



**California
First-Year
Law
Students'
Examination**

**Essay Questions
and
Selected Answers**

June 2008

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2008 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2008 California First-Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors and may not be reprinted.

Applicants were given four hours to answer four essay questions.

<u>Question Number</u>	<u>Subject</u>	<u>Page</u>
1.	Torts	4
2.	Criminal Law	17
3.	Contracts	30
4.	Torts	41

ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

Twelve-year-old Charlie was riding on his small, motorized 3-wheeled all terrain vehicle ("ATV") in his family's large front yard. Suddenly, finding the steering wheel stuck in place, Charlie was unable to steer the ATV, and he panicked. Instead of applying the brakes or turning off the ATV, he jumped off of it and ran away. The ATV continued on its own, rolled out of the yard and into the residential street, directly in front of a car driven by Paul. Paul was sending a text message on his cell phone while driving. He failed to see the ATV roll into the street and he crashed into it. Although the ATV was not large, it was heavy enough that the accident caused serious personal injuries to Paul, and significant damage to his car.

An examination of the wreckage of the ATV showed that the steering wheel stuck because of a malfunction of the steering system. The ATV and the steering system are manufactured by KiddieRides-R-Us.

Under what theory or theories might Paul recover, and what is his likelihood of success, against:

- a. Charlie?
- b. KiddieRides-R-Us?

Discuss.

Answer A to Question 1

a. Paul (P) v. Charlie (C)

NEGLIGENCE

P may assert a negligence claim against C. To establish a prima facie case for negligence, the plaintiff must prove: i) the existence of a duty on the defendant to conform to a specific standard of conduct for the protection of the plaintiff against unreasonable risks of injury; ii) a breach of this duty by the defendant; iii) the breach of duty is the actual and proximate cause of the plaintiff's injury; and iv) the plaintiff suffered damages to her person or property.

DUTY

The general duty owed by a defendant is the reasonable person standard, i.e., the defendant is under a duty to act like a reasonable, ordinary, and prudent person and take precautions against creating unreasonable risks of injury to others. The duty is owed to any foreseeable plaintiff. Note that in a situation where the "unforeseeable plaintiff" problem arises, the result depends on whether the Andrews View is followed (which provides that all persons who suffered injury as a proximate result of the defendant's act can be a plaintiff), or the Cardozo View is followed (the plaintiff must be within the zone of increased danger created by the defendant's act).

Duty owed by a child

When the defendant is a child, the duty imposed on the child will be in accordance with the child's age, intelligence, experience, and education. Note that if the child is engaged in an activity of adults, the standard would also be that of an adult.

Here, P would argue that C owes a duty to exercise reasonable care in operating the ATV to prevent it from entering the street, where foreseeable plaintiff may be injured. Further, when it malfunctioned, C should have applied the brake, as a reasonable person would do.

C would counter by arguing that because he is only twelve years old, he may not be under a duty to act with the level of intelligence and experience P is trying to

establish. C would also argue that riding an ATV is not an activity commonly engaged by adults; therefore, a standard applicable to adults should not be imposed. However, P would argue that a child of C's age and experience should be able to stop the ATV in this situation. P is likely to succeed.

BREACH OF DUTY

The defendant breaches his duty when he fails to live up to the applicable standard of care. Here, P would argue that C failed to apply the brake, which constitutes a breach of duty. Breach of duty may be established by direct evidence, circumstantial evidence (*res ipsa loquitur*), or breach of a statute. Here, there is direct evidence of C's act.

CAUSATION

Actual Cause

P would argue that "but for" C's failure to stop the ATV, he would not have suffered the injury. Therefore, the actual causation requirement is met. Note that although C's act standing alone is insufficient to cause the injury, it is nonetheless an actual cause. In cases where there are more than one acts, if any one standing alone is sufficient to cause the result, then that act is an actual cause if it is a substantial factor.

Proximate Cause

The general rule relating to proximate cause is that all consequences that are the normal incidents of and within the increased risk of the defendant's act are proximately caused by his act. The test is one of foreseeability. When there are intervening forces, such forces may break the chain of proximate causation if they are so unforeseeable to constitute a supervening event.

Here, P would argue that C's failure to stop the ATV foreseeably caused it to enter the street and collide with his car. C would argue, however, that P's own act of sending a text message constitutes an intervening event that is unforeseeable and supervening. C would also argue that the ATV's malfunctioning also intervenes with the causal chain. However, P would argue that it is foreseeable that normal negligent acts may occur when motorists are

driving nearby, and C's acts increased the risk of the harmful result (collision). P is likely to establish that proximate cause exists.

DAMAGES

P would argue that he suffered damages to his person ("serious personal injuries") and his property ("significant damages to his car"). Therefore, the damage element exists. P would recover pain and suffering (including emotional distress if he suffered from personal injury as a result of physical impact or threat of physical impact – note that the "zone of danger" doctrine need not be discussed here), lost wages and earning capacity (future capacity will be reduced to present value), medical expense, and loss of consortium.

DEFENSES

Contributory Negligence

In a contributory negligence jurisdiction, when the plaintiff's negligent act contributorily caused his injury, he is barred from recovery. Plaintiff is under a duty to conform to the same reasonable person standard.

Here, C would argue that P is contributorily negligent in sending a text message while driving. Therefore, in a contributory negligence jurisdiction, C has a defense. Note that the last clear chance rule does not apply because the plaintiff's negligence did not occur prior to the defendant's.

Comparative Negligence

In a comparative negligence jurisdiction, the plaintiff's recovery would be reduced in proportion to his own negligence. Here, C would argue that P is contributorily negligent in sending a text message while driving; therefore his recovery would be reduced in an amount proportional to his negligence.

Assumption of Risk

Assumption of Risk occurs when one knowingly and voluntarily enters or stays in the danger. Here P did not know about the danger; therefore this defense does not exist.

b. PAUL (P) v. KIDDERIDES-R-US (K)

PRODUCTS LIABILITY

Products liability is a generic term referring to the liability of a supplier of a defective product to one who suffered injury caused by the product's defect. Products liability can be based on the tort theories of strict liability, negligence, misrepresentation and breach of warranty, and in certain cases intentional torts.

STRICT LIABILITY

Strict liability in torts refers to the imposition of liability without a finding of fault. A prima facie case for strict liability requires the following elements: i) an absolute duty owed by the defendant to make safe (defendant must be a commercial supplier in a strict products liability case); ii) breach of that duty by the defendant; iii) the defendant's breach of duty is the actual and proximate cause of the plaintiff's injury; and iv) damages to the plaintiff's person or property.

In a strict products liability claim, the key elements include: i) the defendant is a commercial supplier (manufacturer, distributor, wholesaler, retailer, and similar parties in the commercial supply chain of the product). A casual seller would not suffice; ii) the product is defective when it left the control of the defendant; iii) the product was not expected to and in fact did not experience substantial alteration; iv) no privity (contractual relationship) is required; the defendant is liable for the buyer, user, and bystander who suffered injury caused by the defect; v) the defendant is expected to anticipate foreseeable misuse by the product's user.

Commercial Supplier and Duty

Here, P would argue that K is clearly a commercial supplier because it is the manufacturer of the ATV. As a manufacturer, K owes a duty to supply a safe product that is free of unreasonably dangerous defects. K placed the ATV in the stream of commerce, therefore owes such a duty.

Defective Product – Breach of Duty

A product is defective if it is unreasonably dangerous, i.e. dangerous beyond the expectation of an ordinary consumer. Generally, the type of defects of a product include: i) design defect, where the product is defective in its design and where a

less dangerous design is commercially feasible; ii) manufacturing defect, where the defect arises from the manufacturing process and the product failed to conform to its specifications; and iii) failure to give adequate warning.

Here, P would argue that the ATV is an unreasonably dangerous product because it malfunctioned during its ordinary course of use. Such malfunctioning is clearly beyond the reasonable expectation of an ordinary consumer. The malfunctioning is likely the result of a manufacturing defect.

Product Defective and not Substantially Altered

P would also argue that the ATV was defective when it left the control of K and was not substantially altered. There is no indication in the facts that the product was expected to or did in fact undergo substantial alteration. Here, an inference similar to the one used in the doctrine of *res ipsa loquitur* (the thing speaks for itself) may be invoked to prove this argument.

Privity is not Required

Here, K may try to argue that P is not in privity (e.g. a direct sale contractual relationship) with K. However, privity is not required for strict products liability. Therefore, as a foreseeable bystander who drives on the street near which the ATV is used, P would argue that he is a foreseeable plaintiff.

Causation

P would argue that his injury was actually caused by the ATV's defect. "But for" the ATV's defect, he would not have collided with the ATV and suffered the injury.

P would also argue that his injury was proximately caused by the ATV's product. The rules of proximate causation were discussed *supra*. Here, P would argue that it is a normal incident and foreseeable consequence that ATV's defect would result in it entering the street and causing the collision. K would attempt to argue that there are intervening forces such as C's failure to control the ATV, and P's own negligence. However, P would argue that these intervening forces are foreseeable (the misuse of C and his own sending text message while driving). And it is likely that the court would find that these intervening forces are not sufficient to break the chain of separate causation.

Damages

Discussed supra (P v. C)

Defenses

Contributory negligence is generally no defense in strict liability cases, unless the plaintiff knows of the defect and is subsequently negligent (which amounts to assumption of risk). Comparative negligence is a defense and discussed supra.

NEGLIGENCE

General rules of negligence are discussed supra (P v. C)

Here, in addition to the elements in the strict liability claim, P must establish that K is negligent. He may attempt to use the doctrine of *res ipsa loquitur* (the thing speaks for itself), and argue that the type of malfunction does not normally occur absent negligence, and that the accident is attributable to K since it is the manufacturer, and that the accident is not attributable to P himself.

Defenses

Discussed supra (P v. C)

BREACH OF WARRANTY AND MISREPRESENTATION

When a product fails its express warranty, implied warranty of merchantability (suitable for the ordinary purpose of its use), or when misrepresentation regarding the product by the supplier exists, this theory may be used. Here, the main issue is the implied warranty of merchantability, which is clearly breached. Privity is not required (horizontal privity not required under the modern trend). No fault need be proved. Defenses are similar to strict products liability cases.

Answer B to Question 1

Paul (P) v. Charlie (C)

Negligence?

Negligence is where the defendant fails to conform his conduct to that of a reasonably prudent person in the same or similar circumstances and thereby creates an unreasonable risk of injury to foreseeable plaintiffs in the zone of danger. Negligence is proven where the defendant owes a duty, breaches that duty, is the actual and proximate cause of plaintiff's injuries and the plaintiff actually suffers injuries.

Duty?

C owes a general duty of care to avoid harming others.

Breach?

C is a child and would normally be held to the child standard of care (that of children of the same age, experience and intelligence). However, when a child engages in dangerous or adult activities, the standard is elevated to that of an adult. Here, C is operating a motorized vehicle capable of doing great damage/harm if not handled in a safe/prudent fashion. C will be held to the standard of a reasonably prudent adult therefore.

Comparing C's conduct with that of a reasonably prudent adult, the question is now whether he behaved reasonably under the circumstances. It is somewhat likely that any adult might panic if faced with C's situation – the steering mechanism of his vehicle suddenly failing and his not knowing what to do, but wanting to avoid harm to himself by escaping the situation as quickly as possible. On the other hand, most adults would probably have the good sense to either shut off the motor and apply the brakes as quickly as possible. Such a move would be more likely to ensure one's safety as opposed to jumping from a moving vehicle. Further, it would be the best way to avoid harm to others or damage to property.

Conclusion: C, when held to the adult standard, has breached his duty to avoid unreasonable harm to others.

Actual Cause?

Actual cause is where the but-for test is applied. Here we can easily state that but for C's failure to stop the ATV and by leaping off of it while still moving, P would not have collided with the ATV.

Proximate or Legal Cause?

This test asks if the harm done was foreseeable given the plaintiff's conduct. Here we can easily state that it was foreseeable that jumping off a moving vehicle (essentially creating a runaway vehicle) would create a very high risk of harm to others nearby.

Damages?

We are told that P suffered personal injuries and that his vehicle was damaged. Damages are established.

Defenses?

Emergency?

C might assert that his actions were understandable given that he was reacting to an emergency. This argument probably won't go far, however. As discussed above, most adults likely would know better than to abandon a moving vehicle and, rather, would attempt to stop it.

Contributory Negligence?

In a minority of jurisdictions, if the plaintiff's own negligence played even the smallest role in creating his damages, there is no recovery. Here, we are told that P was texting on the phone and therefore could not see the ATV in time to avoid hitting it. P had a duty to confirm his own behavior to avoid harm to himself and others. By carelessly texting while driving, P breached that duty in that his full attention was not on the road. But for his texting, P would likely have not hit the ATV, and it was foreseeable that by texting and being inattentive, P might collide with another vehicle, pedestrian or other obstacle. In such a jurisdiction, P's negligence would bar any recovery.

Comparative Fault (CF)?

In the majority of jurisdictions, the plaintiff's negligence would not bar recovery, but reduce the amount of damages he might be awarded based on his proportion of the fault. As discussed above, P was also negligent, so the amount of money he might recover from C would be reduced according to his level of fault in the accident. In a "pure" CF jurisdiction, P can recover even if he's 99% at fault (though he'll get only 1% of the damages he's seeking). In a modified CF jurisdiction, P's fault must not exceed 50%. If it does, he cannot recover at all.

Last Clear Chance?

If a plaintiff had the last opportunity to avoid harm by taking appropriate action, his recovery may be barred. Here P could have avoided hitting the ATV most likely had he not been focused on texting. Had he seen the ATV in time, he might have braked or swerved to avoid it. The facts are not clear on whether this might have occurred.

Conclusion: C is probably negligent in failing to stop the ATV and causing the collision with P, but P's recovery (medical expenses and property damage) will most likely be reduced due to his own carelessness.

P v. KiddieRides-R-U's (R)

Strict Liability in Torts?

Liability without fault ensues if a manufacturer, retailer, or other business involved in the selling of a particular product introduces a defective product into the stream of commerce and causes harm to a buyer, consumer, user, or even bystander.

Proper Plaintiff?

Though not a purchaser or buyer, P is a foreseeable bystander who might be harmed by the ATV (as would anyone within the immediate area of the vehicle). P is a proper plaintiff.

Proper Defendant?

K is the maker of the ATV and placed the product into the stream of commerce. K is a proper defendant.

Defect?

We are told in the facts that the steering mechanism malfunctioned. If the malfunction was the result of a defect present in the ATV when it left K's hands, then K will be strictly liable. It is not clear from the facts if this is the case, however. Assuming that the ATV has not been modified and that the malfunction was not due to long term wear and tear, it is more likely than not that the defect was present when the ATV left K's plant.

Type of Defect?

There are three types of defects – manufacturing defect, design defect, and failure to adequately warn. Here, the defect is most likely one of the first two. Either this particular ATV left the assembly line with a flaw that no other units exhibited or there was a flaw in the overall design of all ATV models that could result in steering failure.

There are two tests for determining a defect: the consumer expectation test (what would the average consumer expect?) and the risk/utility test (where we ask if the cost of avoiding the risk outweighs the utility of the product). With consumer expectation, we can easily say that no consumer would expect the steering to fail on an ATV. With risk/utility, it is clear that the minor cost of making a safe steering mechanism far outweighs any utility (given that the vehicle is for recreation).

The product is most certainly defective.

Causation? (Defined above)

But for the steering defect, there would have been no collision with P. It is foreseeable that a steering defect of this sort could result in a collision with any person, vehicle, or structure in the surrounding area. Causation is satisfied.

Damages? (See above)

Defenses?

Assumption of the Risk?

This is likely the only defense available to K, but K has to prove that P knew the risk, understood the risk, and voluntarily encountered it. There is no indication that P knew an ATV would come flying out of nowhere, so this defense can be quickly dismissed.

Conclusion: K can likely be found strictly liable for P's injuries/damages due to K's defective ATV.

Negligence? (Defined above)

Duty?

K will be compared with other reasonably prudent ATV manufacturers and K owes a duty of general care to avoid making products that pose an unreasonable risk of harm to foreseeable plaintiffs.

Breach?

It is quite obvious that by making an ATV with a faulty steering system, K has breached its duty. A reasonably prudent manufacturer would not allow a product with such a high risk of harm to leave its facilities.

Causation?

But for the steering defect, there would have been no collision with P. It is foreseeable that a steering defect of this sort could result in a collision with any person, vehicle or structure in the surrounding area. Causation is satisfied.

Damages?

See negligence above.

Defenses?

K can raise the same defenses that C might. See above.

Conclusion: K can likely be held liable on a theory of negligence in P's damages.

Breach of Warranty?

Express Warranty?

None was based on the facts.

Implied Warranty of Fitness for a Particular Purpose?

None was made.

Implied Warranty of Merchantability (IWOM)?

IWOM means that a particular product is suited for the purpose for which it's intended.

Here, one can assume that the ATV is suited for locomotion on streets or off-road activity like other ATVs. Part of that equation would be that the vehicle has properly working brakes, steering, acceleration, etc. The fact that the steering on this particular ATV has malfunctioned is most likely a breach of IWOM.

Privity?

Though P was not a purchaser or user of the ATV, some jurisdictions now extend privity to bystanders who suffer damages due to a breach of warranty on a particular product.

Conclusion: If in privity, P can prevail on a contractual theory of breach of warranty against K.

Question 2

Angela, Brian and Carter were at Angela's house, drinking beer. They wanted to order a pizza and have it delivered, but they did not have enough money to pay for it. Carter suggested they order the pizza and grab it from the pizza delivery person without paying. Brian told Angela to call the pizza parlor. She did so and ordered a pizza, knowing she could not pay for it. Brian and Carter waited outside the house.

When the delivery person arrived with the pizza, Carter pulled a gun out of his jacket pocket. Brian had no idea Carter was carrying a gun. Carter fired the weapon into the delivery person's vehicle but did not hit anyone. Carter told Brian to grab the pizza and run. Brian was shocked by Carter's actions and did not move. Carter turned the gun on Brian and told him, again, to grab the pizza and run. Brian then grabbed the pizza, and Carter and Brian fled the scene. Brian and Carter returned to Angela's house through the back door and all of them ate the pizza. Later, the police arrested Angela, Brian and Carter.

With what crimes, if any, can Angela, Brian and Carter reasonably be charged and what defense(s), if any, can each of them reasonably assert? Discuss.

Answer A to Question 2

People v. Carter

Solicitation

The crime of solicitation occurs when a party incites another to commit an unlawful act. This could be any misdemeanor, felony or breach of the peace. If the unlawful act is completed it may merge with the intended crime.

Here, the parties involved lacked the money to pay for pizza so Carter suggested to the other members to order a pizza and then take the pizza without paying for it. Taking a pizza without paying for it is stealing property which does not belong to the person trying to steal it and thus a crime. Since Carter "suggested" to the other members of the parties to steal the pizza and mere words of encouragement or even suggestion are found to be sufficient for the crime of solicitation, Carter has committed this crime.

Conspiracy

Conspiracy is an agreement between one or more parties to commit an unlawful act. The parties must have guilty minds and under the Wharton Rule a crime which must have two people to commit cannot be a conspiracy, for example adultery or duelling. Furthermore, a conspirator may be found guilty of any acts of his or her coconspirators if it is in furtherance of the conspiracy, under the Pinkerton Rule.

Here, Carter solicited the group of people to commit the crime of stealing a pizza (as discussed above), furthermore, he agreed with the other two parties to commit this act and went outside (where the crime was to take place) with the intent of stealing the pizza. His intent can be shown since he solicited the other parties. Furthermore, the act of carrying a gun, shouting commands to other parties and shooting at the victim (the delivery person) can all be seen as acts beyond mere preparation of committing the intended crime.

Carter is likely to be found guilty of conspiracy.

Assault

Assault is an intentional act which places a person in fear or apprehension of an immediate harmful touching. An attempted battery can also be found to be an assault, but if the battery is completed, the assault is absolved by the more serious crime of battery.

Here, Carter brandished a gun to the delivery boy to give up the pizza. It is reasonable to suspect that a gun being pointed at someone would cause them fear or apprehension of an immediate harmful result. Guns can easily put people in fear of losing their lives, so whether or not the gun was loaded or was even a real gun is likely not to help Carter out since a reasonable person would be placed in immediate apprehension of great bodily injury at the sight of a gun. Furthermore, Carter actually fired the weapon. This was likely to let the delivery person know that the gun had bullets and was in fact real. Undoubtedly, the circumstances would put fear into the delivery boy and meet the elements of assault (likely assault with a deadly weapon).

Robbery

Robbery is larceny of person by the use of intimidation or force or future harm to induce him to relinquish personal property.

Here, the delivery person was in sole and rightful possession of the pizza and it was thus his personal property. Since Carter had not paid for the pizza he had no rights to possess it. By using the gun to place fear into the delivery person's mind, Carter met the element of robbery which requires the defendant to do some action which uses force or intimidation to cause the delivery person to relinquish his lawful possession (the pizza, until it was paid for). In addition, Carter by shouting commands to Brian of what was expected to be done ("grab the pizza") met the intent element of the crime.

Larceny

Larceny is the trespassory taking and carrying away of the personal property of another with the intent to deprive permanently.

Here, as established previously, the pizza was in the rightful ownership of the delivery person until payment was relinquished, thus transferring the right to the

personal property. No money was given and thus no right to the pizza existed. Carter commanded Brian to grab the pizza and thus meets the elements of larceny since the taking of something which you do not have the legal right to take can be found to be a trespassory taking and carrying away. Furthermore, the parties ate the pizza – effectively depriving the rightful owner of the pizza permanently. A jury may seek to find Carter guilty of robbery instead of larceny since it is the more serious of the crimes and all of the elements are present.

While Carter is likely to be charged with the majority of these crimes, he may want to say that he cannot be charged with larceny or burglary since the actual taking and carrying away was done by Brian; however, he was a conspirator and will be charged with any crimes that his coconspirators have committed. In addition, his act of using force is likely to render him guilty in both robbery and larceny.

Attempted Murder

Attempt is defined as an act in preparation of that if completed will result in the actual crime. Homicide at common law is defined as the (1) killing (2) of another with (3) malice aforethought. Malice aforethought can be met through four conditions: (1) an intent to kill, (2) a reckless disregard for mankind or a depraved heart/wantonness, (3) intentional infliction of great bodily injury, or (4) felony murder rule. The felony murder rule applies when during the commission of an enumerated felony a defendant commits murder. The enumerated felonies are burglary, arson, rape, kidnapping, robbery and mayhem. Since this was an attempted murder the felony murder rule will not apply. It must be shown that Carter had an intent to kill, a reckless disregard for mankind or an intentional infliction of great bodily injury.

Here, it is likely hard to prove that Carter intended to kill the delivery person or intended to inflict great bodily injury since neither of the two instances occurred. It is most likely that malice aforethought will be found through Carter's actions if he acted with a reckless disregard for mankind. Firing a gun into any inhabited vehicle or house is likely to cause injury whether the injury is intended. Regardless of whether Carter solely intended to scare the delivery person, injury from a bullet being shot into a confined area is high and probably meets the requirements of reckless disregard for humanity. The bullet could have inadvertently hit the gas tank, causing an explosion, or even hit the delivery person.

It is evident that if a death of the delivery person would have resulted from the bullet shot by Carter, he would be charged with murder. However, since no killing occurred the jury could see fit to find Carter guilty of attempted murder.

Defense

Voluntary Intoxication

The only defense that can likely be raised is that all three parties had been drinking beer when the crimes occurred – depending on how much beer the parties drink could establish that the parties, including Carter, could no longer establish the requisite state of mind to commit specific intent crimes. This, however, is unlikely to be a suitable defense since the plans were laid out by Carter and there was adequate timing between the planning and preparation phase to sober up. The facts do not indicate severe intoxication enough to eliminate mental understanding and the likely time between ordering a pizza and the pizza arriving is sufficient cooling off time to stop the planned crime. Finally, Carter was carrying a gun – without the knowledge of his friends. Carrying a gun over to a friend's house cannot likely be found to be a normal activity since one would generally not find a need to defend oneself or shoot anything when going over to a friend's house to drink a few beers and eat dinner. This could establish that Carter had planned criminal behavior prior to arriving at Angela's house and prior to drinking at all.

People v. Angela and Brian

Conspiracy (Defined supra)

If it can be established that Angela and Brian are coconspirators in the acts of Carter then they will be charged with any and all acts committed by Carter or each other in furtherance of the conspiracy. Angela and Brian must have both committed other acts in furtherance of the perpetration of the crime to be considered conspirators. Here, Brian told Angela to call the pizza parlor, knowing that Carter had intended to steal the pizza. Furthermore, Brian went outside to help Carter take the pizza. It can be inferred that in order to take property which is not in your lawful possession you would likely have to use some degree of force or other unlawful tactic to receive that property. This could establish the requisite intent necessary for Brian to be charged as a coconspirator in the crime spree. Finally, Brian grabbed the pizza and

participated in eating it. Brian is a coconspirator and will likely be charged with assault, attempted murder, robbery, and/or larceny in addition to conspiracy.

Angela, knowing that she could not pay for the pizza and knowing that an unlawful act was going to take place ordered the pizza. This is likely to be seen as an overt act since it was involved in the direct chain of events which occurred in the crime. Perhaps, it was the igniting event following the solicitation of Carter. If the jury finds that this was an overt act beyond mere preparation and into perpetration of the crime then Angela will be charged with all of the crimes of her coconspirators in furtherance of the conspiracy.

Receiving Stolen Property

A person may be found guilty of receiving stolen property if they receive the personal property of another which they know has been taken illegally and intend to deprive the rightful owner permanently.

Here, the pizza was taken with force from the rightful owner. Angela knew, prior to the pizza being taken, that the pizza would be stolen from its rightful owner. She accepted the stolen property and ate it – thus depriving the rightful owner of the property permanently. Angela can be convicted of receiving stolen property.

Defenses

Voluntary Intoxication (same as for People v. Carter)

Duress

Brian will want to argue that he was placed under duress and was forced to take the pizza because Carter pulled a gun on him and demanded that he commit the crime. This was a gun that Brian was unaware of Carter carrying. This is a plausible defense but will probably not negate Brian's liability since he was a coconspirator in agreement with Carter and Angela to commit the crime in the first place. In order to take personal property of another – force would likely have to be used. Undoubtedly, Brian and Angela would know this and understand the likelihood of injury or even death.

Finally, Angela would want to argue that she had no idea of the actions going on outside of her house so she could not be guilty of the crimes committed;

however, if she is found to be a coconspirator then any crimes committed by the other conspirators are fair game to charge her with as long as they were in furtherance of the conspiracy. Here, the crime planned was to take a pizza – all alleged crimes were in furtherance of taking the pizza and so all parties are likely to be charged with the crime. (None of the parties made a withdrawal.)

Answer B to Question 2

State v. Carter

Solicitation to Commit Robbery

Solicitation is the asking or suggesting or enticing somebody else to commit an unlawful act.

Robbery is the larceny by force from a person's person.

Larceny is the trespassory taking and carrying away of tangible property of another with the intent to permanently deprive him of his property.

Here, Carter suggested to Brian and Carter [sic] that they grab the pizza from the delivery person without paying. This should be sufficient to meet the element of solicitation to commit robbery (more on robbery later).

Solicitation is a specific intent crime and will merge with the completed offence (if completed). Solicitation will merge with the completed offence, to avoid the double jeopardy clause violation.

Conspiracy to Commit Robbery

Conspiracy is the agreement to commit an unlawful act. It requires the intent to agree and the intent to commit the act. It can be implied from the facts. Here, Brian told Angela to call the pizza parlor. Angela did so and ordered pizza knowing she could not pay for it. Based on the acts of Brian and Angela, it can be concluded that an agreement has been reached between Carter, Brian, and Angela to take a pizza(s) without paying (i.e. to commit larceny or larceny by force). Even if the facts do not indicate that Brian/Angela agreed expressly, their acts indicate beyond a reasonable doubt that they agreed with Carter to commit the larceny/robbery and they had the requisite intent to do the act.

Conclusion: Carter will be charged with the conspiracy to commit robbery/larceny.

Defenses

No defenses are apparent from the facts.

Robbery of Pizza Man

Robbery was defined supra. Here, Carter used a lethal weapon (a gun) and fired at the delivery person's vehicle. The use of force is proven beyond a reasonable doubt.

Carter then forced Brian (under the threat of force) to take the pizza from the van and run. Although Carter did not grab the pizza by himself, he used an instrumentality to take the pizza. (i.e., he used the threat of lethal force to get Brian to steal the pizza from the van).

From the person of another?

Here, the pizza was taken from the van, not from the delivery person. However, the courts should consider the pizza taking as a constructive taking from the person or the person's presence. This element of robbery is also met.

Trespass?

Since none of them paid for the pizza, the taking was trespassory.

Conclusion: Carter will be found guilty of the robbery of the pizza delivery person.

Defenses?

No defenses are present in the fact pattern. Carter intentionally took or forced the taking of another's property by force and without consent.

Attempted Murder of Delivery Man (person)

Attempt is a substantial step towards the commission of the unlawful act. The elements are an intent to commit the act and a substantial step towards the commission. Here, Carter fired the weapon into the delivery person's vehicle. This fact indicates that Carter did not try to scare the other person but he was

trying to actually hit the delivery guy. The firing of a lethal weapon into the vehicle will meet the State's burdens of proof of establishing an intent to murder the delivery man (person).

The substantial step was completed by just missing the person. Therefore, but for the miss, the delivery person would have been hit.

Therefore, the prima facie case for attempted murder will be established by the State. If no malice is found, then Carter could be charged with attempted involuntary manslaughter or other lesser crimes.

Defenses

Carter will claim that he did not intend to kill or shoot at the delivery person. He was only trying to scare him so that he could take the pizza without paying because he had no money. The State will argue that Carter fired the gun into the vehicle and that was a sufficient act to establish an attempted murder charge.

Attempted Felony Murder

Attempted felony murder is an attempt to kill someone during the perpetration of a dangerous felony – here, the dangerous felony is robbery of the delivery person.

The same elements as in attempted murder apply. Felony murder implies a malice and the State will argue that the malice element has been proven. The malice can also be established by intent to kill; intent to inflict great bodily harm; reckless disregard for an unjustifiable risk to the human life (depraved heart murder or willful/wanton conduct). Here, the use of the legal weapon proves intent to kill.

In summary, the State will establish malice aforethought and will also establish either attempt to commit murder; attempt to commit felony murder; or attempt to commit involuntary manslaughter.

State v. Brian

Crimes of Brian

Solicitation of Angela

Brian told Angela to call the pizza parlor. This is a solicitation to robbery/larceny. There are no defenses.

The crime will merge with the completed crimes of larceny, robbery, attempted murder.

Conspiracy

See under State v. Carter. Brian will be reasonably charged with conspiracy to commit larceny or robbery.

There are no defenses, as he told Angela to commit an overt act and waited outside the house with Carter, to see the delivery vehicle with the person inside.

Under the Common Law (CL) the conspiracy was complete when agreement was reached. Modernly, most jurisdictions require an overt act in furtherance of the conspiracy. The overt act would be the telling of Angela to call the parlor and the waiting outside the house to ambush the pizza guy. Thus, the State will establish a conspiracy, under both CL and modernly. He will be liable for all crimes committed in furtherance of the conspiracy.

Robbery

The State may properly charge Brian with the robbery of the pizza person. Please see the robbery analysis under State v. Carter. The only element that it will be difficult to prove would be the force element and the taking of the tangible property with force or the threat of force.

Here, Brian will argue that it was Carter who used force by firing the gun at the pizza guy – he did not use force or threat of force. He was, however, part of the conspiracy to commit larceny/robbery and he will be charged as an accomplice to the robbery committed by Carter.

Thus, even if he did not use the actual force, he was a coconspirator and an accomplice (aided/abetted the commission of crimes) and will be liable for all crimes committed in furtherance of the conspiracy under the Pinkerton rule as well as modernly.

Defenses

Duress:

Brian will argue that he was forced (he was under duress) by Carter to take the pizza without paying. Duress is a valid defense to a theft crime.

Abandonment:

Brian will also raise the abandonment defense that he did not know that Carter had a gun and he changed his mind when he saw Carter pulling a gun and firing at the pizza person. This defense will fail because he did not communicate the defense to the police and he did not say anything to Carter. The abandonment defense requires an effort to thwart the success of the crime. Here, he did not do that and he took the pizza. Finally, all three of them ate the pizza. This further proves that he did not abandon the conspiracy or the commission of the robbery or the other offenses.

Accessory to Attempted Murder?

The State can also charge Brian as an accessory to the attempted murder of the pizza guy. An accessory is one who aids and abets, encourages, assists, participates in the commission of a crime.

He could be charged with the attempted murder of the pizza guy under the coconspiracy theory, because he is liable for any crimes committed in furtherance of the conspiracy.

Defenses

The defenses are the defenses of duress and the abandonment defense. These were discussed supra.

Conclusion: Brian could be charged with the crimes of solicitation, conspiracy, robbery, attempted murder, and larceny of the pizza (if no robbery is established by the State).

State v. Angela

Conspiracy

See Supra.

Angela did call the pizza parlor and ordered pizza knowing she could not pay for it. The agreement and the overt act are easily established. She will be found liable for all crimes committed in furtherance of the conspiracy.

Accomplice Liability: See State v. Brian

Larceny of the Pizza

The eating of the pizza is the same as the sharing of the proceeds of the robbery. Thus, the State will charge her with the crimes committed by Carter and Brian – robbery, attempted murder, larceny.

Conclusion: Angela could be charged under conspiracy and accomplice theories for all the crimes discussed earlier under Brian and Carter.

Question 3

Sally decided to hold a garage sale. She posted signs in the neighborhood which read: "Giant Garage Sale — Electronic keyboard: \$200 (one only), designer clothes, CD's, Books and More! Sunday, Noon to 4:00 p.m."

On Sunday, Andy saw one of Sally's signs, and arrived at her home promptly at noon. He examined the keyboard and then announced, "I'll take the keyboard for \$200, but first I need to get a truck to move it home. I'll be back before 4:00 with the money and a truck." Before Sally could respond, he left.

Sally's friend, Betty, stopped by at 1:00, and saw a designer gown. Betty told Sally, "I'd love to buy that gown, but I can't afford it!" Sally replied, "I had hoped to get \$400 for the gown, Betty, but you've helped me out before, and I've always wanted to pay you back. So, if I can't sell it for \$400 by 3:30, the gown is yours for free." Betty thanked Sally and left.

At 1:30, Chuck browsed through the garage sale and found a set of art books. "I want to buy these," he told Sally, "but I don't have any cash with me." "That's O.K.," Sally replied. "I'll sell you those books for \$100. The offer's open until 4:00." "Thanks," Chuck answered, "I'll be back as soon as I can."

At 3:30, Betty called Sally and asked if anyone had purchased the gown yet. "Not yet," Sally replied. "No one's here so I'm going to close up early. It looks like it's yours." "Thanks," Betty responded. "I am going to run to the store and buy shoes and a purse that match the gown."

At 3:45, Debbie arrived at the sale, pointed at the gown Sally had promised to Betty, and said, "I'll buy that gown for \$300, and I'll buy that set of art books too." Sally sold the gown and books to Debbie.

Chuck returned before 4:00, saw Debbie carrying the books and said to Sally, "You can't sell those books to her! We had a deal!" Although he attempted to give Sally \$100, she refused the money.

Betty arrived shortly thereafter, and showed Sally the shoes and purse that she had purchased to go with the gown. Sally told her the evening gown had been sold.

1. Does Andy have an enforceable contract with Sally? Discuss.
2. Does Betty have an enforceable contract with Sally? Discuss.
3. Does Chuck have an enforceable contract with Sally? Discuss.

Answer A to Question 3

Validity of Contracts

The determination of whether Andy, Betty or Chuck had an enforceable contract will be based on whether a valid contract had been formed. A valid contract requires an offer, acceptance and consideration.

Governing Law

The UCC governs contracts for the sale of goods which are movable things at the time of identification to the contract. All of the items sold by Sally are movable and therefore, goods. Thus, the UCC will control.

Andy v. Sally for keyboard

Offer

An offer is an outward manifestation of a present contractual intent requiring definite and certain terms, communicated to the offeree.

Sally's posted signs

Sally's posted signs which stated Electric Keyboard: \$200 (one only) were not an offer because it is not definite as to who the parties are. It is a solicitation for offers that invites people to come to her yard sale and negotiate with her as usually happens at yard sales.

Sally may argue that since the sign was specific in the number of keyboards for sale (1) and the price (\$200) and time for acceptance (Noon to 4:00 p.m.) it contained sufficient details to be considered an offer. Further, since Andy responded to the sign by arriving promptly at noon willing to pay the \$200, he showed that he believed it was an offer that was available for acceptance.

Under the UCC, which liberally construes the requirements of an offer, quantity and parties must be included for it to be an offer. Since the parties were not definite, it is not a valid offer.

Andy's offer

When Andy said to Sally, "I'll take the keyboard for \$200, but first I need to get a truck to move it home. I'll be back before 4:00 with the money and a truck" he showed his intent to be bound by contract under the terms he stated. There is sufficient detail in his offer because it indicated price - \$200, quantity – one keyboard, parties – Andy and Sally, and time of performance – before 4:00 p.m.

This is a valid offer.

Acceptance

An acceptance is the unequivocal assent to the terms of an offer.

Here, Andy left before Sally could respond to his offer. Therefore, there has been no acceptance. Sally probably retains the power to accept until 4:00. However, she could reject the offer by selling the keyboard to someone else.

Since there has not been an acceptance, there is not an enforceable contract between Andy and Sally.

Betty v. Sally for gown

Offer

Defined supra.

When Betty, a friend of Sally's stopped by and saw a gown for sale she stated "I'd love to buy the gown, but I can't afford it." This statement is not an offer because it clearly indicates that Betty does not intend to buy the gown, only wishes that she could. However, Sally's response may be considered an offer.

Sally's statement "I had hoped to get \$400 for the gown, Betty, but you've helped me out before, and I've always wanted to pay you back. So if I can't sell it for \$400 by 3:30, the gown is yours for free" indicates Sally's willingness to give the gown to Betty, which would show her intent to be bound. The offer cites price – free, subject matter and quantity – one gown, time for performance – 3:30 p.m. The offer contains a condition precedent – the offer is only good if Sally can't sell it for \$400 by 3:30.

Acceptance

Defined supra.

Betty thanked Sally for her offer, which indicates her unequivocal acceptance to the terms. Further, Sally reinforced her acceptance when she called at 3:30 to see if the dress had sold, she was told “Not yet” by Sally, indicating the condition had been satisfied.

Therefore, there is acceptance.

Consideration

That which is bargained for and given in exchange for a return promise requiring benefit and detriment.

Sally will argue that her offer to give the gown to Betty for free is gratuitous and therefore, there is no consideration since she receives no benefit.

Betty will argue that the consideration for was stated by Sally – “You’ve helped me out before, and I’ve always wanted to pay you back.” However, past consideration is not valid.

Therefore, there is no consideration.

Promissory Estoppel

Under promissory estoppel, a promise made by the promisor that the promisor knows will likely induce reliance by the promisee and which does include such reliance may be binding if injustice cannot be avoided otherwise.

When Betty was told by Sally over the phone that “it looks like it’s (the gown) yours,” Betty responded by saying “Thanks, I am going to run to the store and buy shoes and a purse that match the gown.” Thus, Betty was aware that her promise to Betty had induced reliance by Betty. Betty did rely on the promise because she bought new shoes and a purse. This is detrimental reliance and is sufficient to serve as consideration.

Therefore the contract is binding.

Remedies

Specific Performance

Since the gown was unique, it is possible that Betty could seek specific performance. However, that is not very practical or likely since the gown was sold to someone else.

Reliance Damages

Betty will be able to recover the cost of the shoes and purse that she purchased in reliance on Sally's promise.

General Damages

Since Sally breached her contract with Betty, Betty may seek the "benefit of her bargain," which would be value of the dress since specific performance is unlikely. However, it is more likely that she will receive only her reliance damages since the purpose of promissory estoppel is to avoid injustice.

Chuck v. Sally for art books

Offer

Defined supra.

When Sally told Chuck, "I'll sell you those books (the art books) for \$100," she demonstrated her present intent to be bound. The terms were definite and certain – subject matter – art books, price, \$100, parties – Chuck and Sally. These terms are sufficient to be an offer under the UCC.

Therefore, there was an offer.

Option?

An option is a promise supported by consideration that indicates that an offer will be held open for a specific amount of time.

Chuck will argue that Sally's offer included an option because she stated "The offer's open until 4:00." However, Chuck did not give any consideration for the option, so the option is not valid or enforceable.

Chuck may further argue that Sally is a merchant since she is selling her own possession of which she must be knowledgeable and firm offers from a merchant do not require consideration to create an option. However, Sally should not be considered a merchant for this transaction because the goods are art books and there are no facts to indicate that Sally has any expertise in art books. Owning art books does not make one an expert or knowledgeable.

Therefore, the option is not valid and Sally was able to revoke her offer at any time.

Indirect Revocation

Knowledge received by an offeree from a reliable source that the offeror does not intend to enter into the contract is an indirect revocation and ends the power of acceptance by the offeree.

Here, Chuck returned to the garage sale to see Debbie carrying the art books which Sally had sold to her. Chuck's own eyes are a reliable source and the fact that the books had been sold to Debbie indicates that Sally did not intend to make a contract with Chuck.

Thus there was a valid revocation.

Therefore, there is no enforceable contract between Chuck and Sally.

Answer B to Question 3

Andy v. Sally

UCC – Uniform Commercial Code

UCC applies to all sales of movable goods. If a contract exists it will be covered/governed by the UCC.

Merchants

A merchant is one who deals in goods of that nature or holds themselves out as being knowledgeable of a certain good.

Neither party would be a merchant here.

Mutual Assent

Mutual assent is required for a contract and can be demonstrated by a valid offer which is accepted before revocation or expiration.

Offer

An offer contains the required elements and is offered with the power of acceptance. Advertisements are not generally considered to be valid offers because they lack the specific elements of a valid offer.

Signs

Were the signs posted by Sally in the neighborhood considered a valid offer? Only one item contains a quantity, which was the keyboard. Nothing else has a quantity. Under the UCC quantity and parties are required in a valid contract while the other elements can be filled in using UCC gap fillers. Because this advertisement was made to all who could see it and it lacked quantity in all items except the keyboard it would likely not be considered a valid offer. Furthermore, if based upon a reasonable person's view, it would not create the power of acceptance. The one exception to this may be the keyboard.

Andy's Statement

Andy examines the keyboard and tells Sally he will "take it." If the advertisement posted in the neighborhood was a valid offer this statement could be a valid acceptance. Since the subject of the contract was the keyboard and the quantity was in the poster, Andy could have reasonably inferred his statement was an acceptance of the offer. The fact that he leaves without waiting for a reply from Sally would seem to indicate his statement was an acceptance. Andy would likely have accepted the offer made by Sally to form a contract.

Additional Terms

Andy added to his acceptance the additional term of not taking the keyboard immediately but returning for it. Under the UCC additional terms added in the acceptance will become part of the contract unless: (1) the offer prohibits new terms, (2) the terms materially alter the contract, (3) the offer[or] objects. This applies for contracts between merchants. Here, since neither party is a merchant the additional term would be viewed as an additional proposal.

Consideration

There is valid consideration for this contract of \$200.

Contract

If the poster is viewed as being a valid offer for the keyboard, then Andy's acceptance is valid and with consideration will form a valid contract. If the poster is not deemed to be a valid offer, then Andy's statement would be the offer which has not been accepted yet. If Andy returns and Sally accepts his payment and performs, this would form a valid acceptance and contract.

Because of the nature of the subject and the quantity in the poster and Andy's acceptance, the court would find a valid contract exists.

Betty v. Sally

UCC: supra

Gown: goods

Merchants: supra

Neither party

Mutual Assent: supra

Offer: supra

Sign: supra

The gown is not even mentioned in the sign so no valid offer would exist.

Betty's Statement

Betty says "I'd love to buy the gown but I can't afford it." There is no intent to be bound or power of acceptance in this statement. It would not be a valid offer.

Betty's Statement

Betty states she had hoped to get \$400 for the gown and acknowledged that Betty has "helped me out before." She also states that if she can't sell it by 3:30 for \$400 she will give it to her. It would appear this could be a valid offer if there is consideration.

Consideration

Consideration is a bargained for exchange with detriment to each party. Here Sally is giving up her gown (detriment) but is receiving nothing in return. This would be a gift. The only consideration is that of past performance where Betty had helped her out before. Past performance is not sufficient detriment for a current contract. Furthermore, Betty's past actions were not conditioned on future payment. They too, were given as a gift. There is no valid consideration for this contract and, therefore, there is no contract.

Promissory Estoppel

Promissory Estoppel occurs when the plaintiff foreseeably and detrimentally relies upon a promise. The court may enforce an invalid contract to prevent an injustice. Betty will claim she relied upon her friend's (Sally's) promise to get the gown. This is further strengthened by the fact that she called at 3:30, the time Sally promised to make the gift. Sally told Betty – no one is here – I'm closing up – the gown "looks like it is yours."

Certainly at this point it was foreseeable that Betty would rely on the promise of a gift. Betty did in fact rely upon the promise by purchasing shoes and purse. This

reliance is further evident because she told Sally she was going to rely upon this promise.

Because the reliance was both foreseeable and detrimental, the court would likely enforce the contract without valid consideration.

Damages

Betty could claim reliance and general damages for breach of contract if the court enforced the contract under Promissory Estoppel.

Chuck v. Sally

UCC: supra	Art Books: Goods
Merchants: supra	Neither
Mutual Assent: supra	
Offer: supra	
Sign: supra	

Chuck's Statement

Chuck states, "I want to buy these" (art books) but I don't have any cash. This would not be a valid offer but a start of negotiations. It lacks sufficient details to be a valid offer and there is no intent to be bound.

Sally's Statement

Sally says, "I'll sell those books (art books) for \$100." The offer is open until 4:00 p.m. This is a valid offer because it has quantity, price, subject and parties.

Revoked

Can Sally's offer be revoked? Does she have to hold it open 'till 4:00 p.m. as she states? Because neither party is a merchant, it can only be held open if consideration is paid to hold it open, i.e., options contract. Here, there is no compensation paid to hold the offer open and therefore despite her statement to the contrary, she can revoke the offer at any time.

Chuck's Statement

Chuck promises to return but does not accept the contract nor does he pay to keep the option open.

Debbie

Debbie makes a valid offer for the art books and Sally accepts. By accepting Debbie's offer she revoked Chuck's offer before acceptance.

Payment

Because there was no contract Sally did not accept the payment from Chuck when tendered.

There is no contract between Chuck and Sally.

Promissory Estoppel

If Chuck can show he foreseeably and detrimentally relied upon Sally's offer before it was revoked he may have a claim. Based upon the fact here his only reliance was to go home to get money. The courts typically seek to return a person to the position they were in prior to any agreement. Chuck's position would be unchanged and therefore there would likely be no successful claim for Promissory Estoppel.

Question 4

Dede attends college with Alex, Betty, and Carl. One day, an argument that she was having with Alex, her ex-boyfriend, became heated. The argument occurred in a very crowded college lecture hall between classes. During the argument, Dede picked up a heavy textbook and threw it at Alex. Alex shielded his head with his hands and ducked. The textbook missed Alex, but it hit Betty, who was standing behind Alex. The impact fractured Betty's nose.

Enraged at missing Alex, Dede then picked up another textbook and threw it as hard as she could into a crowd of students gathered nearby. This second textbook struck Carl, who was standing in the crowd. As a result, Carl suffered a bruised rib.

What intentional tort claims, if any, do Alex, Betty, and Carl have against Dede? Discuss.

Answer A to Question 4

Alex v. Dede

Throwing book 1

Assault

Assault is the volitional and intentional act of the defendant that causes the plaintiff to have reasonable apprehension of an immediate battery. Here, Dede picked up a textbook and threw it. Her act was of her own will. Intent can be shown by purpose or desire or knowledge to a substantial certainty that a result will occur. Here, since Dede was angry, it appears that her purpose was to hit Alex with the book. Under the concept of transferred intent, intent can be transferred from one tort to another or from one victim to another. Under the majority view, intent can be transferred between all intentional torts except conversion and intentional infliction of emotional distress. Under the Restatement's minority view, intent can be transferred only between assault and battery. Under Prosser's minority view, intent can be transferred between assault, battery, and false imprisonment. Here, Dede's intent to hit Alex with the book will transfer to an assault under any of these views. Additionally, Dede should know with substantial certainty that a person will have apprehension when a book is thrown at them. Here, Alex demonstrates his apprehension by shielding his head with his hands and ducking. A reasonable person would have likewise been apprehensive. Alex will establish a prima facie case for assault.

Throwing book 2

There is no evidence that Alex was affected by the second throwing of a book.

Betty v. Dede

Throwing book 1

Assault (see rule above)

Per the doctrine of transferred intent (discussed above), Dede's intention to assault or batter Alex will transfer to the assault or battery of Betty. Here, Betty was standing behind Alex. The book hit Betty in the face, indicating that she was facing the book as it traveled and would thus be aware of its imminent arrival. It is unclear if Alex ducked at the last moment and thereby did not give Betty time to actually see the book. The facts do not indicate that Betty reacted in any manner prior to the book hitting her. It does not appear that Betty suffered any apprehension.

Battery

Battery is the volitional and intentional act of the defendant causing a harmful or offensive touching to the plaintiff or something closely connected. Here, Dede's act was of her own free will and intent will be transferred as discussed previously. The harmful or offensive touching can be accomplished through the use of instrumentality. Here, the instrumentality is the book. Being hit in the face with a book is harmful, as evidenced by the fracture of Betty's nose, although no actual injury is required. Betty will establish a prima facie case for battery.

Carl v. Dede

Throwing book 2

Assault (see rule above)

As discussed previously, this issue will turn on whether or not Carl was able to see the book coming and thereby suffer any apprehension. The facts do not indicate that he suffered any apprehension so he will not be able to establish assault.

Battery (see rule above)

Here, Dede threw the book into a crowd. While she may have not aimed at Carl specifically, she should have known with substantial certainty that someone would be hit. Through the doctrine of transferred intent, her desire to hit (or cause someone apprehension) will transfer to the battery of Carl. Intent will be established. The book will suffice as the instrument used by Dede to accomplish the touching. Being hit with the book will suffice for the harmful or offensive touching element. Carl will establish a prima facie case for battery.

Defenses

There are no viable defenses.

Remedies

Alex, Betty and Carl will be entitled to compensatory damages. These include pecuniary losses (missed time at work, medical expenses, etc.) and nonpecuniary losses (pain and suffering). Since the torts were intentional and, especially in the case of the second book thrown, may be willful and wanton conduct, they may be entitled to punitive damages as well.

Answer B to Question 4

GENERAL CONSIDERATIONS

Intent

In order to prove an intentional tort, the parties must establish that when Dede threw the text books (1) she intended the results that occurred, or (2) the results that occurred were a substantial certainty of the actions that Dede committed. This is observed through an objective test.

Since the first element of intent (manifest acknowledgement of the intent) is hard to prove, it is unlikely that someone will volunteer culpability; the latter is usually easier to prove. Alex, Betty and Carl must all show that the results that occurred were a substantial certainty of the actions that Dede performed.

Alex v. Dede

Assault

Assault is defined as (1) an affirmative/intentional act, (2) which causes the plaintiff to be in fear or apprehension (3) of an immediate harmful touching. The plaintiff must be aware of the attempt and must be placed in the immediate fear of harm – future threats of harm will not suffice.

Here, Dede threw a book at Alex. College textbooks are not small or light for the most part and a reasonable person would likely be scared of the result of a heavy textbook hitting them. The facts indicate that the throwing of the book was a result of a heated argument which makes the likelihood that the force of the throw was quite strong and could result in a detrimental blow. Alex's fear and apprehension can further be evidenced by his shielding his head and ducking to avoid getting hit by the book. This would be a normal and expected reaction of someone who fears injury from a heavy object being launched at him. Furthermore, given the fact that they were well acquainted (ex-lovers) they were likely not too far away from each other, which would result in an even more serious impact.

Since a reasonable person would block a book from hitting them it is likely that Alex was placed in fear of an immediate harmful touching and that since throwing a heavy textbook at a person is a substantial certainty to cause the person fear, Dede is likely to be liable for assault of Alex. Since there was no harmful touching (the book actually hit someone else) a battery would not apply.

Betty v. Dede

Battery

Battery is defined as (1) an affirmative/intentional act (2) which results in a harmful touching.

Here, Betty must show that Dede intended to hit her with the textbook. This is difficult since Dede was having a heated argument with Alex and likely intended that injury occur to him instead of Betty. However, in tort law there exists transferred intent where as long as the defendant had the requisite intent to injure one party or commit a tort against one party it can be transferred to another party that actually received the tort. This is likely to apply in the case of Betty v. Dede since as established in the assault claim under Alex v. Dede – Dede intentionally threw the textbook at Alex to cause injury – the fact that it hit Betty does not eliminate the intent – only transfers it. Betty is a likely transferred intent victim since Dede threw the textbook in a crowded college lecture hall where students are busily trying to move from one class to the next and not likely to be able to react quickly enough to duck an unexpected flying book from hitting them. Since Dede transferred the intent the first element of battery is met and since the textbook resulted in a fractured nose the second element of a harmful touching is met.

Assault

Betty may have a claim against Dede for assault (as defined above), but if she did not see the book prior to it hitting her then she could not be placed in immediate fear or apprehension of the harm occurring – so there would be no intentional tort of assault.

Carl v. Dede

Battery (defined supra)

Carl must prove that Dede operated with the requisite intent to cause the harm that resulted (his bruised rib). While it is doubtful that Dede intended to strike Carl personally, her action of throwing a second textbook into a crowd of students is substantially certain to cause at least one of those students harm. This element of substantial certainty meets the second requirement of intent under the definition. Hurling anything into a crowd – even a pencil is likely to cause damage – something as large as a textbook could result in serious bodily injury. Finally, Carl must show that his bruised rib was a harmful touching. Undoubtedly, a rib injury due to a hurled object is going to be seen as an objective, harmful touching.

Assault – see Betty v. Dede

Defenses

While it is unlikely that the normal defenses of consent, defense of others, defense of property, self-defense, necessity or arrest will apply to the torts committed by Dede, she may want to argue that an ordinary, reasonable person who was in a heated argument with her boyfriend would react in a like or similar circumstance. It is doubtful that any jurors would accept this plea since no matter how angry a person gets it is not reasonable to throw a potentially dangerous object into a crowded room out of anger.

Dede will likely be responsible for all damages that resulted from her actions. The damages were a direct result of Dede's actions and thus the causation element is met.