Torts Finals Outlines
Professor Stogner
Spring 2017

Question One

Zena v. Aaron Air

Intentional misrepresentation
--if Aaron knew there was no guarantee of non-bumping

Negligent misrepresentation
--if Aaron should have known, but didn't, that bumping was possible

Assault
--if Zena saw her batterers coming

Battery
--dragging Zena from plane
--Aaron Air would be liable for all Zena's injuries during the battery, including the concussion she suffered when the latch opened and a piece of luggage hit her head.
--there is no evidence that the contractual relationship Zena had with Aaron Air would require her to comply with a request to leave, even absent the guarantee she received from Aaron, and no evidence Aaron Air was privileged to use force to remove her. Even if Aaron Air was privileged to use force to remove Zena, the force used here is likely excessive.
--Aaron Air is vicariously liable for the intentional torts of its employees in this case as they were acting on behalf of the airline and in the scope of their employment.

Products Liability

Negligence
--Aaron Air manufactured its own planes. A poorly constructed latch is a component part for which Aaron Air would be responsible; thus, another theory of liability for Zena's concussion is that Aaron Air breached a duty of due care owed to Zena, actually and proximately causing her concussion, by allowing a poorly constructed latch to be used to hold luggage in the aircraft.

Express and Implied warranties
--Neither theory would likely apply in this case because a) no express representations were made about the quality of the aircraft and b) an implied warranty is available to the purchaser of a product or a person in horizontal privity with that purchaser, such as a family or household member. It is likely that a passenger on a plane is not tantamount to a product purchaser.

Manufacturing Defect

--It seems likely that the poorly constructed latch is a singular defect in manufacturing as opposed to a design flaw. At least, there is no evidence that the poor construction was endemic to all the plane's latches. Restatement 402A could be referenced to argue that the latch made the plane unreasonably unsafe to the user or consumer.

Defamation

--Zena is a private plaintiff who does not need to prove constitutional malice or fault. Aaron's statements about Zena specifically and even about her small company's paintings were false and injurious to her reputation (calling her paintings forgeries is essentially calling Zena a cheat and fraud), constituting slander and likely slander per se. Damages are presumed if the statements were slander per se.

False Light

--Maybe the statements suggesting that Zena was not rational and that Aaron had never seen her before make her seem unstable. If these remarks don't rise to the level of actionable defamation because they are not harmful to her reputation, Zena may have a false light cause of action.

Injurious Falsehood

--The statements about Zena's paintings being forgeries.

Interference With Prospective Economic Advantage

--If Aaron's statements, which were untrue and thus wrongful, caused Zena to lose future business.

Abuse Of Process

--the intent to vex with excessive interrogatories etc.

Torts Finals Outlines
Professor Stogner
Spring 2017

Question Two

Pongo v. David

Negligence

--David may have breached a duty of due care by diving with a customer without checking the safety of diving the lake first; and by encouraging Pongo to swim into a downed tree. The catfish bite and Pongo's jerking reaction to it are not superceding intervening acts, and Pongo's type of injury is likely not unforeseeable. An argument can be fairly made, however, that David did not breach a duty of due care. He knew Pongo was an experienced diver who could presumably take care of himself underwater. Could a reasonable person in David's position really have foreseen a catfish bite in the tree and taken steps to avoid it? Who's to say a safety dive in advance would have revealed this possibility? (In other words, there may be no actual cause relationship between a failure to make a safety dive in advance and Pongo's injury.) Further, was this underwater incident no different than when a player in a pick up basketball game on a defendant's driveway simply sprains his own ankle when coming down with a rebound? Perhaps Pongo's injury resulted from a risk which is inherent in the recreational activity of diving and occurs absent defendant's carelessness.

--Pongo likely impliedly assumed the risk. He knew the risk--that something could cause him to hit his face on an object underwater, causing injury-- and its magnitude--a potential scar--as an experienced diver in his own right, and voluntarily undertook the dive and the tree exploration. In some jurisdictions implied assumption of the risk is still a complete defense. In others it merges with comparative fault and may only reduce instead of entirely eliminate recovery.

Intrusion

--use of the binoculars into the partially open curtains to see the buckle

Trespass To Land

--entry onto Pongo's land to get the belt buckle

--recapture of property not likely to constitute a defense because the pursuit is not fresh and entry into another's residence is probably unauthorized by law even if the pursuit is fresh.

Conversion

--David was the rightful owner of the buckle. But conversion is an intentional interference with another's possession. Even a plaintiff in wrongful possession of chattel can sue a converter who takes the chattel. But in some jurisdictions David's legitimate claim of right to the buckle constitutes a valid defense to Pongo's conversion cause of action. Other courts would deny recovery to Pongo because after

David takes the buckle back Pongo lacks a legitimate claim of right to the buckle, even though it was taken from his possession. Thus, David likely prevails on the conversion action against him.

Trespass To Chattel

--same discussion as in conversion, above.

Assault

--Even though David is saying "I'll sue you," which is not an imminent threat of bodily harm, sticking his finger in Pongo's face while saying it could be sufficient to create the necessary apprehension.

David v. Pongo

Conversion/ trespass to chattel

--That Pongo did not know the buckle was stolen is not a defense to conversion/trespass to chattel. Mistake is not a defense. It doesn't matter that Pongo bought the buckle at a flea market not knowing it was stolen. He is still liable. David's "title" to the buckle did not pass to another when it was stolen from him.

Defamation

--No defamation cause of action because Pongo made no false statements about Dave.

Interference With Prospective Economic Advantage

--Pongo's written statements about David's dive business did cost David future business, but because none of the statements Pongo made were false, and his "don't dive with David" conclusion was mere opinion without expression of verifiable fact, nothing he did was wrongful. Thus there was no actionable interference with prospective economic advantage.

Prima Facie Tort

--Acting with an intent to harm David's business is behavior worthy of discussion of the prima facie tort theory of recovery. The statement "I'll ruin your business" is powerful evidence that Pongo is liable in spite of his avoiding false statements about Dave's business.

Misappropriation Of Likeness

--Using David's photo in a Pongo's Chips ad.

Assault

--Pongo's statement that he was going to hit David was uttered without any accompanying action, it appears. Mere words are insufficient for assault.