

**October 2014 Baby Bar
Question 2 – Torts**

1. Spouses cannot sue each other in tort:

Spousal Immunity

At common law a husband and wife could not sue each other for personal injury torts committed by one upon the other. However, modernly the spousal immunity doctrine has been abolished.

Homer and Wanda are husband and wife. When the furnace in their home stopped working, Homer insisted on attempting to fix it, and caused the house to burn down. Wanda was yelling at Homer for what he had done and Homer slapped Wanda in order to calm her down. Hence, Homer did commit a battery, but because of the immunity doctrine, Wanda will not be able to bring an action under common law. However, modernly Wanda will be able to bring an action against her husband for battery and negligence.

Therefore, modernly spouses can sue each other in tort.

2. Wanda failed to present sufficient evidence to support a finding that Homer was negligent

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 damages.

Duty

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

Homer owed a duty to properly fix the furnace in his home as a reasonable prudent person would do under the same or similar circumstances.

Therefore, Homer owes a duty of due care to his wife Wanda.

Breach

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

The furnace in their home stopped working and Wanda wanted to call a licensed repair person to fix the furnace. Homer insisted on attempting to fix the furnace himself despite having no knowledge of how the furnace works. After working on the furnace he informed Wanda that he had fixed it. They went out to dinner and when they arrived they were informed by a firefighter that a fire broke out, which originated in the furnace. Thus, Homer's conduct of improperly fixing the furnace caused the house to burn down falling below the reasonable person standard of care.

Therefore, Homer breached his duty owed to Wanda.

Res Ipsa Loquitur

Under the doctrine of res ipsa loquitur, a plaintiff can establish a breach upon showing the following factors: 1) The accident would not normally happen absent negligence, 2) the instrumentality must be in the exclusive control of the defendant, and 3) the plaintiff could not contribute to his own injury.

Wanda will argue that a house does not normally burn down in the absence of negligence, e.g., negligence in repair of the furnace. Further, Homer insisted upon fixing the furnace and attempted to fix it himself instead of hiring a licensed repair person. Homer informed Wanda that he had fixed the furnace and there are no facts to indicate that another contributed to the burning the house down, i.e. the injury. Thus, he was in the exclusive control of the furnace.

Homer will argue that the firefighter at the scene stated it “appeared” to have originated at the furnace. He will further argue that the firefighter’s statement does not equate to establishing that the fire did start at the furnace or that the fire started as a result of Homer’s repairs to the furnace. However, a house generally does not burn down after a furnace is repaired unless the repair was performed incorrectly. Since the house did burn down after Homer repaired the furnace, there is an inference that Homer did not properly repair the furnace, which caused the fire.

The house burned down due to a fire that originated in the furnace. Since Homer was the person who repaired the furnace and did not hire a licensed repair person, the instrumentality must have been in the exclusive control of Homer, the defendant.

In addition, Wanda wanted to hire a licensed repair person to fix the furnace and Homer insisted on attempting to fix it. After working on the furnace Homer told Wanda that he repaired the furnace and then they went out to diner and returned after dinner to find the house was destroyed by a fire. Hence, plaintiff did not contribute to her own injuries, the destruction of the house.

Actual Cause

“But for” not fixing the furnace properly the house would not have been destroyed by fire. However, Homer will argue that the fireman stated it appeared that the fire originated from the furnace. There are no facts that suggest that Homer’s repair was done improperly and caused the fire. However, one can make an inference that the firefighter was an expert in the field in determining how the fire started. Since the fire originated in the furnace, Homer was negligent in his repair.

Thus, Homer was the actual cause of the damage.

Proximate Cause

It is foreseeable that trying to fix a furnace when you have no knowledge of how a furnace works, that you could improperly fix the furnace that results in a fire causing the house to burn down. Therefore, Homer was the proximate cause of the damages to the house.

Damages

The house was burned to the ground. Therefore, Wanda should be able to recover for the property loss of the house.

3. Homer is not subject to liability for slapping Wanda because his intent was to calm her down, not to cause her any harm.

Battery

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

Homer's conduct of slapping Wanda to calm her down shows he was substantially certain to hit Wanda. Thus, Homer's actions were intentional. Homer will argue he only intended to calm Wanda down since she was yelling at Homer for burning down the house. As such, he lacked the requisite intent to harm Wanda.

However, Homer did intend to slap Wanda in order to get her to stop yelling, thus his conduct was intentional.

Homer slapped Wanda. Since Homer intended to cause a harmful contact to Wanda, he will be liable for the resulting harm to Wanda since his wrongful intent or slapping Wanda was harmful and offensive

Further, Homer slapped Wanda, thus, a harmful touching of another.

Homer will be liable for battery.

General Damages

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

In an attempt to stop Wanda from yelling, Homer slapped her. She should recover for these damages which reasonable and naturally flow from Homer's tortious conduct. Wanda will be able to recover for her pain and suffering.

Thus, Wanda will be entitled to general damages.

Special Damages

Special damages must be foreseeable, reasonable in amount and not too remote. Special damages must be specifically pleaded and proved in order to recover.

Wanda will receive damages for her medical expenses and lost wages resulting from Homer's act. It is foreseeable and reasonable based on Homer's conduct that Wanda would require medical treatment and suffer lost wages while recovering from any injuries. Since the damages would relate to the conduct of Homer, the damages are not too remote.

Therefore, Wanda is entitled to special damages.

Punitive Damages

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

Since Homer committed a battery against Wanda, he acted with the intent to cause injury to Wanda.

Therefore, the court can award punitive damages from Homer's conduct.