

## TORTS

Carr

Spring 2017 Mid-Term

### ISSUE OUTLINE--QUESTION 1

**Nina v. Tom (his estate)** Battery All elements satisfied; no evident privilege. 3 points

**Nina v. Tom** False Imprisonment The continuing battery and Tom's demand for beer in exchange for her release would qualify as false imprisonment, even if Nina was not overly concerned about the situation at that moment. No defense evident from these facts. 3 points

**Tom v. Older Gentleman** Battery Older Gentleman may claim defense of others (Nina) but that privilege hinges on whether 1) a reasonable person in his position would believe the situation warranted his intervention (likely); and 2) the degree of force he employed was reasonable in these circumstances (borderline question of fact). Either conclusion valid. 4 points

**Tom v. Lynn** Negligence Lynn's speeding in urban traffic was a substantial factor in her failure to stop when Tom emerged from between parked cars. That breach of her duty of care in driving was an actual cause of the injury; no intervening acts superseded to break the causal chain that resulted in Tom's presumed injury when struck by Lynn's car. Lynn will raise Tom's breach of his duty to self-protect when he ran into traffic as contributing to his injury; that claim diminished by Tom's understandable distraction of his just-broken arm. Lynn primarily liable for a portion of Tom's ultimate injury, a liability shared with Norm (see below). 4 points

**Lynn v. Norm (his estate)** Negligence Norm's tailgating (and therefore speeding, as Lynn was) was a breach of his duty of care while driving in the city and an actual cause of his striking Lynn's car. Norm will claim Lynn's negligent driving case a contributing factor, but Lynn's negligence was the cause of her striking Tom, not of her being struck by speeding Norm. Norm would have a legal basis for suing Tom's estate for contribution as a joint tortfeasor for his negligence in running into the street and causing Lynn to slam on the brakes, but that degree of negligence (discussed above) was somewhat mitigated and very small compared to Norm's. Norm's estate liable for Lynn's damaged car (including the damaged window; see below). 4 points

**Tom v. Norm** Negligence The same breach of duty in driving that caused the rear-end accident increased Tom's injuries by an unknown degree. Lynn and Norm would each be liable for the specific injuries caused; likely that Tom's ultimate death would be seen as an indivisible injury for which both would be jointly and severally liable. Possible greater liability for Norm if facts adduced at trial prove Tom's demise made more likely by delay in rescue due to Norm's gunplay with Rita. 4 points

**Lynn v. Norm** Trespass to Chattel In attempting to shoot Lynn (an attempted battery, a crime but not a tort), Norm damaged Lynn's car further by his intentional act, which damaged her window. Transferred intent doctrine would satisfy the technical intent requirement for

Norm's estate to be liable for this intentional tort. No assault as Lynn knew Norm could not effect a battery upon her when she was in her car. 3 points

**Injured pedestrians in fleeing crowd v. Norm** Negligence Norm may be found to have breached his duty of care to the curious bystanders when he fired a gun. Foreseeable that panic would ensue and some could be injured. No privilege apparent; Norm liable. 3 points

**Norm v. Rita** Battery Rita could successfully invoke both defense of others and authority of law in her use of deadly force to stop Norm from what Rita could have reasonably perceived as a deadly threat to Lynn. This battery was justified. 3 points

**Pedestrian Paul (his estate) v. Rita** Battery OR Negligence Paul's invocation of the doctrine of transferred intent of Rita's intent to shoot Norm would be defeated by her justification in shooting Norm. However, Rita may have breached her duty of care in firing as she did with Paul evidently in the zone of danger. Question of fact as to whether the emergency circumstances warranted Rita's firing when and as she did; unknown outcome from these facts Rita possibly liable to Paul's estate. 4 points

**Paul v. Norm** Negligence Whether or not Rita liable for neg in shooting which killed Paul, Norm could also be found to have been an actual cause of that death. Foreseeable that his firing gun at Lynn—and refusing to drop gun when ordered to do so by person pointing a gun at him—would result in bullets flying around and injuring others in the zone of danger. Norm's estate may claim Rita's shooting was a superseding act and the proximate cause of Paul's death, but Rita's act was a dependent consequence of Norm's tortious conduct. If Rita also negligent, likely they would be jointly and severally liable as joint tortfeasors. 3 points

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**Catering company v. Rick** Conversion/Trespass to Chattel Rick's theft of the apron satisfies the elements of one of these torts; if apron recovered by damaged slightly, trespass to chattel. If not recovered or damaged beyond use, conversion. No tort if recovered undamaged, as any deprivation of use for a short time would not constitute injury. 3 points

**Rick v. three groomsmen** Battery All elements satisfied. Groomsmen unaware of Rick's spiking the punch, so no arguable justification for laying on of hands to hustle Rick off. 3 points

**Rick v. three groomsmen** False Imprisonment This tort accomplished, also without legal privilege or justification. Rick's wounds incurred in making his escape from the locked shed would be recoverable damages for this intentional tort. 4 points

**Wedding guests v. Rick** Battery All those who drank the drug-laced punch would have a cause of action in battery against Rick. Damages would vary from slight to the deaths of those intoxicated party-goers in ambulance (see below). 4 points

**Jack v. Rick** Battery Rick committed unprivileged battery on Jack with the spiked drink and with the saw blade. Rick liable—through the combination of the two batteries—either solely or jointly with the ambulance driver (see below) for Jack's death. If the head injury from the fall—produced by the combined batteries—wasn't fatal, Rick's battery of the other guests was a substantial factor in the fatal ambulance crash which ensured Jack's death. 6 points

**Rick's estate v. Angry party guests** Battery While no local jury would likely award Rick anything, legally Rick was battered by the party guests once he was no longer a physical threat, at which point any claim of defense of others ended. 4 points

**Jack, Ambulance passengers, rescuers v. Rick** Battery Doctrine of transferred intent would make Rick liable—either solely or as a joint tortfeasor with the impaired ambulance driver (see below) for the deaths that resulted from the ambulance crash. Rick will claim that decision of impaired guests to drive Rick to hospital was superseding act, but that decision made in emergency circumstances by persons whose judgment was impaired by Rick's wrongful conduct in spiking the punch. Even if driver also liable, Rick remains a joint tortfeasor. 6 points

**Jack, ambulance passengers, rescuers v. ambulance driver** Negligence These plaintiffs may claim that the violation of the statute prohibiting non-paramedics from driving ambulances was *negligence per se*. They must show that the statute was crafted to protect persons such as themselves (likely) from the kind of harm that befell them (more difficult). Even if such proof would then establish the breach of duty by driver, and no intervening acts (rescuers voluntary engagement covered by the rescue doctrine), the driver would likely avoid liability by raising the same facts presented above: decision made in emergency under influence of involuntary intoxication attributed to Rick's battery. 8 points