULT

## Trespass to chattel (Dog)

Trespass to chattel is the intentional interference with the chattel of another without consent or privilege.

When Sam hit Joe's dog he interfered with his chattel.

Sam will be argue that he did not intent to hit the dog. But under Transfer intent ~~is~~ when someone intent like in this case a Battery as the result is ~~a~~ Trespass to chattel the person is held liable.

Sam will be liable for the Trespass to chattel and if the dog suffered any injury he will ~~be~~ have

To my special damages. Also he will ~~be~~ pay general damages for Joe's pain and suffering.

~~RE #~~

## BATTERY?

BATTERY is the <sup>Harmful and offensive</sup> intentional Touching of another without consent or privilege.

Joe will argue that Sam is liable for <sup>BATTERY</sup> ~~NOT~~ ~~IT~~ <sup>NOT</sup> it will fail since the tort has to be against the person. In this case Joe was not touched and the dog is not a person. ~~There~~ Nevertheless, Sam will be liable because Joe was holding the dog and a BATTERY is found when the other person touch the

victim or something <sup>physically</sup> connected to the victim. In this case since Joe ~~was~~ holding the dog Sam will be liable.

### (IED) Intentional Infliction of Emotional Distress

Serious Extreme and Outrageous conduct intended to cause and which does cause severe emotional distress.

The facts stated that Joe "became very <sup>emotionally</sup> ~~emotional~~ distressed". If Joe can ~~be~~ show that distress by the need for therapy or not able to sleep during the night he may be able to succeed in his claim. From the facts it does not look like he will prevail in this one.

## False Imprisonment

Intentional psychological or physical confinement of another ~~person~~ within fixed boundaries for any period of time without consent or ~~privilege~~ <sup>privilege</sup>.

When Sam looked Joe in his truck he did it intentionally, ~~because~~ the truck has <sup>fixed</sup> boundaries and were 10 minutes without Joe's consent.

Sam will argue that 10' is not a lot of time but it will be foiled because any period of time is ~~the~~

necessary. He will also argue that Joe <sup>was able to</sup> ~~can~~ escape

since the truck was ~~not~~ able to be opened from inside. Joe may not know or he may be afraid

of escaping with Sam <sup>being</sup> ~~is~~ outside. Sam will be

liable for false imprisonment of Joe.

He will ~~have~~ be responsible for general damages and maybe punitive damages also.

SAM v. Joe

Negligence

Joe will ~~not~~ be liable for negligence if it is found that he had a duty of care, he breached that duty, and damages were actually and proximately caused by his breach.

~~Duty~~ Sam will try to argue that since Joe didn't have a valid driver license he was negligence per se (usually driver licensing is required by statute). He

MAY ~~possibly~~ prevail since it is the intent of this

STATUTES To prevent the kind of injury that Joe caused  
and to protect the class of person as Sam  
in this case. The idea of licensing is to prevent  
this ~~class~~ class of accident and to protect other drivers.  
~~to prevent this class of~~ Joe will be liable of  
negligence per se.

## Duty

Since Joe was driving a car he will be held to  
an adult standard ~~because~~ because he was involved in an  
adult activity

## Breach

Joe breached his duty when he reentered Sam's  
truck. ~~the~~ According to the facts he was



driving carelessly. ~~As person is ordinary~~

An ordinary, prudent reasonable person wouldn't drive carelessly. Joe is liable for negligence.

He has no defense. ~~Since~~

## Damages

He will be liable for the market value of the Tailight which are called special damages.

## Trespass to chattel (TIN)

Defined supra.

When Joe smashed Sam's tire he interfered with his chattel. ~~He~~ Joe is liable for this TIN.

He will be responsible for special damages (fixing ~~of~~ the tire)

~~and~~ and maybe punitive damages

## Conversion (Tire)

Intentional exercise of wrongful dominion and control over the chattel in possession of another

When Joe slashed Sam's tire it is possible

that he might destroyed the tire. If the tire

was destroyed the Joe will be liable for conversion

so will be liable for special damages (market

value of tire) and ~~general~~ <sup>punitive</sup> damages for his malicious

conduct.

## Trespass to land

Entry upon the land <sup>in possession</sup> of another

When Joe entered into Sam's driveway he commit

Trespass to land. He was not invited and Sam

did not consent to the entry. Joe is liable for Trespass to land

### Damages

He will be responsible for nominal damages.

### SAM v. Harriet

### IMMUNITY

Since Harriet was Joe's wife she is not responsible under common law for damages even

if looks like ~~it~~ she was acting in concert. Harriet

is NOT liable. NOT TORT action against her. Under common

law

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**Fred v. Kelly's Service Station**Negligence of Kelly's

If it can be shown that Kelly's owed a duty of care to Fred, that it breached that duty, and the resulting damages were actually and proximately caused by that breach, Kelly's will be liable for those damages.

Duty

When Fred arrived at Kelly's he intended to buy gas, thus he was a customer, an invitee, onto the property, or land that Kelly owned. As an invitee Kelly had a duty of care for Fred. However when Fred asked to use the restroom, he was told that it was only for employees. Despite being told this, he entered the restroom. Upon entrance to the unauthorized space Fred became a trespasser and Fred's duties to him changed. Generally no duty of care is owed to a trespasser. However, in this case, patrons of this station frequently used the restroom despite being told of the "employee only" policy. Since Kelly knew that people frequently used the restroom, he had duty to warn them of known hazards, such as a slippery floor.

The facts indicate that a slippery substance was on the floor, but do not indicate for how long it was on the floor. Because this was a man-made hazard in an artificial (man-made, not natural) environment, Kelly would have some duty to warn, but not necessarily a duty to inspect or fix the hazard.

Depending on jurisdiction, if Kelly's is located in a Rowland v. Christian jurisdiction, Fred will be owed a general duty of care, and not classified as a known trespasser.

Breach

As Kelly did not warn Fred of the hazard, he breached his duty as a land owner to a known trespasser.

If Rowland v. Christian jurisdiction, Kelly's breached by not cleaning up the slippery substance, in a busy area.

Causation

But for the hazardous condition in Kelly's bathroom, Fred would not have slipped and fallen breaking his wrist. thus Kelly was the actual cause of Fred's broken wrist.

It is foreseeable that allowing a slippery substance on a bathroom floor, and not warning people who enter the bathroom about it, would result in someone slipping and falling. And often when

people slip and fall they break their bones. There were no intervening acts between these events. Later Fred went to the doctor and was not treated correctly. Malpractice is always a foreseeable event. Thus Kelly was the proximate cause of Fred's wrist becoming deformed.

#### Contribution-defense

Kelly's will claim that Fred took responsibility by going to an area where he was told not to go. However, it was previously known lots of patrons used the restroom despite being told of the policy. And going to the bathroom generally, does not place someone in a precarious situation. Therefore this will not relieve Kelly's of liability.

#### Damages

Kelly's will be jointly and severally liable for the damages with Good Luck Hospital for special damages including medical treatments, and any general damages such as pain and suffering. Although Fred's health insurance reimbursed him, that is a collateral source, and doesn't relieve Kelly's of their liability for damages.

Kelly's and GLH will be Jointly and Severally liable for all of Fred's damages. It is up to the defendants to prove they are not responsible for any part of the damages. Together they must pay one relief and satisfaction of the total damages. Fred is not entitled to collect more than once from the tortfeasors for the total amount of damages.

### **Fred v Good Luck Hospital**

#### Negligence of Good Luck Hospital (GLH)

If it can be shown that GLH owed a duty of care to Fred, that it breached that duty, and the resulting damages were actually and proximately caused by that breach, GLH will be liable for those damages.

#### Duty

When Fred arrived at GLH, he had a broken wrist. A hospital owes a higher duty than reasonable care to patients. They owe a special duty, set on a national level, for hospitals.

#### Breach

When GLH did not believe that Fred's wrist was broken, and did not take an x-ray, they violated their duty of caring for their patient.

#### Causation

But for GLH refusing to take an x-ray, and thus incorrectly treating Fred, Fred's wrist became deformed. GLH was the actual cause of the deformation.

GLH will claim that the fall at Kelly's was the cause of the breakage and thus they are not responsible. However because they breached their duty, and didn't fix the wrist, the succession of events led to the deformation. Had they correctly set Fred's wrist it would not have become deformed. Thus the malpractice at GLH was a cause of the deformation.

After leaving GLH there were no other events that intervened, between the breakage and the deformation, thus GLH was the proximate cause of the deformation.

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## Damages

GLH will be jointly and severally liable for the damages with Kelly's for special damages including medical treatments, and general damages, if any, such as pain and suffering. Although Fred's health insurance reimbursed him, that is a collateral source, and doesn't relieve GLH of their liability for damages (supra).

## **David v. Kelly's Service Station**

### Negligence of Kelly's

If it can be shown that Kelly's owed a duty of care to David, that it breached that duty, and the resulting damages were actually and proximately caused by that breach, Kelly's will be liable for those damages.

### Duty

Places of business such as gas stations which sell snacks, owe a higher duty of care to their customers, who are classified as invitees. The business must inspect for and correct hazardous conditions.

As noted above Depending on jurisdiction, if Kelly's is located in a Rowland v. Christian jurisdiction, David will be owed a general duty of care, and not classified as a known invitee.

### Breach

When the mini-mart allowed a display rack with a sharp edge to be accessed by it's customers, it breached it's duty.

### Causation

But for the lack of inspection and remedy of the hazardous display rack, David would not have cut his right hand on the sharp edge. Thus Kelly's is the actual cause of the injury.

Nothing intervened between David's action of reaching for some chips, and cutting his hand on the sharp rack. It is foreseeable that if customers have to reach into a rack with a sharp edge to get their chips, they will cut their hand. Thus Kelly's is the proximate cause of David's injury.

### Damages

Kelly's will be liable for David's special damages such as medical expenses and lost wages, and any general damages such as pain and suffering.

**END OF EXAM**