

Torts Essay Outline
Fall 2016 Midterm
Professor Stogner
Question 1

Paula v. Dave

Trespass to land (when Dave jumped her fence)

Conversion (This happened when Dave stole the pig).

Trespass to chattel (This happened when Dave stole the pig).

Battery (Can it be said that when, during trespass to chattel with the pig, Dave accidentally struck Paula in the crosswalk a battery occurred due to the doctrine of transferred intent?)

Negligence (Common law negligence, as a distracted Dave struck Paula in the cross walk; the pig's lap jump was not a superceding intervening act resulting in an absence of proximate cause).

Negligence per se (The crosswalk statute was appropriate for use).

Intentional Infliction Of Emotional Distress (Weak case, mostly due to probable lack of severe emotional distress).

Dave v. Paula

Assault (Dave ducked when Paula swung).

Battery (Paula's punch landed).

False Imprisonment (Paula covered by Dave's car door, but was he confined? He could have driven off or climbed out passenger door).

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Question 2

Porter v. Don

Battery (Don set a bear trap for potential brandy thieves. He probably lacked a substantial certainty there would be a harmful touching, since he didn't know whether a thief would actually come, and he didn't know whether a thief would fail to see the bear trap. The argument that his intent to trap a thief transfers to the innocent trespasser Porter does not alleviate the problem of lack of substantial certainty that a thief would invade the cabin. Battery unlikely. No intent. If battery were viable the defense-of-property privilege would not be available, as the bear trap is, like a spring gun, excessive force).

Negligence (Leaving the bear trap may not subject Don to liability in jurisdictions that hold no duty is owed to an undiscovered trespasser. Rowland v. Christian jurisdictions may conclude a duty was owed notwithstanding Porter's status as a trespasser, especially since a desperate traveler needing shelter may be foreseeable).

Don v. Porter

Trespass to Land (Porter intended to enter the cabin. Of course, the key issue here is his lack of liability due to the necessity defense. Interestingly, however, an argument could still be made that Porter would have to pay for Don's ankle injury because he moved and reset the bear trap while trespassing under the private necessity privilege).

Trespass to Chattel (Perhaps when Porter stepped in the trap, reset the trap and inadvertently moved it he "intermeddled" with it. Although this intermeddling did not dispossess Don of the trap or impair its quality, the resetting of the trap and possibly the movement of it may have resulted in Don's ankle injury, making Porter's conduct with the trap a trespass to chattel under the Restatement approach).

Battery (if Porter's intermeddling with the trap was a trespass to chattel, Don's stepping into it may have been a battery by the doctrine of transferred intent).

Negligence (In carelessly resetting and moving the trap).

Assault (Porter's note to Don of some future threat is insufficient for an assault because the threat was not of imminent harm).