

KERN COUNTY COLLEGE OF LAW

TORTS

MID-TERM EXAMINATION

FALL 2019

Professor B. Martin

Instructions:

There are Three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Question 1

12 year-old Ryan McIntosh loves horror movies.

Last week, while his mother was in the other room talking on the phone, Ryan grabbed a credit card out of her purse and used it to order a voice anonymizer, which makes his pre-pubescent voice sound exactly like the deep, energetic voice of a serial killer from Wes Anderson's cult classic film, *Scream*. Ryan has made dozens of purchases with his mother's credit card over the last year, including a gift for a friend's birthday. Ryan's Mom showed Ryan how to make online purchases, but *usually* she is in the same room and understands the details of the transaction.

Ryan found 43 year-old Sally Drake through a search on FB. Sally was the mother of Donna Drake, a classmate of Ryan's older sister who Ryan enjoyed fantasizing about during dull moments in his sixth grade class. While Donna was over at a sleepover at the McIntosh house, Ryan discovered that Sally had her phone number public on FB profile.

Ryan gave Sally a call with his voice anonymizer saying: "Is this Sally? You must love your daughter, Donna, very much. But, you should know that I love her, too. You think she's safe with the McIntosh's, but I've got her right where I want her. If you call the police or McIntosh's, I will make your daughter kneel and pour boiling water down her throat until she burns to death from the insides for your sins."

Sally responds sheepishly, "What do you want me to do?"

Ryan said, "I want you to take this phone and start walking down the street and don't stop or I'll cut out your daughter's tongue, so she'll never be able to cry and ask you 'Mommy why did you let him hurt me?' I'll be watching you."

Ryan got off the phone and started playing Pokemon Go and completely forgot about his prank.

Meanwhile, Sally Drake continued walking and walking and walking. Her phone died and she continued walking with only a grape jelly sandwich on white bread, which she gobbled as she was headed out. After the 18th hour of walking, Sally's feet were blistered and her body inflamed and exhausted. She saw a man she'd seen before – he must be following her! As the man approached her, he said, "You must be Sally?" He'd heard about a missing woman by that name on the radio. Sally pulled out her house keys and stabbed him in the eye to protect herself. The man, who was about to ask her if she was okay and if he could help given her haggard state, lost all vision in his left eye.

Discuss any intentional torts and defenses to intentional torts.

Question 2

Robert, a PG&E inspector, was going door-to-door following the most recent power shut offs inspecting residential meters. To do so, he would have to access the side or rear yards of PG & E customers. Due to the high volume of meters that required inspection, as well as the general urgency created by the shut offs, PG & E was unable to notify its customers of the inspection by robo-calls, texts or otherwise.

As Robert approached Butch's house, he could see over a three-foot high perimeter fence that the meter was located at the rear corner of the house. Rather than announcing himself, or using a gate, Robert simply jumped over the three-foot fence and started walking toward the meter. As Robert got approximately fifteen feet into the side yard, Butch's dog, a 150-pound Rottweiler name "Satan" ran around the corner straight toward Robert. While "Satan" looked exactly as his name suggested, he was, in fact, a fairly docile dog who simply wanted to greet and play with this new person in the yard.

Robert, however, had no way to understand the dog's intentions, and immediately turned around to flee from this devil-looking 150-pound mass of fur and teeth. As Robert ran toward the fence he placed his hand on one of the vertical fence boards to vault over. This board had significant dry rot, and with force of Robert's hand broke causing Robert to fall awkwardly and break his ankle. Unfortunately, the momentum of the fall caused Robert to roll further forward to a point that his cheek was impaled by a broken and jagged sprinkler riser that Butch had meant to repair but hadn't got around to yet.

Robert sues Butch for his injuries under both strict and general liability theories. Discuss what legal theories might be available. Butch disputes the claims and denies that a trespassing Robert is entitled to anything. Discuss any defenses available to Butch.

Question 3

Dirxx, was a big fan of renowned comfort cook Rachel Fay. He liked to watch her show and try to cook her recipes. One day he started making "Blackened Salmon" when he realized he had no Paprika. He immediately jumped into his car to drive to the nearby grocery store. Unfortunately, he forgot to turn off the burner to his pan of sizzling oil and butter.

When Dirxx returned to his street, it was full of fire trucks and emergency medical responders. His stove had caught the pan of oil and butter on fire. The fire spread throughout the entire apartment complex. The fire ruined the personal and real property of everyone in the complex, largely because of an unusual gale wind that came in from the ocean that afternoon.

Among the things destroyed in the inferno was "Lulu." Lulu was his next door neighbor's dog. Lulu's owner, Patrice, had stood on the sidewalk in front of his home and listened in horror as he heard the howls and cries of his burning dog. Patrice suffered severe burns on his hands when he tried to re-enter his apartment to save Lulu. In the end, neither Patrice nor the emergency responders could reach poor Lulu.

What causes of action, if any, could Dirxx's next door neighbor Patrice bring for Patrice's losses, including the loss of Lulu? What defenses, if any, could Dirxx assert? Discuss.

What causes of action, if any, could Dirxx's neighbor Paul, who lives on the far side of the apartment complex bring for the loss of his personal property in the fire? What defenses, if any, could Dirxx assert? Discuss.

Torts-Q2 Answer Outline-Fall 2019 – DSplini

Issue 1 (25%): Dangerous animal/dog bite strict liability analysis:

- No evidence in hypothetical of prior dangerous propensities of Satan the dog
- Dog "fright" vs. dog bite situation: strict liability would not apply
- Duty of landowner in relation to animal regarding unknown trespasser vs. foreseeable, if unexpected, licensee

Issue 2 (50%): Premises liability analysis:

- General duty of owner or possessor of land (*Rowland v. Christian* and CACI 1001 analysis)
- Actual vs. Constructive notice/known or should have known analysis
 - o Was there notice of rotted fence board
 - o Was there notice of broken sprinkler riser
- Obligations required of landowner to discharge duty: repair, make safe, or warn
 - o Further discussion of *Rowland* factors, including likelihood and seriousness of harm and difficulty/cost of protecting against risk of harm

-Significance of Robert's status (trespasser, licensee, guest – under *Rowland* doesn't eliminate duty, but may affect level of duty and care required

Issue 3 (25%): Defenses available:

- Comparative fault of Robert
 - o Could have announced himself
 - o Could have used gate
 - o May have overreacted to Satan

Proximate Cause (2 points)	Paul-Attenuation (2 points)	Reasonably foreseeable to burn far side of complex? (2 points)	(1 pt)	7
Paul's Damages (2 points)	General and Special Damages (2 points)	Property. Anything else? (2 points)	(1 pt)	2
Total Points				105

	Contributory Negligence (2 points)	P duty to P is set by RPP. Patrice injured his own hand (2 points)	(1 pt)	5
	AOR (2 points)	P knows fire is lethal; P tried to enter anyway (2 points)	(1 pt)	5
Paul v. D				
Duty (2 points)	All foreseeable plaintiffs (2 points)	Other side of complex? (2 points)	(1 pt)	7
SOC (2 points)	RPP (2 points)	Turn off the burner (2 points)	(1 pt)	2
Breach (2 points)	<u>Blyth</u> ; <u>Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points)	Burden of turning off the burner against probability of fire (2 points)	(1 pt)	2
Actual Cause (2 points)	But For; (2 Points)	Apartment would not have burned down (2 pts)	(1 pt)	2

Actual Cause (2 points)	But For; Substantial Factor (4 Points)	Apartment would not have burned down; hand would not have been burned? (2 pts)	(1 pt)	9
Proximate Cause (2 points)	Dependent Foreseeable Intervening Act - rescuer (2 points)	P's attempt to save dog RF unless reckless (2 points)	(1 pt)	7
Proximate Cause (2 points)	Independent Unforeseeable Intervening Act - Act of God (2 points)	Unusual gale wind (2 points)	(1 pt)	7
Patrice's Damages (2 points)	General and Special Damages; Loss of Consortium (2 points)	Property; Medical expenses; pain and suffering; companionship of dog (2 points)	(1 pt)	7
Patrice's Damages (2 points)	Indirect NIED; <i>Amaya; Legg v. Dillon; Thing v. LaChusa</i> (6 points)	Is a dog a close relationship; he heard but did not see - is that sufficient (2 points)	(1 pt)	11
Defenses (2 points)	Comp Neg (<i>Li v. Yellow Cab</i>) (2 points)	P duty to P is set by RPP. Patrice injured his own hand (2 points)	(1 pt)	7

Answer Outline Q1-Torts-Fall 2019-RAllen

Issue	Rule	Analysis	Concl'n	Points Allotted
Patrice v D				
Negligence (2 points)	Over-arching Negligence elements (2 points)			4
Duty (2 points)	All foreseeable plaintiffs (2 points)	Other people in the complex (2 points)	(1 pt)	7
SOC (2 points)	RPP (2 points)	Turn off the burner (2 points)	(1 pt)	7
Breach (2 points)	<u>Blyth</u> ; <u>Carroll</u> <u>Towing</u> ; Hand Balance Test (2 points)	Burden of turning off the burner against probability of fire (2 points)	(1 pt)	7

1)

The first question we must analyze is that whether Ryan, a 12-year old boy in the sixth grade could have reasonably create a requisite intend foreseeable for his actions. We must also analyze if Ryan's mom could bare liability (vicarious liability) for her son's actions. The second question is valid because there is a special relationship/duty between a parent and a minor child. In some cases the courts have mentioned that a a minor may create the foreseeable intend by knowing their actions are general wrong/harmful (pulling a chair from underneath another person. It would be reasonably foreseeable that doing so could create a harm or danger to the plaintiff). For this reason, we shall look at all Intentional torts in the question presented.

Trespass to Chattels

Did Ryan's usage of his mother's credit card satisfy a trespass to chattels?

Trespass to chattels is the interference and intermediate of the possession of property belonging to the plaintiff.

Here, the facts tell us that Ryan has in the passed used his mother's credit card. In fact the facts tell us that Ryan's other has taught him how to use the card. However, an important fact pattern is that usually she is in the same room when Ryan is using the credit card and she understands the details of the transaction. This may justify the theory that Ryan's usage of his mother card is consented by his mother. The facts tell us that at the time in question, Ryan's om was not present in the room and was not aware of Ryan's usage of the card (therefore no consent). Ryan may raise the defense that since he had access to the card, there was no trespass to chattels. Ryan's mom could use the defense that she was unaware of his usage and thus the usage was not justified.

It is likely that Ryan committed trespass to chattels by interfering with his mothers possession of her credit card.

Conversion

Did Ryan commit the intentional tort of Conversion of monetary funds vis-a-vis the usage f the credit card?

Conversion (*forced sale*) is the substantial interference, misappropriation, destruction of Plaintiff's property by defendant. If a conversion has been committed, a usual remedy would be for the D to pay P the market value of the converted chattel.

The facts tell us that Ryan used the credit card to purchase the voice anonymizer. The card-holder is Ryan's mom. The money in the account associated with the credit card belongs to Ryan's mother. Ryan used his mother's money to make a purchase therefore converting the money for his purchase. Ryan may bring the defense of custom and that there was implied consent on part of his mother in regards to the usage of the credit card. Ryan's remedy would be to replace the money back to his mother immediately.

Ryan's actions may constitute that he significantly interfered with the mother's possession of money and his misappropriation constitutes conversion. He wrongfully took possession of mother's property.

Should we hold Ryan responsible for his actions?

When children engage in adult activities (driving cars, shooting guns/hunting) the the court may exercise to view them as adults. Since they ought to be aware of the dangerous nature of their actions.

The question before us is if usage of a credit card may be justified as such.

It may be argued if Ryan's activities (usage of the credit card) may be held up to that expectation.

Negligent Infliction of Emotional Distress

Did Ryan negligently inflict emotional distress to Sally (Donna's mother)?

NIED is an act by the D that puts the P under the reasonable apprehension/threat of Physical injury. NIED has two prongs:

Zone of Danger and Bystander Test

Zone of Danger requires that the P be present at the scene and as a result of a reasonable apprehension of physical injury caused by the D, the P encounters an emotional distress. There are two subsections to this theory that apply to (1) the mishandling of corpses; and (2) Over the phone acts that involve falsely telling someone that their spouse or (someone with special relationship to the Plaintiff) has been killed.

Bystander Test requires that the P be at the scene of the incident, the party injured or harmed be a of close relationship to the P and as a result of D's acts, Pleastif suffered sever emotional distress.

Application: It may be shown that Ryan's actions satisfy the elements of NIED. The test for this is if the infliction would cause an reasonable ordinary person to experience such an emotional distress as a result of D's actions.

It may objectively be argued that Ryan's acts may reflect to satisfy the elements of NIED (zone of Danger).

Intentional Infliction of Emotional Distress (IIED):

An act by the D that constitutes extreme and outrageous conduct, causing the P to experience severe emotional distress.

Sally may assert that Ryan's acts were intentional. Sally may also claim that his acts were outrageous. She may claim that she was under such emotional stress that she ran out of the house immediately and walked for 18 hours. Sally can claim that Ryan had the intend to cause her this mental stressed. Ryan deliberately looked up Sally's number and intentionally called her.

Sally would be able to argue that Ryan's actions were intentional, extreme, and outrageous. Thus, she may be able to assert IIED

False imprisonment

Were Ryan's actions enough to satisfy the Intentional Torts of False imprisonment (FI)?

FI is an act(s) or omission to act by the D that restrains, or confines the P to a bounded area without the consent of the P and with the knowledge of the P about the confinement.

The facts tell us that Ryan told Sally to "take the phone and start walking down the street and don't stop", followed by a great bodily threat to her daughter. Sally may argue that her restriction of movement (only able to walk on the street and nowhere else) was in a way a confinement. Sally was aware of this physical restriction, Sally was not given a way out of this confinement and she was bounded to an area (the street). Ryan may use the defense of consent. He may say that Sally acted independently and she was under no threat to follow the instructions given.

While Ryan may use the defense of Consent, Sally's argument would most likely be a stronger one.

Assault

Can Ryan's actions justify Assault on Sally?

Assault is an incomplete tort. It is an act by the D that puts the P in a reasonable apprehension of an immediate imminent harm. Mere words are not enough unless followed by an overt act (fist in the face, gun to the face, raised baseball bat etc.) Assault may also be justified under a conditional threat theory (bank robber pulling gun on everyone in the bank and ordering them to get-down)

It would be a valid argument to bring up for Sally that although Ryan's phone call may not justify an assault, but the context of his message and threat may be assault. Ryan argues that Sally was never under an imminent apprehension of immediate harm to herself and thus she can not successfully satisfy the elements of Assault.

Battery (Causation)

Did Ryan commit battery on Sally when Sally's feet were blistered and her body inflamed and exhausted?

Battery is the intentional harmful or offensive contact with the P or the plaintiff's person (anything attached to the P. purse, clothing, accessories).

This would be a causation question.

Causation consisted of Actual and Proximate cause. A D must be found liable for both in order to be liable for the harm.

Actual Cause (Cause in fact) has three available tests:

(1) But for test: But for had it not been because of Ryan's phone call, Sally would not be walking 18 hours in the street and would not have the physical harm.

(2) Substantial Factor test: When two independent forces join and cause a harm to the P.

(2) Alternative Liability Theory (Summers v. Tice) - Burden of Proof changes to the P: Where there are multiple factors causing the harm that each of them independently could have caused.

Proximate Cause

Dependent Intervening Cause: If it was foreseeable that as a result of D's actions, P suffered another harm. If the matter that follows the original acts of the P is reasonably foreseeable, then original D will still be held liable (does not break the chain of causation)

Independent Intervening Cause / Superseding Cause is when the harm following the D's original actions were so abnormal that it would break the chain of causation and thus D would not be liable.

Here, it would be foreseeable that Sally would follow the instructions given by Ryan over the phone in fear of her daughter's well-being. This would have summarized Ryan's actions not only as the cause-in-fact, but also the Proximate Cause (legal cause). Ryan may assert Consent.

Ryan may likely be held liable to Battery on Sally.

Battery on the Man

Can Ryan be liable for Battery committed by Sally on the Man (Vicarious liability and Transferred Intent)?

(Causation rules above)

Although it may be argued that Ryan is the cause in fact of Sally's presence at the place and time in which the man encountered her, the criminal act of Sally upon the man is likely an independent

intervening cause to the claim. The standard test would be looking at Sally's actions and comparing them to a ordinary, reasonable prudent person. This is an objective test. It is unlikely that an objective person would stab another person in the eye upon a question without being under threat or fear. This may break the chain of causation to Ryan and not hold Ryan liable for the harm done upon the man. Sally may use the fact that she was tired, under stress, having walked 18 hours non-stop, in fear of her daughter and since the facts tell us that she had seems the man subjectively believed that he was about to harm her. And she may use the defense of Self-Defense (available defense to Intentional Torts).

Ryan will likely not be liable for the battery Sally committed on the man due to the fact that this was an independent intervening force (Superseding force)

Can Sally be charged with Battery?

Battery Rules are

Sally stabbed the man in the eye causing him physical damage.

Sally's action satisfies Battery.

Can Ryan's mother be liable for any of this under the doctrine of vicarious liability and omission to act (Duty to supervise her minor child)

Intent (from Intentional Torts) is justified as an act or an omission to act where there was a legal duty. A parent-child relationship satisfies the the notion of duty.

It may be very well argued that Ryan's mom as a result of her failure to act (supervise her minor child) is liable for all the harm done. The only exception would be Sally would most likely still be held liable for the battery committed on the man since that was an abnormal, unforeseen result.

Intention Torts Defenses (applicable ones used above) are:

(1) *Defense of Property*

(2) *Defense of others*

(3) *Defense of 3rd person*

(4) *Consent*

(5) *Authority*

(6) *Necessary*

(7) *Self-Defense.*

END OF EXAM

2)

Strict Liability

The courts utilize the theory of strict liability in cases where the defendant engages in activities that are inherently dangerous. Some of these activities would be the transport of explosive, owning exotic animals (tigers, lions, etc), or even demolishing buildings with explosives. If a pet owners is in possession of an animal that is inherently dangerous, the court might decide to use the theory of strict liability.

Owning a Rottweiler

Issue:

Whether owning a Rottweiler constitutes as an inherently dangerous activity?

Rule:

Strict liability is used when the defendant engages in inherently dangerous activities

Analysis:

While "Satan", the Rottweiler, appeared to be a danger, the dog was fairly docile. The facts do not make any note of the dog harming anyone in the past. There is no reason to even suggest that the dog is an aggressive pet.

Conclusion:

There is insufficient evidence to suggest a claim for strict liability

General liability

When dealing with torts, the courts often times rely on general liability theories. These theories are not too imposing on the defendant's which helps reduce the number of

frivolous claims the court has to handle. Unlike strict liability, the level of care that the individual exercises is considered under general liability.

Negligence

Issue:

Whether Butch was negligent to Robert?

Rule:

To establish a claim for negligence, the plaintiff must satisfy the following conditions

1. Duty
2. Breach of duty
3. Causation
4. Damages

Analysis:

1. Duty

Issue:

Whether Robert trespassed into Butch's property

Rule:

In order to establish a claim for trespass the following elements must be met

1. Physical invasion
2. Intent
3. Causation

Analysis:

When Robert arrived at Butch's property, Robert found himself having to make a couple of decisions. He decided to physically enter the property. He was working for the utility company and simply wanted to inspect the meter. Given that his job required him to physically check the meter within Butch's property, there is an implied intent that Robert wanted to physically enter Butch's property

Conclusion:

Robert trespassed into Butch's property

Issue:

Whether Robert was a discovered trespasser?

Rule:

A discovered trespasser is one who the property owner knows is currently on the property

Analysis:

The facts do not suggest that Butch was aware of Robert's presence.

Conclusion:

Given that Butch did not know Robert was in the property, Robert is not a discovered trespasser

Issue:

Whether Robert was an anticipated trespasser?

Rule:

An anticipated trespasser is one who the property owner anticipates will be on the property

Analysis:

A mere power shutoff is no reason to believe that (1) a utility employee will be on your property. The utility company failed to inform Butch that Robert would be visiting the property

Conclusion:

Robert was not an anticipated trespasser

Issue:

Whether Robert was a licensee

Rule:

A licensee is a person who (1) enters a property (2) with the permission of the owner (3) to conduct business (4) separate to that of the owner

Analysis:

While Robert might satisfy some of the conditions, he did not enter the premises with the permission of the owner (Butch).

Conclusion:

Robert is not a licensee

2. Breach of duty

To establish a valid claim for negligence, the plaintiff must prove that the defendant breached the duty of care. Given the analysis above, Butch owed no duty of care to Robert

3. Causation

To establish a valid claim for negligence, the plaintiff must prove that the defendant's breach of duty was the direct cause of the negligence. Given that there was no breach of duty, the element of causation is not satisfied

4. Damages

While some of the previous elements have not been satisfied, Robert did sustain injuries within Butch's property. Robert suffered a broken hand, a broken ankle, and an impaled cheek. When determining whether damages are to be awarded, different jurisdictions use different theories. The three theories of negligence are (1) contributory (2) partial comparative (3) pure comparative.

1. Under contributory negligence, the plaintiff is not entitled to damages if they are found to be at fault, regardless of the percent of fault that they are found responsible for. Under this theory, Robert would receive nothing because he trespassed and thus is at fault for the damages.
2. Under partial comparative fault, the plaintiff is entitled to recover only if they are found to be under 50% at fault. If the court found Robert to be under 50% at fault, he would be entitled to compensation for his damages
3. Under pure comparative, the plaintiff is entitled to recovery based on the percent to which they were at fault. If the plaintiff was 90% at fault, they would still be entitled to 10% compensation.

Conclusion:

Butch was not negligent to Robert

END OF EXAM

3)

Patrice v. Dirxx

Negligence

A prima facie case for negligence is established when the plaintiff can show that the defendant had a duty, that duty was breached, the defendant's negligence was both the cause in fact, and proximate cause, and the plaintiff suffered actual damages.

Duty

Generally, a person has a duty to use reasonable standard of care. Under the majority view, also known as the Cardozo view, this standard of care extends only to foreseeable plaintiffs. Under the minority, or Andrews view, a person owes a duty to any and all potential plaintiffs. Given the majority view limits liability to foreseeable plaintiffs, it will likely be the case the Robert will only have an action if he can show that Butch owed a duty to him as a foreseeable plaintiff.

Standard of Care

The standard of care is the standard which is used to determine whether a duty exists. Excepting special relationships, such as parent and child, and a general standard of care, there are five separate standards of care: unknown trespassers, known trespassers, licensee, and invitee.

An unknown trespasser is a trespasser that is unknown to the defendant. A person owes no duty of care to an unknown trespasser. It is important to know that this standard does not apply only to the incident in question, but rather it asks not only if the defendant knew about the trespasser at the time, but whether the defendant should have known of the possibility of the trespasser.

Known Trespasser

A known trespassers are people that the defendant knows trespass on this land. As stated above, this extends not only to people the defendant may know are trespassing at any given moment, but also trespassers that the defendant should know may be there. If a trespasser is known to the defendant they have a duty to make sure that all known artificial or non-artificial hazards are made safe. A person does not have a duty to inspect one's property for artificial or non-artificial hazards

Licensee

A licensee is a person invited on the another person's property for a social gather, or similar private event. In these situations, the defendant has a duty to make safe and known any artificial or non-artificial hazards, although they do not have a duty to inspect.

Invitee

The last category is an invitee. An invitee is a person that enters an establishment open to the public for the purposes of commerce. A person owes both a duty to make known and safe any artificial or non-artificial hazards, like a licensee. But, the invitee's duty extends even further to include a duty to inspect.

Common Carrier

Finally, common carriers (such as a train services, or airlines) owe the utmost standard of care.

Here, Patrice's counsel will likely argue that Dirxx violated the general standard of care required. As his neighbor, her counsel will likely argue that she is a foreseeable plaintiff given her proximity to Dirxx's apartment and thus he had a duty to act with the standard care normally required. Inside a semi-dormitory setting especially one should take precautions to make sure their using reasonable care.

Dirxx's counsel will likely contend that this was merely an accident that could have happened to anyone. They would likely contend that at some point in their lives, a person has probably left something on the stove or in the oven.

However, even if that is true, the mere fact that it has happened before does not establish that there is generally standard of care due. All that establishes is that other people may potentially have acted negligently. Given that the fire occurred in an apartment complex where others live in close proximity is likely that a duty has been established.

Breach

Breach occurs when a person has breached their duty by not upholding their standard of care.

Here, Patrice's lawyers will likely argue that Dirxx violated his general standard of care and thus breached his duty.

Dirxx's lawyers may contend again that it was merely an accident, and thus not a breach of duty, but this argument will unlikely be persuasive and it will likely be found that Dirxx did breach his duty.

Causation

In a negligence claim there are two types of causation which need to be shown. The first is actual cause. This established through what is know was the "But-for" test, i.e., but-for some action by the defendant plaintiff's harm would not have occurred. The second type of causation needed to establish a prima facie case is proximate causation. Proximate causation is when the outcome is a foreseeable or natural consequence of a person's of the action. Further, in order to establish causation the chain of causation must not be broken by a superseding event. A superseding event is an independent intervening event, such as an "act of God" which serves to cut the chain of causation, and liability.

But-For

Here, Patrice's counsel will likely successfully argue that but-for Dirxx's leaving his pan on the stove the fire would not have happened.

Proximate causation

Here, Patrice's counsel will likely argue that the fire spreading from Dirxx's apartment to her neighboring apartment is natural and foreseeable consequence of Dirxx's actions.

Dirxx's counsel will likely argue that the abnormally strong gale winds acted as superseding cause in the spread of the fire that breaks the chain of causation. If Patrice was not Dirxx's direct neighbor this argument may be successful. However, give Patrice's apartment's proximity to Dirxx's it is unlikely that the winds will act as a causation breaking superseding event.

Damages

Damages are the actual harm caused to the plaintiff.

In this case, Patrice's counsel will contend that Patrice suffered sever burns are a result of the fire. Further, they will likely contend that Patrice's dog, Lulu, is part of the damages caused by the fire, as she was the property of Patrice and died as a result of the fire.

It is likely that damages will be established in this case, and a prima facie case for negligence will be established.

Defenses

Contributory Negligence

Under the old common law rule, if a defendant could establish that the plaintiff contributed in anyway to their injuries then the plaintiff would be barred from recovering any damages. There was an exception to his common law principle known as the last clear shot rule. If the plaintiff can establish that the defendant had the last clear shot at stopping the harm, but failed to do so, then the plaintiff's own contributions will not bar them from recovery.

Even if this case were to happen within a contributory negligence jurisdiction there are no facts to establish that Patrice was in anyway negligent, and thus Dirxx's would likely not have a defense for contributory negligence.

Comparative Negligence

For comparative negligence defenses there are two types. The first is pure comparative negligence. In a pure comparative jurisdiction the plaintiff can recovery for any percentage of damages awarded by the jury. Thus, even if the plaintiff is found 99% liable, they may still collect 1% of damages. A partial comparative jurisdiction allows for a plaintiff to recover only if their negligence contributed less than 50% to the damages.

As stated above, there are not facts to support that Patrice contributed in anyway to Dirxx's negligence. Even if a jury did find Patrice to be negligent in some way it would likely be well under the the 50% threshold necessary for a partial comparative jurisdiction. This Patrice will likely be able to recover significant damages in both a pure and partial comparative jurisdiction.

Negligent Infliction of Emotional Distress

Negligent infliction of emotional distress occurs when a person acts with negligence which results in extreme emotion distress on the part of the plaintiff. For an NIED claim to be successful the plaintiff must establish that they were in the "zone of danger" of the negligent action.

Here, Patrice's lawyers will likely argue that the negligence which result in Patrice being forced to listen while her dog burns alive constitutes negligent infliction of emotional distress. Her lawyers will likely contend that Patrice was in the zone of danger necessary for a claim of NIED because her apartment was burned down by the fire, and she herself suffered actual burns from trying to rescue her dog.

Dirxx's lawyers will likely argue that NIED should not apply because while the death of a pet is tragic, it does not rise to the level of emotional distress required. Normally, NIED cases are reserved for distressed caused from watching a loved one seriously injured or killed. While Dirxx's lawyers cannot deny that Patrice listened to her dog die, but they will likely argue that the dog was property. If it had been a baby, or another immediately family member, the situation would likely be different. However, since it is not an actual person, Dirxx should not be held liable.

Ultimately, this will likely be a difficult decision for the jury. However, they will likely find that legally, LuLu was in fact property, and that while it is tragic to lose a pet it does not rise to level of NIED.

Paul v. Dirxx

Negligence

A prima facie case for negligence is established when the plaintiff can show that the defendant had a duty, that duty was breached, the defendant's negligence was both the cause in fact, and proximate cause, and the plaintiff suffered actual damages.

Duty

Generally, a person has a duty to use reasonable standard of care. Under the majority view, also known as the Cardozo view, this standard of care extends only to foreseeable plaintiffs. Under the minority, or Andrews view, a person owes a duty to any and all potential plaintiffs. Given the majority view limits liability to foreseeable plaintiffs, it will likely be the case the Robert will only have an action if he can show that Butch owed a duty to him as a foreseeable plaintiff.

Standard of Care

The standard of care is the standard which is used to determine whether a duty exists. Excepting special relationships, such as parent and child, and a general standard of care, there are five separate standards of care: unknown trespasser, known trespasser, licensee, and invitee.

An unknown trespasser is a trespasser that is unknown to the defendant. A person owes no duty of care to an unknown trespasser. It is important to know that this standard does not apply only to the incident in question, but rather it asks not only if the defendant knew about the trespasser at the time, but whether the defendant should have known of the possibility of the trespasser.

Known Trespasser

A known trespassers are people that the defendant knows trespass on this land. As stated above, this extends not only to people the defendant may know are trespassing at any given moment, but also trespassers that the defendant should know may be there. If a trespasser is known to the defendant they have a duty to make sure that all known artificial or non-artificial hazards are made safe. A person does not have a duty to inspect one's property for artificial or non-artificial hazards

Licensee

A licensee is a person invited on the another person's property for a social gather, or similar private event. In these situations, the defendant has a duty to make safe and known any artificial or non-artificial hazards, although they do not have a duty to inspect.

Invitee

The last category is an invitee. An invitee is a person that enters an establishment open to the public for the purposes of commerce. A person owes both a duty to make known and safe any artificial or non-artificial hazards, like a licensee. But, the invitee's duty extends even further to include a duty to inspect.

Common Carrier

Finally, common carriers (such as a train services, or airlines) owe the utmost standard of care.

Here, Paul's counsel will likely argue that Dirxx violated the general standard of care required. As his neighbor, his counsel will likely argue that he is a foreseeable plaintiff given that he lives in Dirxx's apartment complex. Thus, Dirxx had a duty to act with the standard care normally required. Inside a semi-dormitory setting especially one should take precautions to make sure their using reasonable care.

Dirxx's counsel will likely contend that while Paul did live in the complex, he was no sufficiently close enough for Dirxx to owe him a duty.

However, a jury will likely find that people living within the same complex are foreseeable plaintiffs, and thus Dirxx has a general duty of care.

Breach

Breach occurs when a person has breached their duty by not upholding their standard of care.

Here, Paul's lawyers will likely argue that Dirxx violated his general standard of care and thus breached his duty.

Dirxx's lawyers may contend again that it was merely an accident, and thus not a breach of duty, but this argument will unlikely be persuasive and it will likely be found that Dirxx did breach his duty.

Causation

In a negligence claim there are two types of causation which need to be shown. The first is actual cause. This established through what is know was the "But-for" test, i.e., but-for some action by the defendant plaintiff's harm would not have occurred. The second type of causation needed to establish a prima facie case is proximate causation. Proximate causation is when the outcome is a foreseeable or natural consequence of a person's of the action. Further, in order to establish causation the chain of causation must not be broken by a superseding event. A superseding event is an independent intervening event, such as an "act of God" which serves to cut the chain of causation, and liability.

But-For

Here, Paul's counsel will likely successfully argue that but-for Dirxx's leaving his pan on the stove the fire would not have happened.

Proximate causation

Here, Paul's counsel will likely argue that the fire spreading from Dirxx's apartment to other units within the apartment complex is natural and foreseeable consequence of Dirxx's actions.

Dirxx's counsel will likely argue that the abnormally strong gale winds acted as superseding cause in the spread of the fire that breaks the chain of causation. Given the fact that Paul is not a direct neighbor of Dirxx and lives across the complex, the fire damaging Paul's apartment would not have occurred without this independent superseding cause.

In this case, the jury is likely to find that the wind was a superseding cause that cut off the chain of causation for Dirxx's negligence.

Damages

Damages are the actual harm caused to the plaintiff.

Paul's lawyers will likely contend that the burning down of his apartments represents actual damage.

While Dirxx's lawyer may concede Paul's apartment was, in fact, burnt down the breaking of the chain of causation makes it unlikely that Dirxx is liable for this damage.

Assuming that the jury does find above that the chain of causation was broken, Paul's claim of negligence will likely fail.

END OF EXAM