

TORTS  
Spring 2012  
Midterm Examination  
Prof. Carr

### ISSUE OUTLINE--QUESTION 1

**Rick v. Tina** Battery (define) One of the clearer examples of the tort. Any notion of Rick's consent to Tina's battery by voluntarily entering the sparring ring dispelled by his screams; no reasonable interpretation of consent extends to Tina's rendering him "bloody, motionless..." The **assault** which occurred as Rick backed away with a broken nose from the approaching Tina was subsumed by the continuing battery. 3 points

**Tina v. Bruce** Battery Because the same punch Bruce administered to Tina in this case had been effective in calming her in previous violent episodes, Bruce could very well raise defense of others as a complete affirmative defense to his battery of Tina. 3 points

**Bruce v. Officer Lou** Assault (define) No indication Bruce was aware the pointed pistol, but even if he had been aware, Officer Lou was justified in his conduct by virtue of the legitimate exercise of authority and defense of others. 3 points

**Bruce v. Officer Lou** Battery Same defense as above. 2 points

**Tina v. Nan** Negligence (define) While Nan's shooting was inadvertent, her lack of intent wouldn't eliminate the claim that once she held the gun she assumed an enhanced duty of care to all those within range. She breached that duty, which was an actual cause of Tina's injury. No superseding causes intervened to prevent her act from being found to be the proximate cause as well. 4 points

**Bruce v. Nan** Assault Bruce was very aware of the impending battery by bullet; he ducked. No defense of others claim by Nan; her statement was one of vengeful intent and Tina was already down. 3 points

**Mayhem & Poetry School v. Nan** Trespass to Chattel (define) Nan's intent to batter Bruce transferred to this trespass of the school when her bullet went through the school's wall. 3 points

**Cathedral v. Nan** Conversion (define) Same as above, but distinguishing this tort for the "shattered" (hence irreparable) stained glass window from the merely damaged school wall. 3 points

**Nan v. Jeff** Negligence No indication that truck driver Jeff breached any duty of care in driving; Nan emerged in front of his truck "from between two parked vans just inches from Jeff's bumper". 3 points

**Nan v. Unnamed Driver** Negligence While a reasonable driver would be able to stop before hitting an object in her path, the fact that Nan was “airborne” as the car struck her would indicate a sudden appearance not anticipable nor remediable by even a conscientious driver, so likely not liable. If you find both this driver and Jeff were negligent, you must address the issue of an apparently indivisible injury. 4 points

**Officer Lou v. Nan** Trespass to Chattel She took his pistol, but it was soon returned. 2 points

**Nan v. Officer Lou** Negligence While Lou would ordinarily have no duty to render aid to the injured Nan, it could be argued that, if Nan were aware of his pursuit, Officer Lou created or at least contributed to her flight, which would then enhance Officer Lou’s duty to act to help her. However, since her flight initially was arguably wrongful and Officer Lou’s pursuit justified, the excessive recklessness in her flight would not be justified. 4 points

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## ISSUE OUTLINE—QUESTION 2

**Sig v. Diane** Trespass to Chattel (define) Diane's intent to inflict a battery on Nora is transformed by the magic of the doctrine of transferred intent to the damage to Sig's property, hapless Bon-bon. 5 points

**Sig v. Mike** False Imprisonment (define) Stage Manager Mike's act of locking Sig in the broom closet satisfies all the elements of the tort. Any claimed defense is negated by Mike's unreasonably excessive act. 3 points

**Nora's Estate v. Diane** Battery (define) All the elements are met and no defense suggested by these facts. 2 points

**Nora's Estate v. Mike** Negligence (define) When Mike attempted CPR to revive Nora he assumed a greater duty toward her, that of a reasonable rescuer. Despite his good intention, he breached that duty and caused her death. Diane's battery was not an intervening cause, so Mike was the proximate cause as well. 4 points

**Injured/dead audience members v. Paul** Negligence Plaintiffs will invoke state Penal Code section 212, under the doctrine of negligence per se, to argue that Paul's apparent violation of this statute proved the existence of a defined duty and its breach. The audience members were very likely the intended set of persons to be protected by this law from the very harm they suffered. Paul may argue that the statute forbids "intentionally and falsely" warning of fire and that this should require the plaintiffs prove he acted with knowledge that the alarm was false.

If you believe Paul was either negligent per se under this statute or simply breached his duty not to subject others to unreasonable risk of harm by precipitately shouting the alarm without any basis other than (mis)hearing Beth, you can then find that his conduct was an actual cause of the crowd's disastrous stampede. Paul could also make the argument that the selling of excess tickets (see next issue) by the house didn't eventuate into an actual cause of the plaintiff's injuries until the stampede, this making it an intervening cause and possibly relieving Paul of liability. Paul will certainly argue as well that the overcrowding was a contributing cause, making the house manager—and the house (Concert Hall), per respondeat superior—joint tortfeasors for purposes of contribution. 13 points

**Injured/dead audience members v. the Concert Hall & House Manager** Negligence Plaintiff's will use the doctrine of negligence per se and the house manager's violation of state Fire Code section 14 to show defendants' duty and breach of that duty. Defendants will argue that because it was a fire code section, it was intended to prevent harm caused by a fire in an overcrowded venue, not by fleeing patrons; a question of law for the court. Defendants will also argue that, even if the selling of an excessive number of tickets was neg per se, Paul's violation of the Penal statute was an intervening act sufficient to relieve them of liability. 11 points