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1)

*Clear, lawyer-like.
Well done.*

JANE v. ANDY

Andy (A) fails to remove the strong plastic tie - negligence

Down

Negligence is the breach of a legal duty that is the actual and legal cause of damages.

Here, A had a duty to make sure that the ring at the bottom of the lake would break away, enabling Jane (J) to ascend quickly. Further, he had a duty to notify Tom that he failed to check. A breached this duty by not checking the ring, as well as not informing Tom before J began her dive. Although J did not seem to suffer any immediate damages from A's negligence, as she most likely ascended at the same rate she would have if she did retrieve the ring, J suffered damages as a result of the subsequent alarm sounding and speed boat, which severed her arms. Andy's failure to check the security of the ring and notify Tom are the "but for" cause of J's injuries, as they likely would not have occurred if Tom did not have to sound the alarm. A will likely be found liable for negligence. A may claim that the boat driver and Sue were contributorily negligent regarding J's injuries, as the boat driving over J could be considered a supervening event, and Sue's inability to provide professional assistance due to her actions also contributed.

*a stretch -
if you're going
to do it?*

SUE'S ESTATE (S) v. ANDY

Sue dies as a result of her attempt to save J, resulting from A's negligence discussed supra.

This is most likely a Survival/Wrongful Death Statute jurisdiction, meaning that Sue's estate will be allowed to recover damages for the injuries sustained by Sue immediately before her death, as well as the damages sustained by S's estate after her death. Andy breached his duty to check the ring, which triggered the alarm. This caused S to shed her air tank in an attempt to save J. Because A breached his duty, it caused S to try to save J, which resulted in her death. A will argue that S assumed the risk of death in her attempt to save J. S was a professional, and made the decision to shed her air tank in an effort to save S. Under comparative negligence, the damages A owes to S may be lessened by S's own negligence in her death.

✓

✓

*Peril exists
rescue*

JANE v. SUE'S ESTATE (S)

Negligence (defined supra)

Sue had a higher level of duty, being a professional paramedic, to ensure that she and J returned to the surface safely. Sue breached this duty by going against her professional opinion to abandon her buoyant air tank and descend to try and assist J. The facts are unclear as to whether S's breach contributed to J's injuries upon ascent, but it can be

inferred that her professional expertise may have aided J in ascending in a safer manner. S may be liable, at least in part, for J's damages.

*S's death may have
interfered w/ her rescue efforts*

SUE'S ESTATE v. JANE

Jane does not help S to the surface - negligence?

Jane did not have a duty to help S return to the surface, because she did not see S, nor acted in trying to find and save her. J will not be found liable for negligence against S.

JANE v. CITY ELECTRICIAN (E)

E failed to inspect the motor that would bring J to safety - negligence (defined supra)

E had a legal duty to inspect the motor before the event. E breached the duty by drunkenly not inspecting. The failure of the motor could be the proximate cause of J ascending beneath the speedboat, leading to the severing of her arms (damages). E will most likely be found contributorily negligent as a joint tortfeasor in J's damages.

JANE v. MOTOR MANUFACTURER

The motor stopped working - product liability

Product liability involves the manufacturer's or seller's tort liability for damages or injuries to the buyer, user, or bystander, caused by a defective product. At common law, product liability was only applicable to those privy to a contract, but modernly, product liability expands to all those who are foreseeable to come in contact with the product. Strict liability requires that 1.) the product is defective, 2.) the manufacturer is responsible for said defect, 3.) the defect is the cause of injury, and 4.) that the product is in the stream of commerce. In this case, the motor seems to be defective, as it failed to work. The facts are not clear as to whether the motor stopped due to a defect made by the manufacturer. The motor stopping could have been, in part, cause of J's ascension under the speedboat. This motor also seems to be in the stream of commerce. Without the presence of a clear defect, more facts are needed to determine if the manufacturer would be held strictly liable. E may also be found jointly and severally liable for failing to inspect.

JANE v. RICK (R)

R makes defamatory statements about J over a nation-wide telecast - defamation

Defamation entails a false, defamatory (offensive and harmful) statement, which is published to a third party.

Slander is defamation in oral form.

Here, R falsely claims that J is actually a man, going so far as to call her "Mister Jane", and that the whole event is a fraud. It can be assumed that J would find these statements, made over a national telecast, offensive and harmful. R will likely be found liable for slander. Misrepresentation (knowingly making a false statement that is relied on, to which that reliance is the cause for damages) may also be asserted, but will likely not hold as the facts do not state that there was any reliance on the statement. In regards to Slander, though, J may suffer damages due to being ridiculed on national television.

JANE v. SPEED BOAT DRIVER (SD)

SD races to the scene, severing J's arms - negligence (supra)

SD had a duty to keep others, including those in the water, out of reasonable risk to harm. SD breached that duty by racing to the scene. But for the speed and failure to see those in the water, J's arms might still be attached. SD could likely be found liable for negligence, although ZSD may raise the defense of necessity, as they had to arrive to the scene as fast as possible.

RICK v. PAM'S ESTATE (P)

Pam shoves R - battery

A battery is the intentional, unprivileged and harmful touching of another person.

Here, Pam intentionally shoves R after he makes his remarks. It can be assumed that this contact was not invited by R. P will likely be found liable for battery.

P shouts at R - Intentional Infliction of Emotional Distress (IIED)

IIED is intentionally making an outrageous statement to cause severe emotional distress in a reasonable human being. Here, P shouts "someone should do a genetic test to see if you're even human, jerk!". What P said was most likely intended to cause R severe emotional distress, but it could be considered a reasonable response to R's previous misogynistic statements, thus making P's comments the least bit outrageous. P will likely not be found liable for IIED.

PAM'S ESTATE v. MATT (M) / R

Matt pepper sprays P - Battery (defined supra)

Here, Matt intentionally pepper sprays P, which P did not invite. M could be found liable for battery against P, but he has a defense. Matt will likely assert a defense that he was acting in defense of R, or the "defense of others" defense. M's response to P's shoving of R isn't

necessarily excessive, and this defense may hold. Pam died as a result from M's pepper spray, but unless M was found to have administered the spray excessively, or negligently, his "defense of others" defense will most likely stand.

⑤

Pam may also attempt to bring action against R under respondeat superior, meaning that the employer could be held vicariously liable for actions done by an employee that are within the scope of employment. Pepper spraying someone would not be in the scope of M's employment as a TV announcer's assistant. R will not be held liable for M's actions. If R were held liable, he could indemnify himself.

PAM'S ESTATE v. CITY/COUNTY EMERGENCY PERSONELL (C)

C were gathered in the doughnut tent at the time of P's death - negligence (defined supra)

①

none
C had a legal duty to be on standby incase of emergency. C breached this duty by not being available at the time of P's peril. The absence of medical assistance could have directly, or at least partially, been the cause of P's damages (death). C will likely be found liable for the negligence in P's death.

TOM (T) v. PAPER

Tom's grieving picture is used in the paper, claiming that he is laughing at J's death - False light

③

False light is the publication of a statement or fact that is NOT false, but casts the plaintiff in a false light due to how the facts are construed, which leads to damages.

Here, Tom is grieving, but the paper states that he is laughing at J's death. He is not actually laughing, but due to how the paper construed the facts, viewers may interpret it in such a way. This would likely cause damages, as no swimmer/diver would ever want to have a coach that would laugh at their death! The newspaper will likely be found liable for false light against T.

DEB (D) v. LYNN (L)

*Good analysis, well
presented & articulated.*

35/38

TRESPASS TO CHATTELS (TTC)

① TTC is defined as the unprivileged interference with the personal property of another. Though Lynn hits the back of Deb's car, she only hits her car due to the Super Cable breaking. Since Lynn does not have the requisite intent and does not act with the knowledge and substantial certainty that she will in fact hit Deb's car, she is

not liable for TTC of Deb's car.

BATTERY

4 A battery is the unprivileged, harmful or offensive touching of another. By striking L with an uppercut that sends L flying into traffic, D clearly intentionally inflicts a harmful and offensive touching on L. The facts are unclear as to who started the altercation, but it appears that D cannot present any defenses here to avail herself of liability. She will be liable for battery on L

Self defense??

LYNN v. GENE and DEB and RUBBERNECKER SPECTATORS
(RS)

NEGLIGENCE

Negligence is defined supra. By driving excessively over the speed limit at 115mph, Gene clearly breaches his duty not to inflict unreasonable harm to others. By driving fast, he was not driving with a reasonable degree of care and struck L, actually and proximately causing her damages.

Deb's hitting Lynn caused her to fly backwards into traffic, where she was struck by G.

6 The rubberneckers who were stopped to watch the fight are also joint tortfeasors here, in their stopping on the motorway is clearly a breach of duty not to inflict unreasonable harm to others, by causing a traffic buildup on a roadway because attention is diverted due to a roadside fight.

Gene will contend that Lynn is contributorily negligent in fighting with Deb on the side of a motorway and will argue that her damages should be reduced in proportion to her degree of fault. Further, he will assert that she assumed the risk in potentially sustained damages by fighting with D on the side of the road in the *12h*

first place.

Lynn may attempt to obtain contribution from Deb, but will likely be found to be contributorily negligent and will not be able to recover.

LYNN v. ACME ROPE CO.

PRODUCTS LIABILITY- DESIGN DEFECT

Products liability holds a manufacturer strictly liable for introducing a defective product into the chain of commerce. There are many types: manufacturing defect, design defect and failure to warn. A manufacturer cannot be held liable for a plaintiff's misuse of product that was not foreseeable.

In addition, there are also various warranties, including both express and implied warranties.

(4) Duty and breach are implied via the manufacturer introducing a defective product into the chain of commerce. Plaintiff must still prove causation and damages. Under a design defect suit, Lynn must be able to prove that the rope was manufactured by Acme Rope Co., which she will be able to show via the rope's packaging, that when she used the rope it was in the same condition as when it left the manufacturer and that the defective product caused her damages.

The Super Cable's packaging states that the rated test strength is 40 pounds. Acme Rope Co. might assert that using the Super Cable.

Since the package expressly states its maximum weight limit, Acme will likely not be found strictly liable under the defective product theory of products liability.

inadequate labeling / notice ↓ OK

FAILURE TO WARN

Failure to warn is a type of products liability that holds a manufacturer strictly liable without fault for inadequate or lack of warning regarding their products.

Lynn will attempt to assert that tiny print indicating the 40 lb test strength is an inadequate warning that caused her damages, since it was not made clearer in larger type.

4
Acme will likely prevail here, as they did place an express warranty on the front of the package indicating the test strength and will assert that their warning was adequate. Further, a reasonable person might assume that a Super Cable advertising to secure anything still might not be sufficient to tow a car.

ESTATE OF GENE V. LYNN

NEGLIGENCE PER SE

Negligence per se allows a person to be held liable for negligence if it can be proven that the plaintiff is in the class of persons that that statute was designed to protect and that the damages plaintiff sustained was the type of harm that the statute was enacted to prevent.

5
very nice
There is nothing in the facts to suggest that Lynn is a licensed truck driver, within the meaning of Road and Vehicles Statute 101 (RV 101). Further, the facts show that Lynn drives a tiny car, and not a tow truck, as required under RV 101. The statute seeks to protect the public against unlicensed tow drivers, not utilizing tow trucks from performing roadside towing assistance. Any non-licensed truck driver, operating anything other than a tow truck when performing towing activities is in violation of this statute, which establishes both duty and breach. Tim and Deb must also prove that Lynn's violation of the RV 101 was also the actual and

proximate cause of their damages.

As Lynn was not a licensed truck driver, using a tow truck to tow Tim's car, she breached her duty under RV 101. Her breach of duty actually caused the damage to Deb's vehicle, but Deb's uppercut to Lynn disrupts the chain of causation here and is a superseding cause to sever Lynn's liability. As such, Lynn's breach of duty under RV 101 is not the actual and proximate cause of Gene's death and she cannot be liable under neg per se for Gene's death.

ESTATE OF GENE v. LYNN WRONGFUL DEATH

- ① Gene's beneficiaries can bring suit against Lynn under a wrongful death statute for Gene's death.

GENE v. TIM BATTERY (supra).

- ④ Kicking Gene's inert body is a harmful and offensive touching. Tim may assert that he was defending Lynn, after she was struck by Gene, however any threat that Gene had posed dissipated, as he now lies inert in the middle of the road. This defense will not work to avail Tim of liability. He will be liable for battery on Gene.

TIM v. BYSTANDERS BATTERY (supra).

- ④ The facts are unclear as to what constitutes "physically subduing" Tim. However, it is reasonable to assume that physical refers to a harmful or offensive touching which would constitute an unprivileged battery on Tim. The bystanders will assert they were acting in defense of Gene, by trying to subdue Tim from kicking Gene. The facts are unclear as to whether the degree of force they

used is reasonably proportionate to any threat that Tim presented to Gene. If their force is proportionate to the kicks inflicted on Gene by Tim, then bystanders can escape liability under a defense of others. However, if they use excessive force, their defense will not work and they will be held liable for battery on Tim.

ESTATE OF TIM/ TIM's BENEFICIARIES v. BYSTANDERS

WRONGFUL DEATH

The battery of Tim (supra) will likely merge with his wrongful death. His beneficiaries, such as a spouse may bring suit against the bystanders under a wrongful death statute.

② Even though Tim was a chronic meth user and an "eggshell plaintiff," the bystanders take Tim as they found him and are liable for his death that they inflicted by physically subduing him, which was too much for his weak heart. Expert testimony may be used to show whether the force the bystanders used was reasonable to defend Gene against Tim's kicking. If it is determined reasonable, then the bystanders cannot be liable for Tim's wrongful death.

SURVIVAL STATUTE

Tim's estate / beneficiaries may also bring suit against the bystanders under a survival statute that permits recovery for any damages inflicted on Tim while he was still alive. The bystanders will attempt to assert defense of others, and if their force is deemed reasonably proportionate to the threat posed by Tim, then they can escape liability.

~~Tim's estate cannot bring suit against Gene, as Gene is no longer alive.~~

END OF EXAM