

## TORTS

Carr

Spring 2014

Mid-Term Examination

### ISSUE OUTLINE--QUESTION 1

**Jeff v. Ali & Liz** Trespass to Property (Define) Ali's good faith belief that she could park where she did no defense to trespass; Ali & Liz liable. 3 points

**Ali v. Jeff** Assault (Define) No assault as Jeff's threat to Ali was conditional: move the van or... 3 points

**Jeff v. Albert** Assault Facts unclear—Albert clutching wooden umbrella, advancing toward Jeff-- whether Jeff may have reasonably believed Albert was about to commit a battery on him. Jeff certainly will offer this belief as a possible—but unsuccessful—defense to his battery of Albert (see below). 4 points

**Albert v. Jeff** Battery (Define) Even if Jeff may establish a reasonable apprehension of a battery so as to make his initial punch a possible act of self-defense, his subsequent kicking of the unconscious Albert when he could no longer have been a threat makes this second act a battery. 5 points

**Albert v. Jeff** Conversion or trespass to chattel (define/distinguish) If Albert's glasses Jeff intentional stepped upon were damaged, trespass to chattel; if destroyed, conversion. 4 points

**Ali/Liz v. Jeff** Trespass to chattel (define, if not done so above) Jeff's self-help in moving the truck from his property was done in an unreasonable fashion, so Jeff liable for interfering with the truck. Damages would include the broken bottles of liquor. 3 points

**Ali/Liz v. Jeff** False Imprisonment (Define) Appears that Ali and Liz were unwillingly confined in the speeding truck, much against their will. 3 points

**Deceased blind person's estate v. Jeff** Negligence (Define) **Violation of Statute as Neg Per Se:** Argument can be made that Jeff violated this statutory prohibition, thus showing his breach of a duty, but this violation was not an actual cause of the pedestrian's injury, so this doctrine is inapplicable to show Jeff was negligent. However, Jeff drove a vehicle with which he was unfamiliar in a unsafe manner, breaching his duty to avoid subjecting others to unreasonable risk. This was an actual cause of the death, but Jeff will maintain that full responsibility for the defective brakes, also an actual cause, rests with Ali, who was on notice of the condition of the brakes that night. 8 points

**Deceased blind person's estate v. Ali** Neg Ali breached her duty to others—including that pedestrian--not to allow her trucks brakes to become defective. This was an actual cause of the pedestrian death, but Jeff's wrongful act was a sufficiently substantial independent intervening act that likely qualifies as a superseding cause so as to relieve Ali of liability. 5 points

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### ISSUE OUTLINE--QUESTION 2

**Acid burned pool patrons v. Jill** Battery (define) Jill's intentional act of placing acid in the pool inevitably produced a harmful touching of all those burned, including little Billy. Whether Jill is liable for Billy's death is uncertain. (See **Billy v. Sam**, below) 3 points

**Parents & Children present v. Jill** Intentional Infliction of Emotional Distress (define) Jill's screamed threat to terrified parents and injured children was outrageous and likely to cause severe emotional distress. 3 points

**Trampled pool patrons v. Jill** (Battery) The doctrine of transferred intent would make Jill liable for the injuries to those injured in the panicked exodus from the pool. 4 points

**Trampled pool patrons v. Sam/Pool Manager/City** Negligence (define) Though he was inadequately trained in the proper procedures and safety techniques, by assuming the role Sam would be held to the standard of a professional lifeguard. Question of whether sounding the alarm was an actual cause as an exacerbating factor in the panic at the pool, but if so Sam and the manager who let him begin work without the proper training and--by respondeat superior--the city, would all be liable for the breach of Sam's duty as joint tortfeasors with Jill for those injured in the chaotic stampede out of the pool. 4 points

**Sam v. Jill** (Battery) Sam was twice battered by Jill: once when he was burned by the acid in extracting little Billy from the pool and then when Jill struck him with the bottle. 3 points

**Billy v. Sam** (Neg) As noted above, Jill is liable via transferred intent for the head injury Billy sustained in the stampede from the pool. Facts unclear as to how extensive that injury and his throat spasm from the acid; expert testimony would possibly determine whether either would be fatal. If so, Jill alone liable. Expert testimony also needed to determine if effective CPR might have saved him, despite two subsequent bullet wounds. If so, then Sam/manager/city liable. If evidence shows the inadvertent shooting was both negligent and was the cause of death, neither Jill nor Sam et al are liable: See **Billy v. Officer Vince**, below. 6 points

**Police officers v. Jill** (Battery) If any physical injury from breathing the acid fumes. 2 points

**Sam v. Officer Vince** (Battery) Officer likely to raise defense of others upon reasonable appearance in this emergency of Sam as the threat. Expert testimony re police procedures as to whether that level of force justified. If not then very likely Vince liable for negligence. See below. 4 points

**Sam v. Officer Vince** (Neg) If shooting was below the standard of care for police, Vince (and likely the city, by respondeat superior or separate negligence for inadequate training) liable for breach of that duty. 4 points

**Billy v. Officer Vince** (Neg), As noted above, expert testimony may show whether the shooting was either the cause of Billy's death or a contributing substantial factor in Billy's indivisible injury resulting in death, which would result in Jill, Sam (and his manager and the city) and Officer Vince all being liable as joint tortfeasors. 5 points