

ISSUE OUTLINE--QUESTION 1

Jane v. Rick Defamation (define) Jane is likely to be deemed a public figure and her world-record attempt a matter of legitimate public interest, therefore her cause of action for defamation as to Rick's comments would be held to the standard of *NY Times v. Sullivan*. Proving "actual malice" would seem an easy matter here, as Rick was aware that his statement that he had seen test results proving Jane was a man was untrue, thus his allegation of her "fraud" as to whether this would be a new "woman's" world record was both false and defamatory. 8 points

Rick v. Pam Battery (define) Despite the offensiveness of Rick's comments, Pam's shove was an offensive if not harmful touching without legal privilege, so she would be liable for battery. This cause of action would survive Pam's death and certainly be invoked by Matt/Rick in their defense of Pam's estate's suit against them for battery. 3 points

Pam's Estate v. Matt/ Rick Battery The facts suggest Matt's pepper-spraying Pam was excessive and so disproportionate to her shoving Rick that a claim of defense of others would not succeed. Matt (and possibly his employer Rick through *respondeat superior*—though intentional torts/criminal acts usually absolve the employer of liability for those acts by employees--if Rick had implicitly endorsed Matt's using pepper spray on anyone touching Rick) would be civilly liable for her death, even if pepper spray is not usually lethal (defendants take plaintiffs as they find them). That the city/county emergency personnel who might have effected a resuscitation were unavailable because they were eating doughnuts elsewhere is immaterial. They had no duty to Pam as a member of the general public and Matt could not reasonably expect others to rescue the victim from the consequences of his battery. 6 points

Sue's Estate v. Andy Negligence Andy's delay in telling Tom about the tethered ring before Jane descended was an actual cause of Sue's attempt to rescue Jane beyond a safe depth; Tom's decision to send the alarm was reasonable under these circumstances and the only other act which intervened to possibly sever the chain of causation was the failure of the electric winch motor, so Andy's delay may be seen as the proximate cause of Sue's death as well, depending on the proof of Sue's case against the city and electrician, below. Andy will also assert that Sue, an experienced diver, assumed the risk, but, as discussed below, "peril invites rescue. 4 points

Sue's Estate v. city electrician/Center City Negligence (define) The city electrician had a duty to perform this expert task competently, particularly given the potentially crucial work the electric winch might have to perform. Electrician breached that duty by non-inspection, but plaintiff would have to prove that a reasonable inspection would have identified/prevented the problem in the motor which caused it to fail. If proven, that would still not establish **actual cause** of Sue's death, as plaintiff would also have to prove the working motor would have retrieved Jane before Sue was put in peril. If that hurdle was met, plaintiff would still have the burden of showing **proximate cause** by overcoming the feasible claim by defendants that Sue, an experienced diver, assumed the risk voluntarily when she swam into the depths after Jane. That defense could be successfully rebutted by the legal maxim "peril invites rescue", which

would then make the city electrician liable for the death as none of the other intervening acts would seem to constitute superseding causes sufficient to break the chain of causation. City liable under doctrine of *respondeat superior*, and possibly directly negligent as well for retaining electrician if City knew or should have known of his/her drinking problem, making the electrician, the City, and Andy possible joint tortfeasors. 9 points

Jane v. Paramedics Negligence The paramedic operating the speeding boat may be liable for Jane's injuries if speeding to the scene where a swimmer is known to be underwater in a boat with exposed propellers was unreasonable conduct. Clearly it was the actual cause of Jane's injuries and the apparent proximate cause as well, no other intervening acts presenting. Possible defense of privilege of emergency seems unavailing if unreasonable conduct makes the situation even more dangerous. City/county employer likely liable under *respondeat superior*. 5 points

Coach Tom v. Newspaper False Light (define) The statement unlikely to qualify as "defamatory", but false light a possible cause of action. Tom's role in this public event likely to make him a public figure, requiring him to show the newspaper acted with the "actual malice" of *NY Times v. Sullivan*. 3 points

ISSUE OUTLINE--QUESTION 2

Deb v. Lynn Negligence (define) Deb may bring suit against Lynn for Lynn's car striking Deb's, for the cost of repair of her car. Deb will cite Statute 101 to invoke the doctrine of Negligence Per Se to prove Lynn was violating her duty to Deb and other drivers by violating the statute, if Deb can show she was a member of the class the statute was intended to protect and that the harm which ensued was of the type the statute was designed to prevent; both seem plausible here. Lynn may point to Tim's sudden braking as an intervening act of sufficient magnitude so as to sever the chain of proximate cause between her act of towing Tim's car and the damage to Deb's car. However, because such mishaps are common when amateurs tow cars, likely Tim's braking will not release Lynn's act as both actual and proximate causes of the collision. Lynn may seek contribution from Acme Rope for some portion of these damages; see below. 9 points

Lynn v. Acme Rope Co. Product Liability Lynn will allege that the tiny print statement on the "SUPER CABLE" label that the rope had a test strength of only 40 pounds was insufficient notice of the limits of the "SUPER CABLE", which in much larger font proclaimed "NO JOB TO (sic) TOUGH FOR SUPER CABLE!" and was this a negligent failure to warn by the manufacturer in regards to a foreseeable use/misuse of the rope, which resulted in the car collision. Defendant Acme will defend this suit by claiming that using Super Cable to tow a car was a misuse of the product, but also—and more productively-- invoking Lynn's violation of the statute under Negligence Per Se (as discussed above) to at least reduce any award under comparative negligence apportionment; Lynn's only damages recoverable from Acme would be her car damage and possible contribution for Deb's car; both Deb's and Gene's acts were sufficient superseding causes as to Lynn's injuries to relive Acme of liability for the injuries. 9 points

Lynn v. Deb /Deb v. Lynn Battery (define) Deb's punch which sent Lynn reeling into the traffic lane for her fateful meeting with Gene and his motorcycle was certainly a harmful/offensive touching, but the facts don't state which of the mutual combatants initiated physical contact which the other will claim warranted a physical response in self defense. If Deb initiated the punching without legal justification, she may be jointly and severally liable with Gene's estate under comparative negligence principles for Lynn's severe injuries, as Deb's punch was an actual cause of Lynn's being struck by the motorcycle which may be on a par, with regard to proximate causation, with Gene's speeding. 6 points

Lynn v. Gene's Estate Negligence Likely Lynn will be able to show Gene was violating his duty to her when he was speeding at 115 mph through stopped traffic. Gene's Estate will counter that he had no reason to expect a pedestrian to be in the traffic lane, but any negligence on Lynn's part or substantial contributing factor of Deb's punch would only reduce the award against Gene under comparative negligence. 5 points

Gene's Estate v. Tim's Estate Battery Tim clearly engaged in a battery not defensible under any claim of defense of self or others when he kicked the unconscious Gene. Gene's Estate will

have to prove that the battery was a substantial factor in Gene's injury/death to warrant more than nominal damages for the battery. 4 points

Tim's Estate v. helpful bystanders Battery The bystanders who subdued Tim to prevent his continued battery of the unconscious Gene likely to prevail under privilege of defense of others, unless proof that one or more used excessive force. If so, because defendants take plaintiffs as they find them, that excessive force would incur liability for Tim's death. 5 points