

32/38

Q1

1 of 1

# Blue Book

NAME

SUBJECT

INSTRUCTOR

EXAM SEAT NO.

SECTION

DATE

GRADE

TORTS  
CANN

12/10/10

10<sup>7/8</sup> x 8<sup>1/4</sup>

50 - 16 PAGE

Excellent -  
well presented,  
nicely articulated. Use  
of facts & knowledge  
of law first rate -  
a lawyerlike job.

Over

(Of course your handwriting  
is better suited for a  
doctor.)

Q 1

Ed (E) v. Ron (P)

Assault = the intentional placing of another  
in <sup>imminent</sup> reasonable ~~the~~ apprehension of an  
harmful or offensive touching  
(HOOT)

(4) When Ron threatened to punch Ed, he was  
intending some fear. However  
generally words alone do not  
suffice for an assault. Further  
his threat was qualified ("if she  
wasn't here"...

R not liab. for assault

Inten'l Inflict. of Emotions Dist.

= The inten'l infliction of severe emot. dist.  
on another by extreme + outrageous  
conduct.

R's ~~behavior~~ conduct of <sup>loudly</sup> calling a stranger  
a nimp + insulting him was <sup>intentional</sup> +  
<sup>pretty</sup>

outrageous, altho arguable if it exceeded all bounds of decency tolerated by society. Ed was humiliated, which probably does not equate to severe emotional distress.

(3)

Probably R not liable for IIED.

## Ed v. Willie

Battery = The int'l HOOOT of another.

When Willie grabbed Ed's arm he intended the contact. But whether a contact is ~~is~~ harmful or offensive is determined by the RP standard + not what a person unduly sensitive would find offensive. Willie grabbed his arm to prevent ~~Ed's~~ Ed's <sup>frankly</sup> ~~arm~~ <sup>frankly</sup> into perform. area. Ed was <sup>frankly</sup> ~~freaky~~ <sup>frankly</sup> fighter of clowns + if he hadn't been the contact would not have been offensive. Willie not liable for battery OKed

(5)

## Jill v. Ed

Negligence (Neg) = Neg is the breach of an existing duty that is the ~~prox~~ actual + prox cause of damage to it.

Jill will say Ed owed her a duty to behave as a ~~to~~ reasonable person would in like circumstances to avoid putting others (her) at unreasonable risk of harm.

②

When Ed ran away from ~~the~~ W + stumbled into ring + control line he breached his duty of due care to her.

Not a conscious act  
so ~~no~~ breach

But for his knocking The line she would not have fallen.

Was it foreseeable ~~that~~ that his wild conduct would result in this injury?

Ed will say that Wilbers closing him was.



~~Tim v. Ed~~

Tim v. Ed

Neg. = Supra

no conscious act by Ed,  
but your analysis is  
contested w/ preceding  
& well precedes

Duty owed to Tim? Would a RP in  
Tim's position have foreseen a risk of  
harm to ~~Tim~~ Tim when he acted?  
Possibly.

But for Ed's falling on him ~~Tim~~ Tim  
wouldn't have died!

Ed will argue that Jill's falling on  
him was an unforeseeable <sup>intervening</sup> ~~cause~~ ~~cause~~  
~~that broke~~ broke the  
causal chain. However Ed's negligent  
act set this seq. of events in motion.

Ed is a prox cause of Tim's death

Shared liability w/ circus, infra.



Tim v. Circus

Neg. supra

The circus owed a duty to Tim to protect him from <sup>unreasonable risk of harm</sup> harm. ~~As~~ As a business inviting customers in, it owed a heightened duty to protect him from ~~an~~ an unreasonable risk of harm.

(43) By not having both safety features/nets over audience w/ ~~people~~ acrobats in air it breached its duty to Tim.

But for the lack of <sup>effectiveness</sup> nets, Tim wouldn't have been hurt.

~~The~~ The circus will argue that Ed's ~~stumbling~~ stumbling onto line was an unforeseeable intervening ~~act~~ act (a superseding cause) that will cut off liability. However, it's a circus and there is increased danger. 'proximity' 'owns'

The circus' neg act of no nets was the prox cause of Tim's death.

(42)

ED + The Circus are both prox causes of Tim's ~~death~~ injury (death) + will be held jointly + ~~severally~~ severally liable. ~~If~~ If in a comparative neg jx, then jury could/would apportion fault + assign liability accordingly. Then they would each pay for the % of fault they were respons for.

## Crowd V. Sec. Supervisor <sup>(S.S.)</sup> / Circus

False Imprisonment: The int'l physical confinement or restraint of another w/in a bounded area.

(4)

The S.S. ordered the closure ~~of~~ + locking of exits. This ~~was~~ showed intent to do the act that imprisoned the crowd w/in the circus tent (bounded area).

The S.S. will defend w/ justification (preventing deranged killer escaping) or ~~the~~ the defense ( $\Delta$ ) of Def. of others  
A person may use reasonable force



to defend himself/others/~~the~~ against  
reasonably perceived threatened  
harm. Here the SS could have reasonably  
thought Ed was a killer. This will be  
a valid  $\Delta$ .

SS not liable for F.I., but - - -

Good  
transition

Negligence? (supra)

(A2) The SS + Circus owed a duty to its  
customers to not put them at risk.  
locking a whole crowd in a tent  
when crazy things are happening was  
a breach of that duty. ~~totally~~  
~~A2~~

But for the SS locking them in  
they would not have been trampled.

~~It was foreseeable that a crowd~~  
~~could panic in this situation~~

It was foreseeable that a crowd  
could panic in this situation

Yes, Negligence liability to crowd.

## Trainer (T) v. Nan (N)

Battery - defined supra

(5) When N <sup>volitionally</sup> grabbed ~~the trainer's shirt~~, however well intentioned b/c of her ~~work~~ life long defending of animals, ~~was~~ she intentionally made contact w/ him, or rather, with his clothes which are connected to him + suffice for a contact. She shook him violently: harmful + offensive.

N liable for Batt of Trainer.

## Nan v. Trainer

Battery supra

When the elephant lifted her trunk in its trunk The trainer could be said to have indirectly harmfully ~~cont~~ touched Nan indirectly (using elephant).

Yes, Trainer liable for battery.

2)

Mitch v Barb

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Negligence is the breach of a duty which is the actual and proximate cause of harm. Duty of care is that care that a reasonable, prudent person would take under the circumstances to avoid foreseeable harm. Duty is also established when one assumes the duty, has a special relationship with the plaintiff, by statute, by contract or by creating a higher risk of harm by their actions

*Very lawyer  
tub analysis  
& decision  
with  
organized  
4x what*

Because an allergy can pose a real risk to a person so affected, it is reasonable that a salon owner would notify a client before using a peanut product on them. The risk from peanut allergies is well known; therefore Barb had a duty to inform Mitch. When she did not inform him, she breached that duty. Her omission to act was the actual cause of the allergic reaction, and was also the proximate cause-no superceding acts intervened between her action and his allergic reaction. When Mitch began to itch, gasp and was barely able to stand, the harm was evident. Barb was negligent in her actions to Mitch.

*6  
nearly  
done*

When she failed to act by calling an ambulance, she was then breaching a duty that was formed by her creation of the risk in the first place as well. Additionally, she had assumed a duty as the shop owner to her clients, and her omission to act was a breach of that duty. Her unwillingness to call an ambulance was a breach and at least one of the causes of Mitch's later death.

When Mitch later died, Barb's actions may still have been the proximate cause, depending on how the fact finder views the intervening acts that follow in this discussion.

Negligence per se is negligence created by a violation of statute wherein the plaintiff is in the class of people the statute is designed to protect and the harm is in the class of harm it was designed to prevent. Negligence per se creates an assumption of duty and breach.

When Barb directed her brother to drive Mitch to the hospital, even after he reminded her he had lost his license, she was violating a statute and therefore had a duty as a result of the statute, and breach of it in violating it. Her actions contributed to the harm to Mitch, and the harm was his eventual death. Barbara will be liable under negligence per se.

*only if skip's driving was a  
actual cause - if facts say  
it was.*

Mitch v Skip

Negligence per se supra

When Mitch drove to the hospital knowing he had lost his license, he was violating a statute and therefore had a duty as a result of the statute, and breach of it in violating it.

*no - you say the  
driving & delay may have  
caused - not the fact of driving.*

His actions contributed to the harm to Mitch, and the harm was his eventual death. Skip will be liable under negligence per se.

Negligence supra

3

When Skip agreed to drive Mitch to the hospital he assumed a duty of care for Mitch. When Skip stopped for a pint of gin while driving Mitch to the hospital, he was violating his duty both because he had assumed the duty in agreeing to drive him and because a reasonable person under the circumstances would not have taken the risk of drinking while driving and in delaying getting Mitch to the hospital. His actions in stopping for the gin and drinking while driving do not appear from the facts to have been the actual or proximate cause of Mitch's death, therefore he will not be guilty of negligence apart from negligence per se.

*which still requires proof of causation*

Jen v Sam

Negligence supra

A person who drives a car assumes the duty of acting as a reasonable prudent person would in driving so as to avoid the risk of harm to others. When Sam sped up to beat the yellow light, he was breaching his duty to drive with due care. His distraction by the flashing lights on Skip's car and resulting failure to see Jen resulted in Jen's harm. He will be guilty of negligence, absent a valid defense.

5

not yet

~~assumption of risk~~  
Assumption of risk may be a valid defense as Jen had left the curb before the walk signal and therefore would be in the crosswalk before a driver would be expecting to see her and be watching for a pedestrian. As a result, it is possible that Sam will not be found negligent or at least there may be comparative negligence found that will mitigate the damages that Jen can collect.

Jen v Skip

Negligence supra

A person who drives a car assumes the duty of acting as a reasonable prudent person would in driving so as to avoid the risk of harm to others. When Jen dropped from the sky immediately in Skip's path, he had a duty to try to avoid hitting her. However, according to the facts, no one could have stopped in time and so Jen's death is not the result of the negligence of Skip.

7

Jen v Barb

*creative, but*

Negligence supra

*for for*

When Barb's action in using a product on Mitch that had peanut products in it and did not alert him first resulted in his being on the way to the hospital, Barb's actions may have been the cause of the harm to Jen as well, as it is foreseeable that a person driving someone to the hospital for care that resulted from their negligence could end

up involved in an auto accident that would cause harm to another. Therefore her negligence may be shown to be the proximate cause of Jen's death.

### Mitch v nurse

#### Negligence supra

A nurse working in a hospital assumes a duty of care to patients under her/his care. When the nurse assumed that Mitch was simply inebriated, she breached her duty to Mitch, and this was a contributing cause to Mitch's death, as she directed Skip to put him in an empty room to sleep it off. The death of Mitch was the harm.

Alternatively, it may be found that the poor medical care that Mitch received at the hospital was foreseeable when Barb was negligent, in which case she may be held liable for the harm to Mitch by the nurse. Poor medical care that is not reckless is typically found to be a foreseeable event and therefore not a superseding event that breaks the chain of causation.

Concurrent causes are tested by the substantial factor test to determine if they would have caused the harm alone. If the harm is indivisible then the joint tortfeasors are jointly and severally liable and either may require contribution from the other to help pay damages.

When Barb, Skip and the nurse all acted to contribute to the cause of Mitch's death, they may be found to be joint tortfeasors whose harm cannot be divided. Alternatively, it may be that Barb is found liable if the chain of causation is found not to be too remote and no superseding acts to break it by the fact finder. Mitch (or his estate) will only be able to get satisfaction and no more, as a plaintiff can recover their damages one time only. If the estate decides to provide a release to one or more of the joint tortfeasors, the unreleased tortfeasors will be able to counterclaim for contribution.

### Mitch v Hospital

#### Negligence supra

The hospital assumes a duty of care for all patients who come there seeking medical care. Under the principle of respondeat superior, the hospital will be responsible for the actions of the nurse, as its employee.

### Skip v Hospital

#### Negligence supra

See duty of care above. When the hall floor was very slippery from a recent mopping, there was a breach of the hospital's duty to maintain safe premises and this was the actual and proximate cause of Skip's fall. He hit his head and was stunned, therefore there was damage. The hospital will be liable for negligence to Skip.

Sally v SkipNegligence supra

Skip had a duty to act in the manner that a reasonable, prudent person would under the circumstances. therefore when he lurched to his feet after hitting his head, in order to get help for Mitch, he was not acting unreasonably. He will have the defense of private necessity as he felt Mitch was in danger when he turned blue. Therefore he will not be liable for negligence to Sally.

Sally v NurseNegligence supra

See duty of care above

*hospital*  
 ← now direct causal link  
 w/ slipping ~~on floor~~

② When the nurse negligently directed Skip to put Mitch in an empty room, thinking he was inebriated without checking him out, she breached her duty of care to Mitch as discussed above. However, it is foreseeable that such a breach would result in Mitch becoming dangerously ill and Skip seeking help as a result. She would have been in a position to know of the wet hall floor; therefore the chain of causation may not have been broken. Nurse's actions may have been the proximate and actual cause of Sally's re-broken leg. In that case the Nurse will be liable for negligence to Sally as well.

END OF EXAM