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===== Start of Answer #1 (1473 words) =====

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Pia (P) v. Don (D)**Negligence**

Negligence is a failure to use ordinary care to protect a foreseeable plaintiff from the consequences of one's acts. It is comprised of duty, breach, causation (actual and proximate) and damages.

Duty - D owed some duty to P as she was an invitee in his shop. An invitee is one who enters the premises for the benefit of the owner. Here D benefits from P's patronage. The duty to an invitee generally entails reasonably protecting them from risks, and includes preventing the existence of dangerous conditions on the property. Here, there was no dangerous condition but P's falling out of her chair was of her own doing. It could also be argued that allowing the can of olives to be placed so far back on the shelf created a dangerous condition. Normally, D would not owe a duty to help P, but here there is a special relationship because of her invitee status, or alternatively the duty can be imposed because D was responsible for placing P in a position of danger.

Breach - Did Don act as a reasonably prudent person would in the same or similar circumstance? It can be assumed that one with a duty to P (assuming there was a duty) would react not by calling 911, but immediately coming to P's aid and grabbing the oxygen mask which he saw. He likely objectively fell below the standard of care a reasonable prudent person would have provided. He will argue that this was an emergency situation. In the case of an emergency, the defendant is judged not by how one would act in a normal situation, but in the face of an emergency, a somewhat lower standard. His defense would likely fail as a jury would probably determine that reasonable person would have

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recognized the need for oxygen and given it, rather than worrying about his own selfish morals, therefore D is in breach.

Causation- D is the actual cause of P's brain injuries as she would not have sustained them had he given her oxygen to her six minutes earlier. That is but for D's breach of duty P would not have suffered brain damage.

Proximate cause is a process by which causation is limited only to circumstances where there causal connection between the act and the injury are sufficiently close. The causal chain is broken when there is a remoteness in time and distance, when there are superceding intervening acts, when the type of injury is unforeseeable (depending on the jurisdiction) or when there are public policy considerations which support a break.

Here there is no remoteness of distance or time. D will argue that there is a superceding intervening fact of P's own negligence, saying that a reasonable, prudent person with her disability would not have attempted to reach for a jar when it was foreseeable that she could fall out of her wheelchair. This is a stretch though especially given that he allowed the olives to be placed in a way that it created a risk to P.

In jurisdictions that follow the *Wagon Mound* precedent there will be no proximate cause when the type of injury which happened was unforeseeable. D will argue that the injury here was unforeseeable. If his negligence was based on the placement of the olives on the shelf he may have some chance, as it would be hard to foresee that brain damage to a wheel chair bound customer would be the outcome here. However, the negligence claim is really based on his failure or omission to act, and there it is foreseeable that P would suffer brain injury from the lack of oxygen.

In *Polemis* jurisdictions it does not matter if the actual type of injury if some type of injury is foreseeable other than the one which actually occurs. Thereby D is the proximate cause of P's injury by either standard.

Damages - D will be able to collect special and general damages. Special damages will include all past and future medical costs and the costs associated with her care due to her brain damage, like nursing home and therapy. He will also be liable for her general damages, which include pain and suffering. He will argue that P was contributorily negligent or that the injuries would have occurred anyway, but the facts tell us that the six minute delay in receiving oxygen were the cause of the injury. He will also argue that she was an old, wheelchair bound woman, not somebody of normal physical characteristics but this will be to no avail because of the thin skulled plaintiff theory where the defendant takes the plaintiff as he finds her. The plaintiff's pre-existing physical frailties do not provide a defense. He will argue that she was comparatively negligent, that she because of her disability should have known that she shouldn't risk falling out of her wheel chair. If he succeeds here her damages will be reduced by her percentage of fault.

Assault

Assault is an intentional act which creates an apprehension of an imminent harmful or offensive touching. The defendant must have the apparent present ability to perform the touching.

When D came around the counter and shook P's chair it can be assumed that she apprehended the imminent harmful or offensive touching. . D will argue that he was acting in self defense or defense of property after she tried to pepper

spray him. One is entitled to use reasonable force to defend themselves from a reasonable perceived threat. The perception must be objectively reasonable. Here, D is not reasonably threatened. He has already taken the spray canister from her and she is an invalid and couldn't possibly harm him. *Good*

Battery

Battery is an intentional harmful or offensive touching of another without consent or legal privilege. This is probably a case of an offensive touching, rather than harmful. Whether the touching was offensive will be determined by an objective standard, would an ordinary person find the touching offensive. Here, the shaking of the wheel chair will probably be found to be offensive. D will again argue self-defense or defense of property but he will fail.

good, fact he touched chair and not her body could have been discussed briefly.

Trespass to chattel

Trespass to chattel is an intentional act which impairs the condition, quality or value of a chattel; causes injury to the person, personal property or something in which the plaintiff has a legally protected interest in; or substantially interferes with the plaintiff's use or possession of a chattel. Here, he took the pepper spray canister from P, interfering with her possession. He will argue that he took it in self defense and probably prevail.

Conversion

Conversion is an intentional permanent or very substantial interference with the use or possession of the plaintiff's chattel. Here, again D took the canister away from P, most likely permanently denying her possession of her chattel. His intent was to dispossess her of her chattel. If she wins in this action he will have to

compensate her the full value of the cannister at the time of the taking. Again, he will argue that he took the cannister in self defense.

D v. P

Tresspass to land

Don

Tresspass to land is the unauthorized on to the land of another. P entered D's store with the sole purpose of punishing D. She did not come as an invitee, or as a trespasee because there can be no consent when her intent was to commit a tort against D.

Assault

See defintion supra

Don was in apprehension of the pepper spray coming at him, as evidenced by the fact that he ducked out of the way. Therefore P is liable for assault.

Tresspass to chattel

see defintion supra

P ruined the poissetias, thereby causing a substantial interference or damage to P's chattel. She did not intend this act, but the doctrine of transferred intent allows her intended assault to be transferred to the trespass of chattel. She will be liable for the cost of replacing the poinsettias, as they cannot be repaired.

Conversion

see defintion supra

P did not intend to destroy the plants and the intent does not tranfer as it does to trespass to chattel. She did however intend to do the act which caused their destruction and if she knew with a substantial certainty that this would result then she is liable for conversion as well and would have to pay the value of the poinsettias.

Good

To all of these crimes she may claim that she was justified because of D's earlier torts against her, but retaliation is never a defense. She will also say that she is not liable because of her insanity. However this defense will fail because insanity is generally not a defense to intentional torts as long as she did intend to commit them and was aware as she clearly was.

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Start of Answer #2 (1181 words) =====

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Petra v. Dirk

Does P have cause of action for assault for daily sexually suggestive remarks repeated again this day.

Assault is an intentional act which causes in another an apprehension of an imminent harmful or offensive touching? The defendant must have the present apparent ability to carry out the touching.

Words are never sufficient to form the basis for an assault action, and while they are offensive and may put P in fear of an imminent assault this does not an assault make.

Does P have cause of action for false imprisonment (fi) when D stops bus and locks doors?

False imprisonment is the intentional restraint on the physical liberty of another by force, threat or duress. The plaintiff must be aware of the restraint or harmed by it. Here, D has stopped the bus and locked the door and P does not have the ability to leave the confines of the bus. She is aware of the restraint and D is liable for f.i. He will argue that he was merely stopping to collect her bus ticket and that perhaps it is protocol to lock the doors when stopped away from a bus stop, but this seems highly unlikely.

Does P have cause of action for assault when he comes back and harasses her and demands her pass?

See assault supra.

There may be an assault here, as the repeated offensive remarks combined with the restraint and the demand of a possession from her person may be sufficient threat to apprehend an imminent touching but it is a stretch. *Bob*

Does P have action for battery when he took her ticket?

Battery is an intentional harmful or offensive touching of another without consent or legal authority. Whether a touching is offensive will be determined objectively, would an ordinary person find it offensive.

Battery does not necessarily need to be a touching of the actual person of another. It can be their clothing or something they are holding in their hand, like the buss pass. Under these circumstances the touching of anything that belongs to P or is in contact with her body could be considered offensive. D will argue that he had consent to the touching of the pass, because P gave it to him when

he asked. However consent given by way of force or intimidation is not valid. He will also say that he had legal authority as operator of the bus to take the pass. He may have had authority to check a pass, but under these circumstances this is a misuse of authority.

Very likely not a battery but you made a good argueme
 Does P have action for trespass to chattel?

Trespass to chattel is an intentional act which impairs the quality, condition or value of a chattel; causes injury or damage to the plaintiff's person, personal property or something to which the plaintiff has a legally protected interest; or substantially interferes with the owners use or possession of a chattel.

Here, D's intentional ripping of the pass satisfies any of the definitions of trespass to chattel. He would be liable for the cost of repair (probably impossible) or replacement of the chattel and costs incurred by P's inability to use her bus pass.

Does P have action for conversion?

Conversion is an intentional act which permanently or very substantially deprives the plaintiff of use or possession of her chattel.

Here, D has intentionally rendered P's chattel worthless and he is liable for conversion. Damages for conversion are the full value of the chattel at the time of the taking.

Does P have another action for false imprisonment when D deviated from route to take her to the police station?

see f.i. supra.

Petra demanded to be delivered to work rather than to the police station. Her physical liberty seems to be restrained, although we do not know if the doors were locked. She was on a moving bus and escape from the bus would likely have been impossible without sustaining bodily injury. She was aware of the restraint as she knew that she was off-route and being taken somewhere against her will. Again, D is liable for f.i.

He will argue that he is justified because he thought she had broken the window. A citizen is entitled to make an arrest when a felony has been committed in their presence. When a lesser crime has been committed or the arresting citizen believes one to have been committed but did not witness it, he is entitled to make an arrest, or physically restrain the suspect, but will be liable if he is mistaken. This is the case here, as P has been absolved of any crime at the police station and therefore D's defense fails. He may argue that he was justified anyway, because he has a responsibility as a bus driver to his employers and to the municipality or taxpayers which the bus belongs to make sure that vandals don't damage the bus. This again will fail as P is the only one on the bus and if he were to let her go he could easily identify her to the authorities so that they could make a proper investigation and arrest if needed.

Does P have action for Intentional Infliction of Emotional Distress (IIED)?

IIED is intentional or reckless outrageous conduct directed at the plaintiff, or done knowingly done in plaintiff's presence, which causes plaintiff severe emotional distress. The defendant must intend to cause the emotional distress or know or should know with a substantial certainty that the distress will result. The defendant can also ignore the high likelihood that the distress will result.

D's actions are intentional and could easily be described as outrageous. While we are expected to be able to endure some daily offenses, the constant sexual

remarks, combined with the destruction of the ticket and the false imprisonments push the behavior into the outrageous realm. Outrageous conduct is often considered that which would shock the conscience. If by some chance D's conduct was not deemed to rise to that level under normal standards, it will when you factor in that he is a common carrier. Common carriers are held to stricter standard of conduct because the public is forced to use their services to go about their daily lives.

To claim IIED, the plaintiff must show that the emotional distress was severe. This can usually be done by the presence of physical manifestation, which doesn't apply here, or by testimony and seeking the services of a psychologist. P probably satisfies this because she is going to counseling.

Does P have cause of action for conversion of the laptop?

See conversion supra.

Dirk sold took the laptop presumably knowing that it belonged to Petra and sold it on ebay, thereby intentionally depriving her of her possession. One who unlawfully passes possession of a chattel on to a third party is a converter and D is liable for damages to the fair market value of the laptop at the time that it was taken. He will claim that he didn't know who it belonged to or that it was abandoned on the bus.