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===== Start of Answer #1 (3867 words) =====

Question 1

Devin v. Pat

Trespass to Land- Is Pat liable for T2L when he entered Devin's property to look at the well?

Trespass to Land is the intentional unauthorized entry onto the land of another.

In this case Pat saw the well and made a conscious choice to walk onto Devin's land in order to examine the well. He did not have Devin's consent and therefore he was clearly trespassing on Devin's land. Pat might try to assert a defense of justification because before he entered the land he noticed that the well was built in a way that violates a safety law and he was concerned that someone could be harmed by this. Justification is a privilege that can be asserted when a person does something in order to protect a legal interest. In this case the interest would be the safety of the community. However, I do not think Pat would enjoy this privilege because there was not an immediate necessity to go on to the land. He could have instead alerted an authority that would be able to handle the matter.

Therefore Pat would be liable for T2L

Trespass to Chattel- Is P liable for T2C when he used the bucket to get out of the well?

Trespass to Chattel is an intentional act which 1) impairs the condition, quality, or value of a chattel, 2) substantially interferes with the another's possession of the chattel, or 3) causes injury to the plaintiff's person, personal property, or something in which he has a legally vested interest.

In this case it could be argued that when P used the bucket to climb out of the well, he did substantially interfere with Devin's possession of it. And even though he did not damage it, damages are presumed when number 2 is met in the above definition. However, because the bucket is part of the well, which is a fixture on Devin's land, it would most likely be considered part of the land as well, and would not be a chattel or personal property. If it were to be considered chattel, he would most likely be able to assert the defense of private necessity. Private Necessity is the right to potentially damage or destroy the property of another in order to protect one's own interest. In this case P needed the bucket in order to rescue his own life, and therefore he would most likely enjoy this privilege. If there were any damages to the bucket, he would still have to pay for them, but the facts mentioned none.

Therefore P would not be liable for T2C when he used the bucket. _

Assault- is P liable for assault when he threw the gnome at Devin?

Assault is an intentional act which creates in another the apprehension of receiving an imminent harmful or offensive touching, where the defendant has the present apparent ability to carry it out.

In this case P picked up the gnome and threw it directly at D. This indicates he had the ability to carry out the act, because he actually threw it. He was also close enough to hit D because D had to duck in order to not get hit. D ducking would indicate that he apprehended that an imminent harmful touching was coming his way. P showed intent because he hurled the gnome directly at Devin. P might try to assert self-defense because D had previously allowed him to stay in the well and be harmed. However at the time D was in no way approaching or trying to harm P, and therefore he would not be able to assert this defense. This was more along the lines of retaliation, which is not a defense.

Therefore P would be liable for assault

Trespass to Chattel- is P liable for T2C of the vase that was hit when he threw the gnome?

T2C defined supra.

In this case P threw the gnome and it hit the vase. It left a scratched on the vase which indicates that it caused a damage to the condition, quality and value of the vase. Therefore it did actually cause a damage, which is required for prong 1 of the t2c definition. P did not have the intent to hit the vase, however, the intent would transfer from the assault, or the t2c of the gnome (discussed infra), or the attempt at battery of Devin, which was avoided by Devin ducking. The intent can transfer between torts and between people and chattel, if you are dealing with assault, battery, false imprisonment, t2c, or t2I. There is likely no defense that P could assert in this case.

Therefore P would be liable for T2C of the vase

T2C- is P liable for T2C of the gnome he threw at D?

T2C defined supra

In this case P purposefully picked up the gnome to throw at D. The gnome ended up shattering, which definitely impaired the condition, quality and value of it, therefore there were damages. While P did not intend for the gnome to break directly, he would have known with a substantial certainty, that throwing a breakable object would cause it to break. Therefore he would still meet the element of intent here. There is likely no defense that P could assert in this case.

Therefore P would be liable for T2C of the gnome.

Conversion- is P liable for Conversion of the gnome?

Conversion is an intentional act which causes a complete or very substantial interference with another person's right to possess chattel.

In this case, the gnome was shattered into peices and therefore it was a complete interference with D's right to possess it. In conversion one only needs to intend to do the act that causes the conversion, and because P purposefully threw the gnome, he would be liable. There is no defense that P could assert here.

Therefore P would be liable for conversion of the gnome.

Pat v Devin

Negligence- is D liable in negligence for the injuries P received when he fell in the well?

Negligence is the creation of an unreasonable risk of harm to a foreseeable person. In order to prove negligence one must show there was a breach of a duty owed to that person, and that the breach was the actual and proximate cause of actual damages.

Duty- Did D owe a duty to P?

A duty is an obligation to behave carefully enough that you use reasonable/due care towards a person, or can also be described as an obligation to behave in a certain way under certain circumstances.

In this case, D was a landowner and he had a well on his property which was being maintained in an unsafe way. The walls were low enough that a person could easily fall in, as evidenced by the fact that P did fall in. However, the degree of duty owed to a specific person who comes on the property would depend on whether or not that

person was a trespassor, licensee, or invitee. In this case, P was a trespassor and therefore D generally did not owe him a duty. However there are some exceptions to this rule and one of them is if the property owner/occupier is aware of a danger that exists on his property. In this case it would be expected that D knew his well was not as high as it should be, so he either was or should've been aware of the danger. Therefore even though P was trespassing, D would still owe him a duty to maintain this well more safely. Additionally, once P fell in the well, D discovered him and at that time he was a trespassor that D had discovered. In that situation D then owe's him a general duty of care. Typically when one finds a person in peril, they do not owe him a duty absent a special relationship. In this case D was a land owner and P was his land entrant, and that creates a special relationship. Therefore it can be concluded that D did owe a duty to P to keep the well maintained safely and to assist him once he had fallen in.

Breach- Did D breach his duty?

Breach is the failure to meet an obligation or duty by doing something that a reasonable person would not do.

In this case, a reasonable person would certainly maintain a well at the edge of their property in a way that would make it safe for people who entered his land near it. Additionally, a reasonable person would not leave someone at the bottom of a 22 foot well simply because he had trespassed on his land. D's failure to assist P would be considered nonfeasance, and would qualify as the breach of a duty owed.

Causation

Causation has two prongs to be proven, actual cause- or cause in fact, and proximate cause- or legal cause.

Did D actually cause P's injuries?

To determine actual cause in a case where there was only one cause of harm, you would apply the but/for test. But/for the careless act, would the plaintiff have been harmed? In the case of multiple causes of the harm, you would apply the analysis to see if the careless act was a substantial factor in the harm caused.

In this case, it cannot be said that but/for the low walls, P would not have fallen in. This is because P actually walked up to the wall with prior knowledge that walls were low and peered over it. Therefore D would argue here that P contributed to the negligence. However, if you apply the substantial factor test, actual cause can still be found. P may have contributed, but if the walls were not too low to be safe, he would not have fallen in simply from looking down into the well. Additionally, when D discovered him and left him there, he was stuck for 30 minutes. Two weeks later Pat got pneumonia and the doctor told him it was likely because he was in the water for 30 minutes. If D had assisted him out earlier, he would most likely not have gotten the illness. In order to prove that in court, the doctor would have to testify and it would need to be clearly shown that the illness was not caused by something else entirely.

Therefore, we most likely can show here that D did actually cause P's injuries.

Did D proximately cause P's injuries?

Proximate cause is a sufficiently or reasonably close relationship between the careless act and the harm caused. In order to break causal chain, it must be shown that the damage was too remote, it was an unforeseeable type of harm, there was a superceding intervening act, or public policy. In this case the last three would definitely not apply here to break proximate cause. It can certainly be foreseen that a person could get ill or injured from falling and remaining in a well, and public policy would want people to be protected from this. However, it is possible that D could argue that the damages were too remote because P did not develop the illness until two weeks later. Based on the case of Palsgraf, D could argue that P was out of the zone of danger when he developed the illness and therefore proximate cause would be broken. P

suffered no other injuries from the fall, and therefore if proximate cause was broken by the injury being too remote in time from the careless act then there would be no proximate cause.

Damages

Did D cause the damages?

In this case there was damage in the case of P's illness. If proximate cause is not broken by the two week time lapse, then there would be sufficient damage to collect special and possibly some general damages for pain and suffering from the illness.

Negligence per se

Negligence per se is when a statute establishes a duty and can help establish a breach. In this case it did appear that the well was in violation of a statute. The statute was most likely in place to protect people from falling into wells. Therefore this statute could help P in establishing the duty and breach elements of his case.

Res ipsa
False imprisonment?

Question 2

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Pica v Doby

Conversion- Is D liable for conversion of P's painting?

Conversion is an intentional act which causes the complete or substantial interference with another's right to possess the chattel.

D was in possession of the painting which had belonged to P, which ordinarily would constitute conversion. P was completely disposed of the chattel. The fact the D bought it from a third party who had done the original conversion would not bar him from liability for a conversion. However, there are exceptions to this general rule and one is where a person purchases a peice of property from someone who had converted it through means of fraud but had obtained the title. In this case Xavier had used a bad check to get P to pass her the title for the painting and then sold it to D. Therefore D would not be liable for conversion because he bought soemthing to which the person who sold it to him had the title.

D is not liable for conversion of the painting

Battery- Is D liable for battery when he grabbed her by the arms to stop her from taking the painting?

Battery is the intentional harmful or offensive touching of another person without their consent. In some jurisdictions the intent has to be to harm/offend and touch, and in others simply to touch.

In this case D purposely grabbed P's arms in order to stop her from touching his painting. Therefore he did intend to touch her. Grabbing someone's wrist with enough force to stop them from doing something would be a harmful touch. Therefore the intent would be met for either jurisdiction and it was a harmful touching and P did not consent to it.

However D would assert the defense of defense of property in this case. A person does have the privilege of using a reasonable amount of force to defend their property. It could most likley be argued that simply grabbing her wrists would be a reasonable use of force to stop her from taking the painting. However it is expected that a person request the potential property taker to leave prior to using any force, as long as it would not be dangerous or futile to do so. P was not acting dangerously enough that it would

have been dangerous or futile to at least request she stop before grabbing her arms. Therefore I do not think D would successfully assert this privilege.

Therefore D would be liable for battery when he grabbed her arms.

Assault- is D liable for assault when he grabbed P's arms?

Assault is an intentional act which creates in another an apprehension of receiving an imminent harmful or offensive touching, where the def has the present apparent ability to carry it out.

In this case D did have the ability to carry out the act because he actually grabbed P's arms, however it is unclear in the facts if P saw it coming. She was reaching for the painting and may have had her back to D at the time. However, D did make an exclamation as he reached for her, so that could have alerted her to look and see that he was reaching for her, which would have created the apprehension, which is only an awareness.

Therefore if she did see him reach for it, he would be liable for assault.

False Imprisonment- was D liable for FI when he grabbed P's arms and held them to steer her away from the painting?

False Imprisonment is an intentional act which restrains the physical liberty of another by duress, threat or force, where the person is aware of the restraint or harmed by it. If there is a reasonable means of escape available to the plaintiff that they are aware of and that would not cause them to be exposed to extreme elements or damage their person or clothing, then there is no FI.

In this case, D held on to her arms long enough to steer her away from the painting and continued to hold them until she finally broke free. For FI, there is no specific

requirement as to what type of area a person is confined to, and holding someone by their wrists in your livingroom, would constitute a confinement by force. This would be FI.

D would however most likely assert the same defense of property, and would most likely fail for the reasons stated supra.

Therefore D would most likely be liable for FI

Battery- Is D liable for battery when he forced P down the stairs into the basement?

Battery defined supra.

In this case D grabbed P and forced her down the stairs into his basement. He had the intent to touch her in this situation. He did not specifically have the intent to harm or offend her, however he would have known with a substantial certainty that grabbing someone and forcing them into your basement would be harmful and most likely offensive. Therefore this would be battery in either jurisdiction.

D would again try to assert the defense of property rule. However in this situation it would most likely still fail, but for a different reason. By this time in the scenario, the property in question was already destroyed. Defense of property can only be asserted in an attempt to prevent a tort, not after the tort has already been committed. Therefore he would not be able to assert this defense here.

D would be liable for this battery of P.

Assault- is D liable for assault when he forced P down the stairs?

Assault defined supra.

In this case the facts do not explicitly state that P saw him coming towards her to grab her, but given that she had broken free from him already once, she would most likely be watching him to see his next action. Therefore she most likely saw the battery coming.

He would again try defense of property here at it would most likely fail for the reasons stated supra.

FI- is d liable for FI when he locked P in the basement for 30 minutes?

FI defined supra.

In this case D intentionally locked P in the basement to keep her there until the police arrived. The restraint was by force and the facts do not state there was any means of escape for P. Therefore this would be FI

However D would again try to assert the defense of property privilege here but would fail for the reasons stated supra.

In this case D might also try to assert the privilege of authority of law. As a private citizen he could detain someone by reasonable force that he saw commit a misdemeanor or had probable cause to believe had committed a felony. In this case P had just potentially committed a crime against him when she hit him and caused his painting to be burned. These events had just happened, and therefore he would have been in hot pursuit of her. However if he is mistaken of the fact that she committed a misdemeanor or felony, he would not enjoy this privilege. Therefore whether or not he would enjoy this privilege would depend on if she had in fact committed a crime.

Therefore he would be liable for FI but might enjoy the defense of authority of law

Intentional Infliction of Emotional Distress- Is d liable for IIOED when he keeps calling P a greedy little pig?

IIOED is an intentional or reckless, outrageous act directed at the plaintiff or knowingly done in her presence, that causes the plaintiff severe emotional distress. The distress must meet a very high standard of severity and the behavior must be so outrageous that a civilized society cannot tolerate it. Mere insults generally will not meet this standard.

In this case D continuously calls P on the phone and calls her a greedy little pig. This causes her to develop insomnia. Because he is only saying mere insults, and not threatening her in any manner, this behavior would most likely not meet the standard required by IIOED. She did develop insomnia, but it would need to be considered if this was a reasonable reaction to the behavior, and it most likely is not. Receiving an insult via phone repeatedly would not cause a reasonable person to have insomnia.

Therefore D is most likely not liable for IIOED

Doby v Pica

Assault

Assault is defined supra.

In this case Pica jerked free from D's grasp and then pushed him. Because D had just been holding P by the wrists it can be inferred that he was looking at her when she broke free and pushed him. He therefore most likely saw the push coming which means he apprehended it. P pushed him on purpose, therefore she had intent.

However P could possibly enjoy the privilege of self defense here. D had her by the wrist and she had to struggle to break free. She then pushed him away. She is allowed to use reasonable force to defend herself against a battery from another person. Given

that she had to struggle to get away from him it would be reasonable to think that if she didn't push him, he would have grabbed her again. The force of the push seemed reasonable, and therefore she would most likely enjoy this defense here. She is not required to retreat, although many jurisdictions are moving towards this.

She would most likely not be liable for assault.

Battery- is P liable for battery of D when she pushed him?

Battery supra.

In this case she did intend to push him which is a harmful touching. She would be liable based on that. However she would most likely enjoy the privilege of self defense for the same reasons stated above.

conversion- would P be liable for conversion of the painting?

Conversion defined supra.

In this case P caused the painting to fall off the wall and be burned in the fire when she pushed D. The intent is to do the act that causes the conversion, and because she intended to push him and then his painting burned up, that would meet the intent for conversion.

However she would most likely also enjoy the privilege of self defense here, because the conversion occurred due to the battery where she enjoyed the privilege.

Not without some evidence she knew of substantial certainty her act would cause painting damage

T2C- is she liable for T2C of the painting.

Trespass to Chattel is an intentional act which 1) impairs the quality condition or value of chattel, or substantially interferes with another's possession of it or causes injury to the

person, his property or something in which he has a legally protected interest.

in this case she did impair the quality and condition of the painting because it burned in the fire. She didn't intend to do this but the intent would transfer from battery.

==== End of Answer #1 =====

END OF EXAM