

**June 2013 Baby Bar
Question 2 Torts
Model Answer**

1. Is Bill likely to prevail on any intentional tort claim against Abe? Discuss.

Assault

Assault is an intentional placing of another in reasonable apprehension of an imminent harmful or offensive touching.

Abe wanted to cut down a tree that was growing on public property bordering his house because he did not want to pick up the leaves. In his attempt to do so, Bill, a neighbor, demanded him to stop. While holding the saw in front of him, Abe took two steps towards Bill. Hence his act was intentional.

By Abe taking two steps with a saw in his hand towards Bill, this placed Bill in reasonable apprehension of an imminent harmful touching given that fact that Bill climbed the tree in order to avoid Abe.

Therefore, Abe will be liable to Bill for assault.

General Damages

General damages are damages that reasonably or naturally flow from the tort. General damages allow recovery of compensation for pain and suffering.

Bill should recover for any damages which reasonably and naturally flow from Abe's tortious conduct that he sustained.

Therefore, Bill will be entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and they must be specifically pleaded and proven. Further, special damages must be foreseeable, reasonable in amount and not too remote.

Bill should receive damages for any lost wages resulting from Abe's act.

Therefore, Bill is entitled to special damages.

Punitive Damages

Punitive damages may be awarded where there was intent to injure or harm plaintiff.

Since Abe committed an intentional tort against Bill, he acted with the intent to cause injury to Bill.

Therefore, Bill will be entitled to punitive damages from Abe.

Battery

Battery is the intentional, harmful or offensive touching of another.

Abe's conduct of sawing through the tree trunk while Bill was in the tree shows he was substantially certain to cause Bill injury. Thus, Abe's actions were intentional.

Bill climbed the tree in order to prevent Abe from cutting it down. Thus, Abe's act of cutting through the tree's trunk causing Bill to fall was harmful and offensive to Bill.

Abe will argue he did not actually touch Bill. However, his act of cutting the tree trunk caused Bill to fall out of the tree which equates to a touching. Since Abe sawed through the tree trunk which caused Bill to fall, there was a touching of another.

Thus, it appears Bill does have a claim for battery against Abe.

General Damages

Define and discussed supra.

Special Damages

Define and discussed supra.

Punitive Damages

Define and discussed supra.

Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress is the intentional and outrageous conduct by the defendant which is calculated to cause and which does cause severe emotional distress.

Bill will argue that Abe, knowing that the tree was on public property, and the only reason Abe wanted the tree cut down was because he was tired of picking up the leaves that the tree dropped, sawed the tree trunk. Abe's conduct of sawing through the tree trunk, knowing that Bill protested the cutting of the tree and was in the tree, exceeded the bounds of decent behavior and his acts were intentional and outrageous conduct.

Abe's act of cutting through the tree trunk, knowing that Bill was in the tree, was calculated to cause distress.

The outrageous nature of sawing through a tree trunk due to the fact that the tree dropped leaves and knowing that Bill protested the cutting down of the tree and Bill being up in the tree, and proceeding to saw the tree with Bill in the tree would be calculated to cause and did cause Bill to experience emotional distress.

Assuming that Bill did suffer emotional distress from the incident, given that the facts are silent on this element, Abe will be liable to Bill for intentional infliction of emotional distress.

General Damages

Define and discussed supra.

Special Damages

Define and discussed supra.

Punitive Damages

Define and discussed supra.

2. Is Cindy likely to prevail on any negligence claim against Abe? Discuss.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the breach was the actual and proximate cause of plaintiff's damages.

Duty

Defendant has a duty to act as a reasonable prudent person under the same or similar circumstances.

Abe owes a duty to take steps to avoid hurting his neighbor while cutting down the tree. A reasonable prudent person would take those steps reasonably necessary to assure that the tree is not cut down while someone is in the tree. The fact that Abe and Bill are neighbors and the tree is on public property in their neighborhood, and Bill is protesting its removal, establishes a relationship creating a duty owed to Bill only.

Therefore, Abe has a duty of care to Bill and not Cindy.

Duty – Cardozo and Andrew Views

Cindy will argue that under the Cardozo view, Abe owes a duty of care to foreseeable plaintiffs in the zone of danger.

Since Cindy was passing by and saw Bill fall out of the tree because Abe was sawing through the tree trunk, she rushed to Bill's aid. Therefore, Cindy is within the foreseeable zone of danger of Abe's conduct.

Abe will counter although he did saw through the tree's trunk he did not ask for the aid of Cindy. As such, Cindy is not within the foreseeable zone of danger.

On the other hand, Cindy will argue that danger invites rescue and since Bill was seriously injured, it was foreseeable someone would run to his aid. Hence, she is within the foreseeable zone of danger.

Under the Andrew's view, Abe's conduct would create a foreseeable risk of harm to Cindy and she could be injured while rendering aid to Bill. Thus, Abe's conduct of sawing through the tree trunk and causing Bill to fall created a reasonably foreseeable risk of harm to others.

Therefore, the court will find Abe did owe a duty of due care to Cindy.

Breach

A breach is a failure to act as a reasonable prudent person under the same or similar circumstances.

Since Abe cut through the tree and caused Bill to fall and be injured, he did not act as a reasonable prudent person. Abe will contend that Cindy was injured by another when the car struck her and he did not breach his duty.

Although the motorist failed to see Cindy and struck her with his car which show the motorist breach his duty of due care, Abe is the one that cut down the tree that caused Bill to fall and become seriously injured. Abe should have realized that by his actions of sawing through the tree trunk which caused Bill, who was in the tree, to be injured, that someone would come to his aid. Since Cindy did come to his aid and was injured while rendering aid to Bill, Abe breached his duty of due care owed to Cindy.

Therefore, Abe breached his duty of due care.

Actual Causation – Successive Tortfeasor

“But for” the successive negligent act of Abe sawing through the tree trunk and causing injury to Bill, Cindy would not have run to his aid and but for the car driver's act of striking Cindy with his car, Cindy would not have sustained serious injuries.

Thus, Abe and the car driver are the actual cause of Cindy's injuries.

Proximate Causation

Abe will argue that the car driver's act of striking Cindy is a supervening intervening act.

However, Abe's act is an indirect, independent successive negligent act of the car driver's negligence and it is foreseeable that someone, like Cindy, would run to the aid of an injured person. Thus car driver's conduct will not sever causation in order to relieve Abe of liability of the negligence.

As discussed infra, Abe's successive negligence is the actual cause of Cindy's injuries. Cindy's injuries she sustained while rendering aid to Bill, is a foreseeable result from a negligent driver striking Cindy while she was rendering aid to Bill from Abe's intentional conduct.

Because Abe is liable for subsequent, negligent acts arising from his own negligence, car driver's negligence is not a superseding cause.

Therefore, Abe was the proximate cause of Cindy's serious injuries.

General Damages

General damages are those damages that flow from the tort. Plaintiff must have sustained actual damages to person or property to recover for negligence.

Cindy suffered serious injuries. She should recover general damages for her pain and suffering.

Special Damages

Plaintiff may recover for any medical damages or loss of income if specifically pleaded.

Cindy should be able to recover damages for out-of-pocket expenses related to the hospitalization and other related medical care.

3. Is Debbie likely to prevail on any negligence infliction of emotional distress claim against Abe? Discuss.

Negligent Infliction of Emotional Distress

A party owes a duty to others not to subject them to a foreseeable risk of physical injury (impact/threat) that might foreseeably result in emotional distress.

Bill was in the tree when Abe sawed through the tree trunk. This caused Bill to fall and become seriously injured. Abe owed a duty not to subject Bill to harm. Abe was not aware that Debbie was watching the entire incident from her front porch. However, since Abe was not aware of Debbie he could not foresee physical or emotion injury to Debbie. Moreover, Debbie is not within the scope of potential plaintiffs regarding the bystander theory of negligent infliction of emotional distress.

Therefore, Abe is not liable for negligent infliction of emotional distress.