

Torts
Prof. Carr
Fall 2010
Empire School of Law

MIDTERM ANSWER OUTLINE
Exam Question 1

Ed v. Ron—Assault (define) As Ron’s threat was conditional (“If this pretty lady wasn’t here...”), not a threat of an imminent battery; no assault. 4 points

Ed v. Ron—Intentional Infliction of Emotional Distress (define) Unlikely to be a cause of action as Ron’s boorish conduct was less than “outrageous” by contemporary community standards and Ed’s humiliation, as described, does not seem to reach the “severe distress” required. 3 points

Ed v. Willie the Clown—Battery (define) Willie “grabbed Ed’s arm from behind,” which may qualify as an offensive touching in the context, a judgment call arguable to either conclusion. Note that Ed’s hypersensitivity to clowns does not increase the degree of offensiveness, which is objectively-set by community standards. Willie may offer the defense of authority or necessity, claiming he had to quickly stop Ed from crossing between the arenas, a claim bolstered by the eventual disaster which resulted but also somewhat refuted by the fact that Ed was behind Nan, who was already walking through the area between the performance rings and grabbing Ed. 5 points

Jill v. Ed—Negligence (define: DBCD) Reasonably assuming Jill was injured by the fall, did Ed breach a duty of care when he “stumbled...falling into the trapeze control line”? No, as his was not a conscious act. 3 points

Jill v. Willie—Neg When Willie grabbed Ed, should he have foreseen Ed’s stumbling into the trapeze control line and the consequences? Arguable to either conclusion. 3 points

Tim v. Ed—Neg Same analysis as Jill v. Ed, above. 3 points

Tim v. Circus—Neg Circus has duty not to expose audience members to unreasonable risk of harm. Circus or any of its agents presumed to have expertise in this area and awareness of the hazard to audience members. Did circus breach duty of care in seating Tim too close to the safety net, or by using too small a net, or by the design and installation of the trapeze control line in a place where it might be disturbed and thereby result in a fatal accident? Placement of trapeze above audience an actual cause, but Circus likely to claim Ed’s presence, even if not itself negligent, was unforeseeable intervening act sufficient to constitute a superseding cause. This defense should be unavailing, as Circus apparently took no effective steps to prevent audience members from entering that area. Circus likely liable to Tim (his estate) for obvious damage—his death. 7 points

Elephant trainer v. Nan—Battery An intentional offensive if not harmful touching. Nan may claim defense of elephant/necessity, but appears that would be insufficient to justify her act of violently shaking the trainer. Nan probably liable for battery. 5 points

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Audience members v. Security supervisor/Circus—False imprisonment (define) Acting within the scope of his employment, the security supervisor intentionally locked all the exits, effectively confining the audience members inside. At least some of them were aware of the confinement. Damages not necessary for this intentional tort cause of action, but defendant(s) liable for any consequent injury, including the deaths. Defendant(s) likely to claim defense of necessity, to prevent Ed's escape, but the reasonableness of locking all exits should be argued (apparent need to detain Ed, whether other effective means of doing so available, balanced against risk to audience of locking exits. 5 points

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Exam Question 2

Mitch v. Barb Negligence (define) Initial question of Barb's duty of due care toward Mitch: if 2% of general populace is allergic to peanut butter, reasonable to expect one in every 50 clients would have some reaction, so likely Barb would be on notice. If Mitch's allergic reaction was far greater than normal, question of whether Barb, as professional in this business, should have known of this possible hazard. Even if the standard of a competent professional practitioner would not require that Barb have anticipated Mitch's peril, once Mitch was actually stricken Barb was then under a greater duty as the creator of the hazard. If her choice of brother Skip to drive Mitch to the ER was not just to preserve his business from bad press but was indeed likely to be as expedient as calling for an ambulance—she may have reasonably believed it was, given the time to summon paramedics, though he would then have been receiving medical attention during transit to the ER—she would be liable for the delay, but question of whether that delay was an actual cause of his eventual demise, and if so whether that substantial contributing factor can be allocated a proportionate degree of liability. 7 points

The Statute-- Opportunity to discuss the possible use of violation of statute ("neg per se") to show duty and breach (if requisite two elements of the doctrine satisfied). Here, there were no facts to indicate Skip failed to operate the car in a safe and competent fashion so his violation of the statute was not a cause in fact of Mitch's injury. It could be creatively argued that had Skip not violated the statute that day he would then not have been driving the car which unavoidably struck jogger Jen, but such discussion should also note that her injury/death was not clearly divisible as to which of the two cars which hit her caused her death, so the "but for" test might still absolve Skip—and Barb, who allowed/encouraged him to drive her car. 6 points

Barb v. Mitch (trespass to land) When Barb told wheezing Mitch to leave her shop, she effectively ended his status as an invitee and he would be then a trespasser. However, the medical emergency affecting Skip offers a valid defense of necessity/emergency for remaining, rather than just walking out into the street. 3 points

Mitch v. Skip Neg Once Skip undertook to transport Mitch, the common law rule of no duty to come to the aid of others was displaced by his new duty of due care toward one in a medical emergency. Question of fact--possibly determined by expert testimony—as to whether the momentary delay of obtaining gin from the drive-through liquor store contributed as an actual cause to Mitch's death. If so, then likely finding of Mitch's liability. No facts suggest any other act of neg while Mitch in his care. 4 points

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Jogger Jen v. Sam Neg Sam's driving appeared to satisfy the elements of neg, making him liable to Jen's estate for her death. Even if expert testimony could show the initial impact of his striking Jen was not the actual cause of her death, the collision threw her into the path of Skip's car, which was not being operated negligently ("..no one could have stopped in time.."), so Sam would be liable for having created that second peril as well. Jen's own negligence of leaving the sidewalk before the walk sign flashed will, under modern law, not deprive her (estate) of recovery entirely but will reduce the damages awarded proportionate to her share of fault. Sam's possible claim that Skip's flashers distracted him likely insufficient to overcome his existing duty to operate his car with due regard for others, especially vulnerable pedestrians. 5 points

Mitch v. Nurse Jackie Neg Jackie held to the standard of care required of a medical professional. Expert testimony to determine whether a reasonable professional in this situation would have done more to determine whether Mitch was drunk or in need of medical attention and, if the latter, was this delay an actual cause of his death. Even if so, this would not in most jurisdictions constitute a superseding cause, as negligent medical care deemed foreseeable in injuries, so as not to absolve the initial tortfeasor. 5 points

Skip v. Hospital Neg Duty of property owner to provide reasonably safe premises for those foreseeably on the property apparently breached. Nothing in the facts suggest any warning of the slippery floor in a public area where people likely to be hurrying and distracted, if not actually already physically impaired by injury. 4 points

Sally v. Hospital Neg Skip's unconsciousness prior to his falling onto Sally absolved him of any liability and was a direct consequence of the hospital's negligent act described in Skip v. Hospital above. Question of hospital claiming a pre-existing injury to reduce damages, but facts say the fall re-broke her leg which had been repaired the day before. 4 points