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Monterey College of Law
Torts Exam -- Fall, 2018 -- Professor Martin
Question One

PAUL has a medical condition causing him to occasionally faint but he takes daily medication to avoid those events and he otherwise leads a normal life. PAUL decides to take a bus to the DULL-MART store to do some shopping. The DULL-MART store is a huge warehouse with several departments of merchandise and it is open 365 days a year between the hours of 9:00 a.m. to 9:00 p.m. PAUL arrives at the store at 8:00 p.m.

When he enters the DULL-MART store, PAUL needs to use the restroom and he asks a store employee where a Men's Restroom is located. The employee points to a distant corner of the store and PAUL walks to that location. Finding the Men's Restroom occupied by another customer, PAUL sees a door with a sign, "Female Employees Only" and enters there, finding toilet facilities for the female store employees.

Once in the Female's Restroom, PAUL faints and collapses on the floor. A few minutes later, the store employees begin to close the store for the evening but none of the employees check the restroom where PAUL is on the floor. The DULL-MART store is locked for the night and there are no employees present after 9:00 p.m.

PAUL regains consciousness at 9:30 p.m. and he exits the Female's Restroom. He finds himself locked inside the dimly-lighted warehouse and, after repeatedly calling out, he realizes that he is alone. Believing he must get home to take his medications, PAUL takes a bicycle on display in the store and he pushes on a door labeled "Fire Exit". A loud alarm immediately rings as PAUL exits with the bicycle.

As PAUL begins to ride away from the DULL-MART store at 9:45 p.m., he is seen by two male DULL-MART employees who are still in the store parking lot. The employees hear the alarm and believe that PAUL has stolen the bicycle. They intercept PAUL's path of travel, forcefully grab him, pull him off the bicycle, and pin him on the ground for five minutes. During that time, one of the employees punches PAUL in the face and says, "That's what we think of people who steal!"

Discuss: PAUL vs. DULL-MART in:

1. False Imprisonment
2. Battery

DULL-MART vs. PAUL in:

1. Trespass to Land
2. Trespass to Chattels

Note: Do not discuss principles of Agency. Consider the acts of DULL-MART employees to be the acts of their employer.

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Question Two

PETE has a long history of alcohol and drug abuse, including several arrests, and he is ordered by the Superior Court of Monterey County to attend and complete at least sixteen weeks of live-in treatment at a "sobriety treatment center". PETE's medical insurance pays a fee of \$40,000 and he becomes a resident patient for sixteen weeks at DAVE's HOUSE, a licensed treatment center that advertises and promotes itself as "a safe place to become sober and straight".

After two weeks of sobriety at DAVE's HOUSE, PETE again craves drugs and, one summer night at 3:00 a.m. when everyone else is asleep, PETE creeps from his bedroom to the Staff Room where there is a metal drug locker. The locker is secured by a small padlock, costing only \$3.00, and PETE is able to pry the lock open with a metal spoon from the kitchen. Within the cabinet are opiate pills typically prescribed for pain and PETE is able to swallow what would be a triple dose.

Just twenty minutes later, PETE begins to feel the narcotic effect of the pills and he sneaks out of the house and rests on the front lawn. While gazing at the stars and under the influence of the narcotics at 4:00 a.m., a prowling raccoon bites PETE and runs away. Not only is the animal bite painful, PETE is forced to undergo a series of injections in case the raccoon is rabid or has infected PETE with other toxins.

DISCUSS: PETE vs. DAVE's HOUSE, in Negligence

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Question Three

The business of DOBBS DRUG COMPANY (hereafter DOBBS) is doing research and development to create new pharmaceuticals. For that purpose, DOBBS imports fifty live Egyptian wasps, a species known to carry a rare chemical that may be useful as a cure for cancer. The Egyptian wasps are very aggressive and deliver a particularly painful sting.

DOBBS houses the Egyptian wasps near other caged animals in a modern and clean research laboratory in the town of Monterey. One evening, a student from the nearby university breaks into the unguarded DOBBS laboratory and opens the animal cages in order to free any animals used in experiments. In the process, the student smashes the container containing the Egyptian wasps, so that several of them escape from the laboratory and into the community.

The university student belongs to a radical animal rights organization that condemns any dominion over animals by humans. Several times in previous months, the animal rights organization had staged noisy protests at the site of the DOBBS laboratory and had demanded the release of all animals used for experiments and research.

PAM is a resident of Monterey and she enjoys being a nudist. Soon after the break-in at the DOBBS laboratory, she is naked within her own yard and is stung by one of the Egyptian wasps on an area of her body that would normally be covered by clothes. PAM is one of the few people (one in ten thousand) who not only feels the particularly painful sting, but she also reacts adversely to the rare chemical carried by the insect and she is ill for months.

PAM files a complaint in the Monterey Superior Court, naming DOBBS as a defendant and claiming liability based on Negligence. PAM now wishes to amend her complaint with additional theories of liability.

DISCUSS: PAM vs. DOBBS DRUG COMPANY in Strict Liability only.

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Monterey College of Law
Torts Exam -- Fall, 2018 -- Professor Martin
Question One -- Model Answer

PAUL VS. DULL-MART

1. False Imprisonment

- A. The tort requires an act, done with intent, causing a party to be restrained or confined within fixed boundaries, without reasonable means of escape, and done without consent or privilege. The fact pattern indicates that tort might have occurred on two occasions.
- B. False Imprisonment within DULL-MART
 1. Fixed Boundaries: While the warehouse is "huge", it has defined boundaries and is sufficient to confine PAUL who regains consciousness at 9:30 p.m. and realizes he is locked within the store.
 2. Intent: While the store employees may have been careless in not checking the Female's Restroom, there was no intent to restrain/confine PAUL. It could even be argued that when the store was closed for the evening, there was no substantial certainty that a person would be confined. The element of "intent" is missing.
 3. Reasonable Means of Escape: The facts seem to say that PAUL soon realizes he is alone, locates a bicycle, and leaves the store by merely pushing on a "Fire Exit" door. As PAUL's confinement within the store was easily escapable, the tort does not seem to exist there.
- C. False Imprisonment in the parking lot.
 1. Because PAUL was "forcefully grabbed" and "pulled off the bicycle" by two male store employees, then pinned to the ground for five minutes, his liberty and freedom of movement ended and he was confined to a certain location. The absence of "walls" in the parking lot do not matter and the tort of false imprisonment likely took place there.
 2. Although the elements of the tort are present, DULL-MART may claim the limited "shopkeeper's privilege" whereby a shopkeeper may temporarily & with reasonable force detain a suspected violator. The detaining may include physical touching.
 - a. The issue is whether the DULL-MART employees utilized reasonable force or whether they abused the privilege with unnecessary force.
 1. Because one employee punched PAUL in the face while he was pinned to the ground, that force may be seen as excessive. The language of the employee who punched PAUL seems hostile/malicious. The privilege was therefore likely exceeded and would not apply.
 2. It follows that the parking lot detention likely amounts to an occasion of unprivileged False Imprisonment.

2. Battery

- A. The elements of the tort are an act, done with intent, causing harmful or offensive contact with a person and done without consent or otherwise privileged.
1. Intent: The employees move to "intercept" PAUL's "path of travel", then while PAUL is pinned to the ground, one of them punches PAUL. It is clear that those actions are deliberate and volitional, especially in light of the employee's language that reflects intent and possibly malice.
 2. Contact & Harmful/Offensive: The act of striking PAUL is also certainly an occasion where there is contact with a person and a punch in the face is likewise certainly harmful or offensive.
 3. Privilege of Recapture of Chattels: While there is a privilege to use reasonable force to recover an item of personal property wrongfully taken, there are limits on that privilege.
 - a. The privilege only allows limited force and can only be employed when the wrongdoer is in the process of taking the chattel, or shortly afterwards, when there is "hot pursuit". Those requirements (the initial timing of the privilege) seem to exist as PAUL had just exited the store and "begins to ride away".
 - b. However, the amount of force must be reasonable and the issue is whether the employee acted reasonably when he punched PAUL -- after PAUL had been pinned down and the bicycle was recaptured. With excessive force and with hot pursuit no longer happening, the privilege may have been abused and its protection nullified.
 - c. Therefore, the tort of Battery likely exists and is not privileged.

DULL-MART vs. PAUL

1. Trespass to Land

- A. The tort requires the elements of an act, done with intent (which may be presumed), causing entry into the land of another, without consent or privilege.
1. Entry without Consent: While PAUL was invited into the store as a member of the public, that invitation has its limits.
 - a. PAUL was not invited into restricted or secured areas and the facts state that PAUL enters an area marked "Female Employees Only". Therefore, he may have been a trespasser within that small area.
 - b. PAUL was invited to shop at DULL-MART but he was expected to leave at closing time. Therefore, remaining after closing hours may have also made PAUL a trespasser.
 2. Act: PAUL's entry to both the store and restroom seems to be volitional and deliberate.
 3. Intent: PAUL deliberately entered the Female's Restroom but he had no intent to remain in the store after closing time. Therefore, PAUL may have no liability for being in the store after closing time as he had fainted and had no intent to remain, unless his intent is presumed.

4. Privilege: Because PAUL "needed to use the restroom", those circumstances may amount to an emergency and PAUL may have been able to use the privilege of Necessity.
- a. That privilege allows the use of another's land, for a limited time, to seek safety from serious circumstances that threaten life or property. PAUL would allege that his need to use a restroom was urgent.
 - b. DULL-MART may reply that PAUL was near a Men's Restroom and could have waited.
5. Therefore, it is likely that PAUL is nominally responsible for trespassing into the Female's Restroom but he is not responsible for trespassing by remaining in the store after closing time, due to lack of intent.

2. Trespass to Chattels

- A. The elements of the tort are an act, done with intent, which causes the intermeddling with the personal property of another in a manner that impairs the chattel's condition, quality, or market value.
1. Act & Intent: PAUL purposefully and deliberately took a bicycle from the store and was intending to ride it home. The facts say that PAUL began to ride the bicycle away from the store.
 2. Intermeddling Causing Impairment: The facts do not describe any harm to the bicycle. Therefore, it can be presumed that the bicycle did not suffer a loss of quality or market value and, without impairment, the tort would not exist.
 - a. Privilege of Necessity: Even if there was intermeddling and a slight impairment, PAUL might claim the privilege of necessity which allows the use of another's property, in order to avoid more harmful injury to himself or a 3rd party. Because PAUL believed "he must get home to take his medications", he may argue a genuine urgency to utilize DULL-MART's bicycle. If the privilege exists, PAUL may be required to pay any actual damages for the brief use of the chattel but otherwise he might not be liable for the tort of Trespass to Chattels.

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Question Two -- Model Answer

PETE vs. DAVE's HOUSE, in Negligence

When DAVE's HOUSE (DH) failed to prevent PETE from obtaining/ingesting drugs while a resident within their care facility, it may have breached a duty owed to PETE and caused his harm. Therefore, PETE may proceed against DH by utilizing a cause of action in Negligence.

Negligence is behavior that falls below the standard of care which would have been followed by a reasonable person/entity, in the same or similar circumstances, to avoid an unreasonable risk of harm. That is, Negligence is the breach of a duty that causes damages.

1. Does DH owe PETE a Duty?
 - A. A duty to PETE may be seen by considering what a reasonable treatment center would do to protect its residents. The facts state that PETE has "a long history of drug abuse" and the very purpose of DH is to provide sobriety treatment. DH would therefore be responsible for providing adequate staffing and secure facilities. Adequate staffing would likely involve overnight staff. Secure facilities would likely involve contraband being held in a manner that protects the residents.
 - B. A duty may also be owed due to contract or promise. The facts state that DH advertises itself as a "safe place" and that could be seen as a promise to protect the residents, even from themselves. The facts also state that PETE's insurance paid a large amount of money (\$10K per month) and that certainly is a contract for adequate, reasonable care.
 - C. A duty may also be owed due to a duty to rescue, as it is substantially certain that PETE is in need of treatment for habit/addiction, and that PETE could likely be emotionally fragile. As a person who has been referred to treatment by the Superior Court, once he becomes a resident of DH, PETE should be watched and protected.
2. Was any duty Breached?
 - A. Any of the above duties of care would be breached by failing to provide around-the-clock security for the residents. That would mean DH should have provided overnight staff. Because "everyone else is asleep", PETE was not supervised during his "craving" for drugs. The lack of awake staff would be a breach of duty.
 - B. Any of the above duties of care would be breached by not safely and securely locking the medicines/narcotics in a secure locker. The facts state that the locker is only secured by a "small padlock", costing only \$3.00. While the locker may have been sturdy, the facts describe a padlock that is light and cheap, and it is compromised by a simple spoon. On a Hand Formula analysis, the burden of

using a strong padlock may only have cost another \$20, while the likelihood of abuse by resident-addicts is very high and the harm that would be possible is also high. Therefore, the use of a "small padlock" by DH is another example of breach of duty.

3. Was the breach of any duty the Cause of PETE's harm?

A. Actual Causation

As PETE was injured because of multiple causes (failure to watch PETE and place the drugs in a secure locker, as well as a wandering raccoon), it cannot be said that but for DH's negligence, PETE would not have been bitten. That is, PETE could have gone onto the lawn completely sober, gazed at the stars, and still have been bitten. It might be believed, however, that DH's negligence was a substantial factor in bringing about the harm as PETE was "under the influence of the narcotics" and, while on the lawn at 4:00 a.m., was too impaired to see the animal, then react to avoid the animal. Therefore because this is a situation of multiple causation, and because PETE's intoxication/impairment increased the risk of being bitten, PETE may successfully show actual causation through a substantial factor test.

B. Proximate Causation

The harm to PETE did not flow directly from DH to PETE because it was delivered by a 3rd party/force (the raccoon). DH may argue that because the raccoon is an intervening force -- possibly an independent cause, or the sole proximate cause -- he cannot be held responsible for PETE's harm. Secondly, DH may argue that, per a Cardozo duty analysis, DH is only responsible for harms within a foreseeable zone of danger (harm within the risk) and when PETE left the residence he strayed out of that zone. PETE may answer, per an Andrews world-duty analysis, that DH owed a constant duty to PETE because of his residency at the treatment house, wherever PETE traveled.

4. Can DH utilize any defenses to PETE's allegations?

A. Contributory Negligence

DH would likely claim that PETE's actions were careless, lacking in judgment, and/or self-destructive. In that way, DH would invoke the common law defense of Contributory Negligence -- a doctrine that says if Plaintiff fails to conduct himself in a reasonable way, and if that behavior is a substantial factor in causing the harm, then Plaintiff is barred from maintaining an action. DH would likely point out that PETE himself breached the lock and willingly took the opiates. In response to a defense of Contributory Negligence, PETE would argue that he was a "Helpless Plaintiff" and, although DH did not place him in a position of peril, DH was aware that PETE has a "long history" of substance abuse and helplessness during his craving for drugs. PETE would argue that his helpless status forgives his contributory negligence.

B. Assumption of Risk

DH would also likely claim that PETE's own actions and decisions show he assumed the risks of taking drugs, and that when illegal drugs are ingested, bad

things can happen. PETE, DH would argue, clearly knew the effects of opiates and volunteered for any "bad events".

In response to a defense of Assumption of Risk, PETE would argue that the assumption doctrine requires actual knowledge of the specific risk and a free, willful volunteering to proceed towards that known risk. PETE would argue that while he knows about the dangers of drugs, he had no ideas of being confronted by a biting raccoon. PETE will contend that his harm was not within his knowledge or foresight and the doctrine should not apply.

5. Conclusion

A good argument can be made that DH owed PETE a duty and that any duty was breached by DH not protecting its residents in a reasonable fashion. It is also persuasive that DH's breach was a substantial factor in PETE obtaining drugs and being vulnerable to a bite by a wild animal, but there could be doubt that a raccoon bite is a foreseeable result of taking opiates.

The defenses of contributory negligence and assumption of risk do not seem potent in this fact pattern because of the vulnerability/helplessness of PETE, as argued above, PETE's reliance on DH's protection, and the unforeseeable source of harm.

Therefore, if PETE can survive a proximate cause argument due to the independent/unforeseeable nature of the raccoon attack, PETE could succeed in Negligence.

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Question Three -- Model Answer

PAM vs. DOBBS DRUG COMPANY, using theories of Strict Liability

1. Animals

- A. Common Law Doctrine: At common law, the owner of a wild/feral animal, or a domestic animal with a propensity to attack, is strictly liable for harm to others caused by the animal. Here, the animal is a wasp -- an animal that is certain to be characterized as "wild" -- and PAM would argue that DOBBS is strictly responsible for the harms caused by the escaped wasp's sting.
- B. Causation: PAM suffered two harms from the wasp sting. First, she suffered a "particularly painful" wound/sting. Second, PAM suffers being "ill for months" because she reacts adversely to the rare chemical in the sting.
 - 1. DOBBS might concede responsibility for the painful sting but would likely argue that the harms must be the type that would be foreseeable from that type of animal. That is, the expected result of a wasp sting is temporary pain but not months of illness. Also, DOBBS would argue that PAM's extrasensitivity is an additional proximate cause defense that goes to PAM not being a foreseeable plaintiff.
 - a. PAM's answer is that foreseeability is a Negligence analysis and, under Strict Liability, DOBBS should take the Plaintiff/victim as they find her and without reference to fault.
 - 2. DOBBS might also argue that the actual cause of the wasp's escape was the intervention of a criminal third party, namely the radical student. While that might be pertinent in a negligence analysis -- arguing "indirectness" through a third party's acts -- that analysis would also not matter in Strict Liability.

2. Abnormally Dangerous Activities

- A. Common Law Doctrine: At common law, if one is carrying out an activity characterized as "abnormally dangerous", there is liability for foreseeable harm caused by that activity.
 - 1. Was it an abnormally dangerous activity to import Egyptian wasps? The Restatement 2nd looks to a balancing of the likelihood of harm, times the extent of the risk, while considering the nature/benefit of the activity.
 - a. On one hand, the likelihood of months-long illness is limited given a set number of wasps (50) and only "several" of those escaped. Further, only a "few" people (one in ten thousand) will react adversely. Any citizen, however, is capable of feeling a painful sting so that harm would be more likely.
 - b. The nature of the activity (importing wasps) is not common for a private citizen, and that is a factor considered by both Restatements 2nd & 3rd. However, the activity may be ordinary/common for a pharmaceutical company that does research.
 - c. The benefit of the activity may be the discovery of a cure/therapy for cancer and that would indicate great social benefit.

- d. Thus, when balancing those Restatement factors, including great social benefit, it is possible that the importing and testing of Egyptian wasps by a pharmaceutical company may not be an abnormally dangerous activity.
2. Was the harm foreseeable? As the doctrine only allows recovery for foreseeable harm, it may be argued that PAM may recover for the painful sting, but PAM's reaction was rare and possibly beyond liability.
 3. Was PAM extrasensitive? Another defense recognized by the Restatement is for extrasensitivity and DOBBS will likely argue that the months-long illness was due to that status.
 4. Was PAM contributorily negligent? DOBBS can be expected to point out that PAM was naked at the time and stung on an area of her body that could have been covered. The Restatement does not allow contributory negligence as a defense and it is doubtful that being naked in one's own yard is faulty/negligent behavior.
 5. Did PAM assume a risk by being naked? The Restatement allows Assumption of Risk as a defense but that defense requires a knowing and willful proceeding when faced by the risk. PAM likely did not know of the wasps' escape, nor did she likely know of her reaction to the sting.
 6. Was causation not met because of the independent intervention of the radical student? That defense also will not work as the Restatement states liability exists despite actual causation through an intervening agent.

3. Nuisance

- A. Common Law Doctrine: At common law, one is liable for the substantial and unreasonable interference with the use and enjoyment of another's land. This doctrine may apply because PAM was stung "within her own yard".
1. Was the invasion unreasonable? One test is to weigh the gravity of the interference (painful sting & months-long illness) against the utility (benefit of research). Another test is to ask if the cost of prevention (a guard in the unguarded lab) would be prohibitive.
 - a. DOBBS may benefit from the great utility of the activity.
 2. Was the invasion substantial? Because the sting and adverse reaction would likely be seen as tangible (far more than mere annoyance), the invasion would likely be seen as "substantial".
 3. Could DOBBS use the defense of "live & let live"? DOBBS may argue that society must accommodate research for the greater good of progress and that progress may mean unavoidable intrusions.
 4. Could DOBBS use the defense of "extrasensitivity"? Because Nuisance is judged by an objective standard, the law only protects against harm that would be suffered by a normal person in the community. Here, PAM is "one of the few people" (one in ten thousand) who "reacts adversely" and DOBBS may be excused from PAM's harm beyond the painful sting.

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Prof. Martin

Question 1

Paul v. DULL-MART

1. False Imprisonment

Issue: False Imprisonment

Is Dull-Mart liable for False Imprisonment of Paul?

Rule: A defendant is liable for false imprisonment when they act intentionally to (cause) restrain or confine another person within fixed boundaries (may not include walls or a lock) without means of escape, and without consent or privilege.

Analysis: Here, we have ^{Two} instances when Paul was confined or restrained. The first instance occurred when Paul was locked inside the store. The second instance occurred when the store employees grab Paul and pin him on the ground for five minutes. When Paul was locked inside the store at night after the employees left for the evening, Paul was temporarily confined within the store. After regaining consciousness at 9:30 pm, Paul realized that he was locked within the dimly-lighted warehouse. After repeatedly calling for help, he realizes that he is alone. Believing he must get home to take his medications, Paul took a bicycle and pushed on a door labeled "Fire Exit" and Paul exited the store. The temporary confinement within the store seems only momentary, however, False Imprisonment can be for a short, as well and long period of time. The important elements

THIS IS A GOOD 1ST PAPER
- I LIKE YOUR ORGANIZATION
- I LIKE YOUR UNDERSTANDING OF THE LAW
- SOLID ANALYSIS!
- SOME CREATIVE THINKING!
KEEP IT UP!

IS IT NECESSARY TO WRITE THIS 3X?

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GOOD



are an intentional restraint or confinement without means of escape. Additionally, the "fixed boundaries" do not have to have a "wall" or a "lock". The employees of Dull-Mart did not check the female restroom where Paul fainted. There does not appear to be an intent on the employee's part to confine or restrain Paul at this time. Additionally, Paul was able to leave the store very quickly after realizing that no one was in the store.

However, once Paul got outside he is quickly spotted by the two employees. The employees believe that Paul has stolen the bicycle. They intercept Paul's path of travel, blocking him, and forcefully grab him and pull him off the bicycle, and pin him on the ground for five minutes. The intentional actions of the two employees clearly meet an intentional act to restrain and confine another person within "fixed boundaries", albeit without lock and key. Paul has no apparent means of escape when he is overpowered and held on the ground for five minutes. The actions of the employees were definitely against Paul's consent.

From a defense perspective for Dull-Mart, they would likely claim that they were acting under Shopkeeper's privilege when their employees intercepted and held Paul on the ground. Under this privilege, the employees were attempting to recapture chattels (the bike that Paul had taken from the store). However, the defense of recapture of chattels must be proportional to the force required to recover the chattels, and it must be measured. Here, the employees used excessive force compared to what a reasonable person would have used under similar circumstances. The employees could have first stated a verbal warning to stop. If Paul didn't respond, the employees could have intercepted Paul and grabbed him with no more force than necessary to restrain him. However, the forceful grabbing and pinning him to the ground was above a measured, reasonable amount of force.

Conclusion: Dull-Mart will likely be held liable for the False Imprisonment of Paul.

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~~2 Battery~~

Issue: Battery

Is Dull-Mart liable for Battery of Paul?

Rule: A defendant is liable for Battery when they intentional conduct an act which causes contact with another person or something appurtenant to, which is harmful or offensive, without consent or privilege.

Analysis: When the employees intercept Paul and forcefully grab him and pull him off the bicycle, they made contact with Paul which (by the force described) was harmful and offensive. The grabbing of Paul was without consent or privilege, they made to verbal command or request to touch Paul or gain his consent to do so. Additionally, one of the employees punches Paul in the face and says, "That's what we think of people who steal!". The punching of Paul was not only offensive, it was harmful in that it would likely cause injury - Although only the slightest of touching that is in a offensive or rude way could be sufficient for battery.

From a defense perspective for Dull-Mart, they would attempt to claim that they had Shopkeeper's privilege (as above) for the recapture of chattels. However, the force used by the employees was not measured, proportional to the force required, and was not reasonable.

Conclusion: Dull-Mart will likely be held liable for the Battery of Paul.

DULL-MART v. Paul

1. Trespass to Land

Issue: Trespass to Land

Is Paul liable for Trespass to Land on the Dull-Mart Property (female restroom)

Rule: A defendant is liable for trespass to land when they intentionally enter another person's property (above, below, on, or through nuisance - in a physical sense) without consent or privilege.

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Analysis: When Paul needed to use the restroom, he found that the Men's restroom was occupied by another customer. Paul saw the Female Employees Only sign and entered the room. Once inside, he found the toilet facilities for the female store employees. Paul disregarded the sign to not enter the location that warned "Female Employees Only" intentionally. This was an intentional act that caused entry into the Dull-Mart property (an area of the property that they had restricted for Female employees only). Since Trespass to Land is consider strict liability (only the entrance to the land or property is required), Paul's act could be considered a trespass to land and was against Dull-Mart's consent as he violated that sign.

From a defense perspective, Paul could claim that he entered the female employee location out of necessity. The necessity consisted of an emergency to use the restroom. Necessity requires an emergency that was not created or contributed to by the defendant and presented an immediate risk of danger or harm that outweighs the harm caused by the defendant creating a harm to avoid the emergency. Necessity typically arises out of an agency of Nature. The defense could argue that the need for a restroom was an agency of "nature" and the harm of entering the female location to use the restroom was less than the harm of suffering from a full bladder. Additionally, Paul could have waited for the men's restroom to be available.



Conclusion: From a strict liability perspective, it is possible that Paul could be held liable for Trespass to Land when he entered the restricted area of the Dull-Mart store.

2. Trespass to Chattels

Issue: Trespass to Chattels

Is Paul liable for Trespass to Chattels when he took the bicycle from the store?

Rule: A defendant is liable for trespass to chattels when they intentionally act to cause inter-meddling with another person's chattels, causing damage to a materially valuable or marketable interest without consent or privilege.

Analysis: When Paul took the bicycle on display and exited the store through the emergency exit, Paul inter-meddled with the property of the store. By taking the bicycle out of the store, he could cause damage to the marketable interest of the bicycle by reducing its value for sale to a customer. Paul took the bicycle without consent or privilege.

From a defensive perspective, Paul may claim that he took the bicycle out of necessity. The necessity arose when he believed that he must get home to take his medications. His medications are necessary for a medical condition that causes him to faint. Since Paul just experienced an episode of fainting in the store, it could be found that Paul reasonably believed that he was faced with an immediate danger that he needed to protect himself from (the fainting without his medication). One can use the defense of necessity for an action of Trespass to Chattels under the theory of an immediate harm that the defendant faces and a need to avoid that harm with a lesser evil by necessity to commit an additional, but lesser harm (in this case, taking the bicycle to get home and take his

medication). However, one could argue that Paul created the emergency by not having his medication with him since he needs it on a daily basis.

Conclusion: It is possible that the jury may accept the defense of necessity. However, it is likely that the need to Trespass to Chattels is not justified in this case. Paul could have other options, such as taking a bus (the same way he arrived at the store), or by calling a friend. It is probable Paul would be liable for Trespass to Chattels.

END OF EXAM

2)

PETE v. DAVE'S HOUSE

Dave's House may be liable for negligence for failing to store their facility's medication in a more secure location.

Negligence is conduct that falls below the reasonable standard of care that should have been followed by a reasonably prudent person in the same or similar circumstance in order to avoid an unreasonable risk of harm. It is also a breach of a duty causing harm.

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Duty

Here, Dave's House is a business, specifically, a residential sobriety treatment center that promotes itself as "a safe place to become sober and straight". Pete, a new patient at Dave's house is undergoing treatment at the facility and is living there for the duration of that treatment. Pete's insurance pays Dave's House a fee of \$40,000.00 for sixteen weeks of care. This constitutes a duty by contract where Dave's House owes Pete a reasonable duty of care. Additionally, because Dave's House is a business, they have a duty of care as an Owner to any occupiers. Pete is considered a business guest, or invitee, which also establishes a duty of care.

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The court will likely find that Dave's House did owe Pete a duty of care.

Breach

Here, Dave's House failed to act like a reasonably prudent person or business when storing their onsite medication. Dave's House is a licensed treatment center that treats alcohol and drug addiction. The patients who undergo treatment at Dave's House are likely similar to Pete, in that they have a long history of alcohol and drug abuse. It is certainly foreseeable that one of the patients may attempt to get ahold of drugs. It is well known that relapse is a common occurrence among those attempting to achieve sobriety. Dave's House failed to act reasonably when they stored the very same drugs that an addict would like to get a hold of, in a metal drug locker. The drug locker, despite being "metal" was stored in the Staff Room which was not locked. The facts show that Pete walked right into the room and proceeded right towards the locker. Further, the drug locker was only sealed with a small \$3.00 padlock, which Pete was able to pry open with a spoon from the kitchen. The locker contained several opiates which Pete consumed without hesitation. Dave's House's failure to store the medication in a more secure location was a failure to act in a reasonable manner under the circumstances. In addition, the calculous risk analysis (learned hand formula) shows that Dave's House breached a duty because the burden of locking the Staff Room or perhaps buying a better padlock is less than the the likelihood of the harmful result occurring as it did with Pete (N= B < L x P).

The court will likely find that Dave's House breached the duty of care it owed to Pete by allowing him to so easily access their drug supply.

Causation

But for Dave's House failure to secure their drug supply, Pete would not have consumed drugs and passed out on the front lawn of building where he was bit by a raccoon. The court will likely find that Dave's House was the actual cause of Pete's injuries. Also, the court may find that Dave's House was the proximate cause (also referred to as legal cause) of Pete's injuries because the drugs were stored nearby Pete. The facility is a residential

treatment center, which means Pete was going to be living in the same place as the drug supply was stored for sixteen weeks. The remoteness of Pete to the drugs was very close. As the facts show, he also was directly nearby because he accessed them without issue and without delay. As an addict, Pete was in the zone of danger of the drugs, especially since they were not secure. Additionally, the court may also consider Pete's actions when determining the cause of the harm. But for Pete breaking into the supply locker and voluntarily ingesting the drugs, he would not have been so intoxicated that he would not have fallen asleep outside where he was bit. The court may find that Pete was also a legally contributing cause to his harm.

The court will likely find that Dave's House was the actual and proximate cause of Pete's injuries but also that Pete contributed to his harm.

Damages

Here, Pete received a painful raccoon bite for which he had to undergo a series of injections in order to prevent rabies or any other infection. Additionally, it can be argued that after two weeks of sobriety, Pete's sobriety was compromised by Dave's House's negligence.

The court will likely find that Pete did sustain injuries and damages as a result of Dave's House's damages.

Defenses

Contributory Negligence occurs when the plaintiff's conduct falls below the standard of care that they should have followed for their protection and which is a legally contributing cause of the harm. This is a common law defense in which Dave's House could have

argued that Pete, a longtime addict, contributed to his harm by breaking into their drug locker and consuming the drugs. Had Pete not taken the drugs and fallen asleep on the front lawn, he would not have been bitten by the raccoon. Under Common Law, if Pete had been determined to have contributed to his harm in any way, he would have been completely barred from recovery.

Dave's House may also argue a theory of *Assumption of Risk* which occurs when a plaintiff voluntarily and knowingly assumes a risk associated with an inherently dangerous activity. Dave's House will argue that Pete, a long time drug user, was aware of the dangers of consuming large amounts of drugs and deliberately did so anyway. They will argue that when Pete broke into the locker and consumed the drugs, he did so purposefully and knowing that it could be dangerous - especially if he had been sober for two weeks. If the court finds that Pete *assumed the risk* associated with his conduct that his recovery may be limited under a comparatively negligence theory.

Dave's House defense will likely argue that Pete was *comparatively negligent* in bringing about his harm. If a plaintiff contributes to their own harm, or assumes a risk which leads to harm, under comparative negligence there is an apportionment of liability according to fault. The sharing of the responsibility occurs on a percentage basis. Here, if the court finds that Pete was a legally contributing cause of his harm, he may be limited to what he can recover from Dave's House. Under pure comparative negligence, if Pete contributed more than 50% of the harm, he would have been barred from recovery. However, if it was not pure comparative negligence, Pete can recover whatever percentage Dave's House was responsible for, even if it is less than 50%.

Conclusion

The court will likely find that Dave's House was negligent in their duty to Pete. Pete's recovery may be limited under a comparative negligence theory.

END OF EXAM

3)

PAM vs. DOBBS DRUG COMPANY

Strict Liability is applied under certain circumstances and is when a person is held strictly liable because an action causing harm (unless utterly without fault) results in liability.

ANIMALS

Harm caused by animals can fall under strict liability. If the animals are domestic and docile then they do not fall until strict liability. However, if the domestic animal is deemed dangerous then strict liability does apply. If the animal is classified as wild or feral then strict liability applies.

In this case, the fifty Egyptian wasps are likely to be classified as a wild/feral animal so strict liability will apply. However, even if the wasps are deemed domestic, the wasps are very aggressive so are likely to be classified as a dangerous domestic animal which would also fall under strict liability.

→ NOT LIKELY...

Conclusion

Dobbs Drug Company is likely to held liable for the harms caused to Pam by the Egyptian Wasps.

ULTRAHAZARDOUS/ABNORMALLY DANGEROUS ACTIVITY

An ultrahazardous/abnormally dangerous activity is an activity which is foreseeable and has a significantly high risk of physical harm even if reasonable care is exercised by all actors. It is an activity which is not of common usage. Those who take part in abnormally

dangerous activities are held strictly liable for harms that result even if they are unforeseeable.

It can be argued that Dobbs Drug Company's research and development of new pharmaceuticals is an abnormally dangerous activity. By using fifty Egyptian wasps that are very aggressive and deliver a particularly painful sting it is foreseeable that physical harm will occur and there is a significantly high risk of physical harm even if all actors exercise reasonable care since wasps are not animals that can be easily controlled. Also, using Egyptian wasps for creating new pharmaceuticals would classify as an activity that is not of common usage.

Conclusion

Dobbs Drug Company is likely to be held strictly liable for the harm caused to Pam by the Egyptian Wasps under the doctrine for ultrahazardous/abnormally dangerous activity.

NUISANCE

A public nuisance is an interference with a right common to the general public. Based on the facts, public nuisance can apply since Pam could have been riding her bike where she had a right common to the general public to do so. If this is the case, then Dobbs is likely to be held strictly liable for the public nuisance of their wasps stinging Pam and interfering with her right to ride her bike safely.

A private nuisance ~~is a non-trespassory invasion of another's interest in use and enjoyment of land.~~ To be held strictly liable for a private nuisance the defendant must be a legal cause of the invasion, the invasion must be unreasonable, and the invasion must be substantial/significant. In this case it didn't specify where Pam was riding her bike so depending on that fact private nuisance may apply.

Legal Cause

WOT

In order to be held strictly liable Dobbs Drug Company must be the legal cause of the invasion (the wasp stinging Pam). To be the legal cause of the invasion they must be the actual and proximate cause of the invasion. To determine if they are the actual cause (single, direct and immediate cause) the "but for" test is used. "But for" Dobbs Drug Company possessing the Egyptian Wasps Pam would not have been stung by one and wouldn't have fallen ill for months. Dobbs drug company is the substantial cause of the harm since them possessing the Egyptian wasps was a substantial factor in Pam's harm. Lastly, it is a proximate cause since it is foreseeable that someone would get stung by the wasps if they were to get out. Dobbs Drug company will argue it wasn't a proximate cause since it wasn't foreseeable that the wasps would have escaped. However, it can be argued that the radical animal rights organization that let the animals free have been staging protests and demanding the release of the animals for months. As a result, it was foreseeable that they were going to break in and release the animals if Dobbs Drug company did not.

Unreasonable

If the invasion is unreasonable the gravity must outweigh the utility. In this case, the harm of getting stung by the wasp must be greater than the utility which is possibly finding the cure for cancer. In this case, it can be argued that the gravity does not outweigh the utility. However, another way to determine if the invasion was unreasonable is if the harm was serious/expensive. In this case, Pam was ill for months due to the wasp sting which can arguably satisfy this element. Reckless behavior, negligence, and abnormally dangerous activities also are unreasonable. As a result, if it is deemed that Dobbs Drug Company was negligent or takes part in abnormally dangerous activities (discussed above) then the invasion is unreasonable.

Substantial/Significant

In order for the invasion to be deemed substantial/significant the invasion must be real and more than a mere feeling. In this case that element is met. When determining if the invasion is substantial the location can be considered (locality rule). In this case the location is Monterey where Pam was riding her bike and where Dobbs Drug Company is located which is a high populated area. In addition, when determining if the harm is substantial the length of the invasion can be considered, but it is not dispositive. A lengthy invasion is not required. A one-time invasion can constitute a nuisance but an on-going invasion is likely be deemed substantial. In this case, it is likely that the invasion would be deemed substantial/significant.

Defenses to Nuisance

Coming to the nuisance - does not apply

Live and let live - a compromise may be considered

Conclusion

Dobb's drug company is likely to be held strictly liable under a private nuisance.

DEFENSES

Comparative responsibility

If a plaintiff contributes to their own harm then they can be found comparatively responsible and apportion of liability will be based on fault. The plaintiff's damages may be reduced based on the percent that they are deemed comparatively responsible.

Dobbs may argue that Pam is comparatively responsible for her own harm because she was not wearing a helmet and if she was then she may not have been stung.

Plaintiff's Abnormally Sensitive Activity

There isn't strict liability for abnormally dangerous activities if a harm would not have resulted but for the abnormally sensitive character of the plaintiff's activity.

Dobb's Drug company will argue that the harm would not have resulted but for her abnormally sensitive character since she is one of the few people who has an adverse reaction to the Egyptian wasp sting. However, this argument does not apply to the harm of the particularly painful sting of the wasp.

Scope of Strict Liability

According to the Scope of Strict Liability, strict liability does not apply when a person comes in contact with an animal or abnormally dangerous activity to secure some benefit.

Does Not apply to these facts

CONCLUSION

Dobbs Drug Company is likely to be held strictly liable for Pam's harms caused by the Egyptian wasp.

END OF EXAM