

**June 2015 Baby Bar  
Question 1 Criminal Law  
Model Answer**

**State v Arthur**

**1. What criminal offense or offenses, if any, can be reasonably argued were committed by Arthur? Discuss.**

**Conspiracy # 1**

Conspiracy is the agreement between two or more persons to commit an unlawful act.

Arthur and Cassie worked at an art gallery. They wanted to make some extra money by selling art from the gallery on eBay. They intended to share the proceeds with the owner but did not tell him. Arthur approached Woody, an employee of the building contractor, and offered him \$500 to take the wrapped packaged from the gallery and stash it in the building next door so he and Cassie could pick it up. Based on Arthur and Cassie deciding, and Cassie's act of waiting outside the building to get the package from Woody, there was an agreement. The agreement was between Arthur and Cassie, i.e., two or more.

Arthur and Cassie wanted to make extra money and share the proceeds with the owner of the gallery. Since they were going to share the proceeds they did not have the intent to commit an unlawful act.

However, since Arthur and Cassie were selling the gallery's art work on eBay, without the consent of the owner and they did plan on sneaking the art work out of the gallery, they had the intent to commit an unlawful act, based on their act of taking the art work and selling it on eBay without consent. In addition they were going to share the proceeds. The art work belongs to the owner of the gallery. Why would he share the proceeds, versus keeping all of the proceeds since he owned the art work? Therefore, Arthur and Cassie had the intent to steal the Gallery's art work.

Therefore, there was an agreement to do an unlawful act, i.e., larceny of the art work

Therefore, Arthur will be charged with conspiracy.

**Solicitation**

Solicitation is the, inciting, or inducing of another to commit or to join in the commission of an unlawful act.

Arthur and Cassie decided to make some extra money by selling art that they take from the art gallery. Arthur approached Woody, an employee of the building contractor and offered him \$500 to take a wrapped package from the art gallery and stash it in the building next door so he

and Cassie could pick it up later. Thus, Arthur's asking of Woody enticed and encouraged him. Further, he offered Woody \$500 to take the wrapped package to the building next store and stash it. Thus, his act of giving the \$500 and the wrapped package to Woody was made in the commission of getting Woody to commit a larceny, an unlawful act.

Thus, Arthur can be charged with solicitation.

Solicitation merges with the target crime or with conspiracy. If Arthur is found to be a co-conspirator then the solicitation will merge with conspiracy.

## **Conspiracy #2**

Defined supra.

Woody, for \$500, agreed to take the wrapped package after the gallery was closed and stash it into the next building. Arthur gave the wrapped package to Woody, and the \$500 and Woody took the package up to the roof and was crossing into the next building. Woody's actions show there was an implied agreement between Arthur and Woody evident by his conduct. The agreement was between Woody and Arthur, thus two or more. After the art gallery was closed Arthur gave \$500 to Woody and the wrapped package to take and stash into the next building. Thus, Arthur and Woody had the specific intent to commit an unlawful act.

Although Woody will argue he did not have the intent to commit an unlawful act, based on his actions of taking the \$500, and receiving a wrapped package after the art gallery was closed, he did have the intent to help with the commission of a crime. Thus, Woody did have the intent to commit an unlawful act.

Therefore, there was an agreement to do an unlawful act, i.e., larceny of the art work between Arthur and Woody and they will be guilty of the conspiracy.

## **Embezzlement**

Embezzlement is the fraudulent conversion of the rightfully entrusted property.

Arthur worked at an art gallery. He and Cassie wanted to make some extra money by selling art from the gallery on eBay. Working in an art gallery, would include the job of selling art work to customers. Arthur and Cassie wrapped packages and solicited Woody to take the wrapped package to the building next door and stash it. Since it was after the gallery had closed when Arthur gave Woody the wrapped package, it is inferred he was off duty. Thus, he was not rightfully entrusted with the property evident by the fact the art gallery was closed and he was off duty.

Thus, Arthur will not be charged with embezzlement.

## **Larceny**

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

Arthur worked in an art gallery. He and Cassie wanted to make some extra money by selling art from the gallery on eBay. However, they did not tell the owner of the gallery since they thought he would not approve. Arthur approached Woody and gave him a wrapped package to stash in

the building next door. The package was a painting from the gallery. Hence, since the owner was to aware of what Arthur was going to sell paintings on eBay, and he took a painting out of the gallery without consent from the owner, there was a trespassory taking. Arthur took the painting and gave it to Woody to stash in a building next door to the gallery. Hence, a carrying away. The painting belonged to the art gallery. Thus, it was the property of another. Arthur took the painting and gave it to Woody to stash in order for him to pick it up later and sell it on eBay. Since Arthur and Cassie wanted to make some extra money, and sis not tell the owner of their plan to sell the art on eBay, establishes there was specific intent to permanently deprive the art gallery owner of his paintings.

Thus, Arthur has committed a larceny.

## **Murder**

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through willful and wanton conduct or felony murder rule.

Arthur approached Woody and agreed that for \$500 Woody would take a wrapped package to the building next store and stash it. While Woody was taking the package up to the rook, and as he was crossing into the building next store, he fell and was killed. Since he was committing a crime that was solicited by Arthur the killing was unlawful. Thus, an unlawful killing occurred.

The prosecution will argue that Woody's act climbing onto the roof and crossing over through the roof to the building next door shows a reckless disregard for human life. Therefore, Arthur's conduct was willful and wanton.

Arthur will argue he was only asking Woody to stash a painting and did not instruct him to use the roof to gain access to the building located next door to the art gallery. It is the fact that Woody decided to use the roof to gain access that caused him to fall which resulted in his death. Arthur's conduct of asking Woody to stash the painting n the building next store, which resulted in Woody falling to his death was a mere accident. His actions were not wanton and reckless.

## **Felony Murder**

Any death caused in the commission of, or in an attempt to commit, a dangerous felony is murder. Malice is implied from the intent to commit the underlying felony. However, the felony must be distinct from the killing itself.

Arthur solicited Woody to take the package from the art gallery and stash it in the building next door. The fact that Woody was in the commission of a criminal act, established that Woody was within the res gestea of the criminal act since he fell while he was delivering the package to the building next door to the art gallery. However, the fact that Woody fell and was killed is collateral to the crime at hand.

Arthur will further content that he did not direct Woody on how to get the package to the building and the act of soliciting another to commit a larceny is not acting in the perpetration of a

“dangerous” felony such as burglary or robbery. Solicitation to commit larceny is not one of such dangerous felonies that will support the felony murder rule.

Therefore, Arthur would not be guilty of felony murder for the death of Woody.

### **Pinkerton’s Rule**

Under Pinkerton’s Rule, a co-conspirator may be held liable for a crime committed in furtherance of the conspiracy that is a natural and probable consequence of the unlawful act and a foreseeable consequence thereof.

Since Arthur was a co-conspirator, he may be held liable for all crimes in furtherance of the conspiracy.

Based on the agreement between Arthur and Cassie, they were to take art work from the art gallery and sell it on eBay. The act of Cassie, who re-entered the art gallery and took several more painting from the art gallery, was within the scope of the conspiracy. Thus, the crimes of Cassie, i.e. burglary and larceny to be discussed infra, were foreseeable since they needed art work in order to offer the art work for sale on eBay. In additions the taking of the art work was in furtherance of the conspiracy

Therefore, Arthur will be found guilty of the unlawful acts within the scope of the conspiracy

## **2. What criminal offense or offenses, if any, can be reasonably argued were committed by Cassie? Discuss.**

### **Conspiracy**

Defined and discussed supra.

### **Pinkerton’s Rule**

Under Pinkerton’s Rule, a co-conspirator may be held liable for a crime committed in furtherance of the conspiracy that is a natural and probable consequence of the unlawful act and a foreseeable consequence thereof.

Since Cassie was a co-conspirator, he may be held liable for all crimes in furtherance of the conspiracy.

Based on the agreement between Arthur and Cassie, they were to take art work from the art gallery and sell it on eBay. The act of Woody, who removed the wrapped package from the art gallery, was within the scope of the conspiracy.

Therefore, Cassie will be found guilty of the unlawful acts within the scope of the conspiracy under Pinkerton’s Rule i.e. larceny.

## **Burglary**

Burglary is the nighttime breaking and entering into a dwelling house of another with the intent to commit a felony therein.

After the gallery had closed for the evening Arthur gave Woody the wrapped package. Hence, it was nighttime. When Woody took the package up to the roof in order to get to the next building to stash the package he fell and was killed. Cassie was waiting outside the building for Woody. When he did not arrive Cassie went back into the gallery and took several paintings. Since Cassie was already off work, we will assume he entered without the Art gallery owners consent. Therefore he entered. However, he entered most likely through the art gallery's door. Thus, there was no breaking.

Cassie entered into the art gallery, not the dwelling of another. Cassie took several more paintings and took them home. Hence, he entered with the intent to commit a felony therein. i.e larceny.

However, since there was no breaking or dwelling house of another no common law burglary will be found.

Therefore, there is no common law burglary.

## **Modern Law Burglary**

Modern law burglary is the trespassory entering into a structure in order to commit a crime.

Cassie went back into the art gallery and took several more paintings and took them home, thus, there was an entry. Since Cassie was mostly like off work, and he re-entered the art gallery without the owner's consent, to take more painting his entry was a trespassory entry.

Cassie entered the art gallery, a structure.

Cassie entered the art gallery to take more painting in order to sell them on eBay. Hence, he arguably entered with the intent larceny which shows the intent to commit a crime.

Therefore, Cassie can be charged with modern law burglary.

## **Larceny**

Defined Supra.

Cassie re-entered the art gallery to take more painting. Hence, there was a trespassory taking. Cassie took more painting and took them home. Hence, a carrying away. The painting belonged to the art gallery. Thus, it was the property of another. Cassie took the painting home

in order to sell them on eBay. Therefore there was specific intent to permanently deprive the art gallery owner of his paintings.

Thus, Cassie has committed a larceny.

3. What defenses, if any can each of them raise? Discuss.

**Murder Collateral to the conspiracy**

As discussed Arthur and Cassie will contend that they did not direct Woody on how to get the package to the other building. The agreement between the parties was to help them get the painting out of the art gallery. i.e. a larceny. They were not acting in the perpetration of a “dangerous” felony at the time Woody was killed. Solicitation to commit larceny is not one of such dangerous felonies that will support the felony murder rule.

Therefore they should not be charged with the murder of Woody.

**June 2015 Baby Bar  
Question 2 Contracts  
Model Answer**

**1. What claim or claims, if any, does Walter have against Betsy? Discuss.**

**Preliminary Negotiations**

Preliminary negotiations are communications between the parties that do not equate to the necessary present contractual intent and are essentially an inquiry or an invitation to deal.

Betsy owns a business in South City. Her friend Walter lived in Northville, some distance away. Over the years Betsy has suggested to Walter that he move to South City and work for her. A short time ago Walter decided to follow up on Betsy's suggestion and called her and asked if she was still interested in hiring him.

Thus, an invitation to deal with Betsy exists.

Therefore, Betsy suggesting to Walter to move and work for her, and Walter calling her to see if she was still interested in him working for her created a preliminary negotiation.

**Offer**

An offer is an outward manifestation of present contractual intent to be bound by contractual agreement with definite and certain terms communicated to the offeree.

Walter called Betsy and asked her if she was still interested in hiring him. Betsy replied "of course." Based on her response to Walter's question she demonstrated an outward manifestation of present contractual intent to be bound by contract with Walter.

Betsy stated she was interested in hiring Walter to work in her business, one job as quantity; as soon as possible is the time period; Betsy and Walter are the identity of the parties; no salary or hourly wage was mentioned but the court will look to a reasonable annual salary or hourly as the price and employment is the subject matter. Since the terms are stated with particularity, the terms are definite and certain.

Betsy's offer to Walter was communicated over the phone. Thus, communicated to the offeree.

Therefore, a valid offer exists.

**Acceptance**

Acceptance is an unequivocal assent to the terms of the offer.

Walter agreed and told her he would give notice at his current job and would be in South City by the end of the month. Thus, there was an unequivocal assent to the terms of the offer.

Therefore, a valid acceptance exists.

### **Consideration**

Consideration is that which is bargained for and given in exchange for a return promise requiring a benefit and a legal detriment.

Betsy bargained for Walter to work at her business, for a return promise to pay Walter, which she was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving Walter's employment services at her business. However, Betsy will argue that she did to agree hiring Walter, just that she will see where he would fit, hence there is no detriment.

Walter obligated himself to work for Betsy at her business in South City which he was not previously obligated to do. This was a detriment incurred in exchange for the benefit of receiving a salary for his employment.

Therefore, no valid consideration exists.

### **Detrimental reliance**

Where a party detrimentally relies to the extent that a denial of enforcement of the contract would result in an unconscionable loss or injury, a substitute for consideration exists.

Walter will argue that he gave notice to his employer, shipped his furniture to South City at a cost of \$5,000 and got an airplane headed to South City. This conduct evidences that he detrimentally relied on the offer made by Betsy by the fact he quit his job, moved all of his belonging to South City. Further, he purchased a one way ticket to South City. Walter will also contend by moving such a long distance and leaving his previous employment is proof of the detrimental reliance on the offer made by Betsy. Thus, based on his actions he did rely on Betsy's promise to provide him a job to his detriment.

Since the actions taken by Walter in reliance on the offer by Betsy will result in an unconscionable loss and injury to Walter if Betsy's promise is not enforceable, the court will likely find the detrimental reliance applies.

Therefore, the court will enforce the contract between Walter and Betsy.

### **Statute of Frauds - Contracts Not Performable Within One Year**

Pursuant to the Statute of Frauds, a contract that by its terms is not performable within one year of the making thereof is unenforceable unless in writing.



The employment contract entered into involved a promise to work for Betsy. Although the period of time for the employment was not discussed, since Betsy knows that Walter is moving from Northville to South City which is a distance away, it will be assumed that the terms for Walter's employment will be more than one year.

However, most employment contracts are at will contracts. Walter will argue that if the employment contract is an at will contract he can be terminated at any time, and the agreement does not fall within the purview of the statute of frauds since it is capable of being performed within one year for the making therein.

If the court finds the employment contract to be an "at will" contract based on the terms of the contract, the contract can be performed within one year of the making thereof.

Therefore, since the agreement is performable within one year of the making thereof, the contract is not barred by the Statute of Frauds.

### **Implied-In-Law – Constructive Condition Precedent**

A condition is a fact or event the happening or non-happening of which either creates or extinguishes an absolute duty to perform.

Walter must work for Betsy before Betsy's duty to pay Walter arises. Since Betsy told Walter that she had just lost a major customer and had to impose rigorous cost-cutting she could no longer employ him, this extinguishes Walter's duty to perform.

Therefore, Walter's duty was a constructive condition precedent to Betsy's duty to pay him for his services.

### **Anticipatory Repudiation**

Anticipatory repudiation is an unequivocal expression repudiating the intent to perform a contract.

Betsy lost a major customer and when Walter called her upon his arrival to South City she told him she could no longer employ him. Her conduct constituted an unequivocal expression of repudiation of the parties' contract.

Therefore, Betsy's anticipatory repudiation would excuse Walter's condition to work for her for business.

### **Impossibility**

A duty may be discharged by impossibility. This doctrine applies an objective method; thus in order for impossibility to apply the proponent must show that nobody could have performed the terms of the contract.

Betsy will argue that the loss of a major customer was not foreseeable at the time of making the contract with Walter. Furthermore, Betsy was not the fault of losing a major customer and had to impose rigorous cost-cutting. However, it is not objectively impossible to perform in having Walter work for Betsy. Therefore, the doctrine of impossibility will not discharge Betsy of her duty.

### **Impracticability**

Impracticability requires that a party encounter extreme and unreasonable difficulty or expense that was not anticipated. A mere change in the difficulty or expense due to normal risks that could have been anticipated will not warrant discharge by impracticability.

Betsy will argue that loss of a major customer was not foreseeable at the time of making the contract with Walter. Furthermore, Betsy was not the fault of the lost customer. However, Walter will argue that the loss of a major customer did not inhibit Betsy's ability to employ Walter. Thus, Betsy will not be able to discharge her duty under the doctrine of impracticability.

### **Breach**

A breach is an unjustified failure to perform which goes to the essence of the bargain.

When Betsy told Walter he could no longer employ him, it established an unjustified failure to perform going to the essence of the contract.

Therefore, there was a major breach by Betsy.

## **2. What Damages if any, should Walter be awarded? Discuss.**

### **General Damages**

General damages are damages that flow from a breach of the contract. The non-breaching party is entitled to expectancy damages under the contract.

Walter's expectancy damages are the benefit of his bargain. He bargained for employment at a specified rate. He is entitled his compensation until he finds other employment. However, Walter must mitigate his damages and if he does get another job, he must offset the damages.

Hence, Walter is entitled to general damages.

### **Special Damages**

Special damages are consequential damages. Plaintiff is entitled to compensation for only those injuries that the Defendant, at the time the contract was made, had reason to foresee as a probable result of his breach.

Betsy could foresee that Walter would quit his job, move his furniture to South City since he did not live locally. In addition she could foresee that he would incur an expense for traveling to South City. In addition, Walter could also claim any economic losses, i.e., the costs moving back to Northville, due to Betsy not being able to employ him which is a foreseeable and probable result due to her breach.

Therefore, Walter may be entitled to special damages.

### **Reliance**

Reliance damages are based on the non-breaching parties cost in order to place the non-breaching party in a position he would have been in had the promise not have been made.

Betsy knew that Walter lived a distance away when she offered him the job. The fact that Walter had to move his furniture and travel to a new city based on Betsy's promise is a cost associated with taking the new job at Betsy's business. Walter will be able to get his cost for moving, \$10,000 and the cost of travel, \$500.00 since he did rely to his detriment on Betsy's promise to employ him.

**June 2015 Baby Bar  
Question 3 Torts  
Model Answer**

**What possible tort causes of action does Perry have against Tommy? Discuss.**

**Perry v Tommy**

**Negligence**

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

**Duty**

A minor has a duty to act as a reasonable prudent person, with the same age, intelligence, and experience under the same or similar circumstances.

Tommy owes Perry a duty to drive the golf cart in a safe manner and not create an unreasonable risk of harm. As such, Tommy must drive the golf cart in the same manner as a reasonably prudent child of his same age, intelligence and experience and not subject others to an unreasonable risk of harm.

Tommy will argue he is only fourteen years old and has no knowledge of the rules of driving on the road. As a fourteen-year-old boy he is only concerned with having fun while driving the golf cart. Hence, Tommy will argue that a reasonable fourteen-year-old boy under the same circumstances would not always watch where they are going.

Tommy is engaged in driving a golf cart which would be an adult activity. Thus, he will be held to an adult standard in driving the golf cart.

However, if a duty is owed he owes a duty to those persons on the golf course and not Perry who was not on the golf course.

Hence, Tommy would not owe a duty to Perry.

**Duty – Cardozo/Andrew View**

No duty of care is owed to anyone who unexpectedly is hurt by the Defendant's actions if a reasonable person would not have foreseen injury to anyone from the conduct.

Tommy owes a duty to those persons using the golf course. Since Tommy ran into Dana, who was present on the golf course he does not owe a duty of due care to Perry.

However, there is a split of authority. Under the Cardozo view, the duty of due care is owed only to those in the foreseeable zone of danger.

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

Since Tommy was on the golf course and was not paying attention while he was driving the golf cart hitting Dana, it is foreseeable that Dana who was golfing would swing her club in the wrong

direction making the ball go elsewhere which resulted in causing harm to Perry. Thus, Perry will argue that he is within the foreseeable zone of danger of Tommy's conduct.

Tommy will counter that although he did accidentally hit Dana, which resulted in her hitting her ball into the air intake at the Power Plant the incident involving Perry occurred because Power Plant failed to install the required screen on the air intake. As such, Perry is not within the foreseeable zone of danger.

Since Tommy hit Dana that resulted in her ball landing in the air intake at the power plant, and Perry not being a person within a reasonable range, i.e. he is ten miles away, it is not foreseeable that Tommy's hitting of Dana would cause a golf ball to fall into the air intake at Power Plant which caused Power Plant to shut down. Based on the plant shutting down Perry's equipment stopped supplying him with the needed oxygen. Although Perry did suffer from the power plant shutting down, he was 10 miles away from the golf course where Tommy hit Dana. Thus, Perry is not within the foreseeable zone of danger.

However, if the court does not find Perry within the foreseeable zone of danger, he will argue that the Andrews' view of duty applies. Under Andrew's view, Tommy's conduct created a foreseeable risk of harm to Perry when the golf ball landed in the air intake causing Perry to be injured since his oxygen was not able to function in which he is dependant in order to stay alive.

Thus, Tommy's conduct of hitting Dana that resulted in a golf ball plugging the air intake at the power plant that resulted in Perry's oxygen being shut off created a reasonably foreseeable risk of harm to others, including Perry.

Therefore, the court will find that Tommy did owe a duty of due care to Perry.

### **Breach**

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

While Tommy was golfing and driving the golf cart he was not paying attention. His acts of not paying attention resulted in him hitting Dana, a golfer who swung at her ball causing it to land in the intake valve at the power plant. Tommy's conduct fell below the reasonable person standard of care.

Therefore, Tommy breached his duty owed to Perry.

### **Actual Cause - Successive Tortfeasors**

"But for" Tommy's failure to adequately drive the golf cart he would not have hit Dana causing her ball to go into the power plants intake valve which resulting in shutting the plant down. Further, Power Plant's act of failing to place the required screen on the air intake the plant would not have shut down resulting in Perry's oxygen shutting off. Therefore, the successive negligent acts of Tommy and Power Plant resulted in Perry suffering brain damage.

Therefore, Tommy is the actual cause of the Perry's injuries

### **Proximate Cause**

It is foreseeable that while operating golf cart and not paying attention that someone may be injured.

However, Tommy will argue it is not foreseeable that accidentally hitting a golfer and due to the accident hits a golf ball into the Power Plants air intake would result in the plant shutting down. As a result Perry's oxygen stopped working and Perry could not get the oxygen he needed to live.

### **Intervening, Superseding Cause**

An intervening cause is one that occurs after the negligent conduct of defendant but before the harm. An independent, intervening act is an abnormal response to stimulus created by defendant's negligence. The fact that the intervening force was not reasonably foreseeable does not excuse defendant from liability as long as result was foreseeable.

Tommy will argue that his actions were indirect and independent of Power Plant's act of failing to place the required screen in the air intake, which caused the plant to shut down. Power Plant's failure resulted into the plant shutting down and Perry's oxygen tank to stop working which caused Perry brain damage. Thus, Power Plant's act was an intervening act.

However, Power Plant's negligence of failing to place the screen in the air intake is foreseeable. Thus, the negligent act of a third person is always foreseeable and will not cut off Tommy's liability.

Under Andrews view in order to find proximate cause you need to look to the foreseeability of the harm, directness of the connection between the Defendant's act and the Plaintiff's harm, whether there is a natural and continuous sequence between the two, was the act a substantial factor, and was the harm too remote.

It is foreseeable that if you hit a golfer an injury would result. It is also foreseeable that another party could be negligent. However, is it foreseeable that if you hit a golfer that their ball would clog the air intake at the power plant resulting in Perry's oxygen being shut off? Further, there is no direct connection between Tommy's negligent act and Power Plant, with Perry's suffering of brain damage. The act of Tommy running the golf cart into Dana, a golfer, was not a substantial factor that resulted in the oxygen to stop working. In addition the harm to Perry is too remote to the conduct of Tommy running into Dana.

Therefore, Tommy's conduct was not the proximate cause of Perry's injuries.

Assuming the court does find Tommy the proximate cause damages must be proven

### **General Damages**

Plaintiff must have sustained actual damages to person or property to recover for negligence.

Due to Tommy's act running into Dana while she was golfing that resulted in her hitting her ball into the Power Plant's air intake causing the plant to shut down and Perry's oxygen equipment to stop working, Perry suffered serious brain damage.

Therefore, Perry may recover for his personal injuries.

### **Special Damages**

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

Perry will be able to recover of any medical expenses incurred and any lost wages.

Therefore, Perry may recover special damages.

### **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.

Tommy was driving a golf cart. While not paying attention he ran into Dana who was golfing. As a result she hit her ball into the air intake at the power plant that caused the plant to shut down. As a result Perry's oxygen equipment stopped working. Tommy owed a duty not to subject others to harm. However, because the accident was not a direct result from Tommy's actions it did not result in a foreseeable physical injury to Perry.

Therefore, there was no negligent infliction of emotional distress

**June 2015 Baby Bar  
Question 4 Torts  
Model Answer**

**1. Under what theories, if any, and against whom, might Abe sue for damages? Discuss.**

**Abe v. Bob**

**Defamation**

Defamation is a false defamatory statement intentionally or negligently published to a third party, which is understood as defamatory by that third party causing damages to plaintiff's reputation.

Abe will assert Bob's statement that he was stealing money from the team fund was false and would tend to lower his reputation in his profession making it defamatory in nature.

Bob's statement was made to a standing crowd of students and parents. Since Bob knew the accusations were untrue and he made the accusation in order to get Abe fired, Bob's actions were intentional.

Bob stated to a crowd of students and parents that Abe was stealing money from the team fund. Thus, the publication of the defamatory statement was to a third person.

Bob's statement resulted in Abe being fired from his position as head coach, indicating that such a statement was understood as defamatory.

The statement concerning his profession damaged his reputation as a coach evident by the fact that he could not obtain a job in his chosen profession. The statement Abe had been stealing money from the team fund interfered with his profession. As such, Bob's statements will constitute slander per se and general damages will be presumed.

Bob will be liable for defamation.

**General Damages**

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation pain and suffering.

Based on the defamation being slander per se general damages will be presumed.

**Special Damages**

Defined and discussed supra.



### **Punitive Damages**

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

As discussed, since Bob's acts were intentional and he wanted to get Abe fired as head coach, he acted with the intent to cause injury to Abe.

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

### **False Light**

False light is established when the plaintiff is portrayed falsely in the public's eye.

Based on the facts Bob accused Abe in front of a crowd of students and parents, that he was stealing money from the team fund. The information is largely false. Bob has portrayed Abe as being a thief and stealing children's money from their basketball fund. He made the statements in front of a crowd of student and parents. Therefore Bob portrayed Abe falsely in the public's eye.

Abe will be able to recover for false light.

### **General Damages**

Defined discussed supra

### **Special Damages**

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

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

Therefore, Abe is entitled to special damages.

### **Punitive Damages**

Defined discussed supra

### **Interference with Contract**

Interference with contract is the intentional interference with an existing contract.

Bob blamed Abe for the girl's basketball team's poor performance. Wanting to get Abe fired Bob accused Abe of stealing money from the team fund. Bob made the accusation knowing that

the accusation was not true. Abe was fired from his position as head coach based on Bob's accusation. Thus, knowing that the accusation was false and wanting to get Abe fired, Bob interfered with Abe's job performance. Thus, Bob's conduct was intentional.

Further, Bob's statement was made in order to get Abe fired from his job. By Bob making the false statement which got Abe fired he interfered with an existing contract.

Therefore, Bob will be liable for interference with contract.

### **General Damages**

### **Special Damages**

Defined and discussed supra.

### **Punitive Damages**

Defined and discussed supra.

### **Intentional Infliction of Emotional Distress**

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

Abe will argue Bob's false statement to the crowd of students and parents that he was stealing money from the team fund exceeded the bounds of decent behavior. Further, Bob's statement was made in order to get Abe fired, thus, was intentional, and outrageous conduct.

Bob's act of creating an accusation in order to get Abe fired was calculated to cause distress.

The outrageous nature of making up a false accusation about stealing from the team funds in order to get Abe fired without justification would be calculated to cause and did cause Abe to experience emotional distress.

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

### **General Damages**

Defined supra.

If Abe can show he has suffered emotionally Bob's tortious conduct, he should be able to recover for damages he sustained.

Therefore, Abe will be entitled to general damages.

### **Special Damages**

Defined and discussed supra.

Therefore, Abe is entitled to special damages.

### **Punitive Damages**

Defined and discussed supra.

## **2. Under what theories, if any, and against whom, might Bob sue for damages? Discuss.**

### **Assault # 1 throwing of the ball**

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

The facts indicate Abe, the head coach of the 5<sup>th</sup> grade girl basketball team, was accused by Bob of stealing the team funds. In retaliation Abe threw a basketball at Bob. Since Abe was acting in retaliation he acted with a substantial certainty to scare Bob by his conduct of throwing the basketball directly at Bob. Hence, his act was intentional.

By Abe throwing the basketball directly at Bob put Bob in reasonable apprehension of an imminent harmful touching given that he ducked to avoid being hit by the basketball.

Therefore, Abe will be liable to Bob for assault.

### **Punitive Damages**

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

Since Abe committed an assault against Bob, he acted with the intent to cause injury to Bob.

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

### **Battery**

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

Abe's conduct of throwing the basketball directly at Bob, in retaliation, shows he was substantially certain to cause Bob to react. Thus, Abe's actions were intentional. Bob saw the basketball being thrown at him, but ducked to avoid being hit. Abe will argue since the basketball did not hit Bob there was no harmful or offensive touching.

It appears Bob does not have a claim for battery.

## **Assault # 2 Threat to watch his back**

Defined supra.

The facts indicate Abe, the head coach of the 5<sup>th</sup> grade girl basketball team, was accused by Bob of stealing the team funds. In retaliation Abe went up to Bob and told him ne better watch his back. Since Abe was acting in retaliation he acted with a substantial certainty to scare Bob by his conduct of threatening Bob. Hence, his act was intentional.

By Abe threatening Bob that he better watch his back put Bob in reasonable apprehension of a harmful touching given that he is having nightmares. However, the threat of watching his back is a future threat and is not imminent.

Therefore, Abe will not be liable to Bob for the assault based on his threat.

## **Intentional Infliction of Emotional Distress**

Defined Supra.

Bob will argue Abe's threat that he better watch his back exceeded the bounds of decent behavior. Abe's statement was made in order to get even with Bob for his wrongful accusations, thus, was intentional, and outrageous conduct.

Abe's act of making a threatening statement in order to get back at Bob was calculated to cause distress.

The outrageous nature of making a threat without justification would be calculated to cause and did cause Bob to experience emotional distress. However, Abe will claim he was getting even for the false accusation that Bob stated to the parents and students.

Bob did suffer emotional distress from the incident, given that the fact that he is having nightmares. Abe may be liable to Bob for intentional infliction of emotional distress.

## **Damages**

Supra.

### **3. Under what theories, if any, and against whom, might Carl sue for damages?**

#### **Battery**

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

Bob made an accusation that Abe was stealing money from the team fund. Abe threw a basketball at Bob, who ducked shows he was substantially certain to cause harm to Bob. Thus,

Abe's actions were intentional to Bob. Abe will argue he only intended hit and harm Bob. As such, he lacked the requisite intent to harm Carl.

When Abe threw the basketball and it hit Carl in the face. By Abe's action, he created a harmful touching of another.

Under the transferred intent doctrine, Abe will be liable for battery.

### **General Damages**

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation pain and suffering.

Abe throw a basketball that resulted in hitting Carl in the face. He should recover for these damages which reasonable and naturally from Abe's tortious conduct. Pain and suffering damages should also be awarded. Should Carl's injuries result in disfigurement, he will also be entitled to additional compensation.

Therefore, Carl will be entitled to general damages.

### **Special Damages**

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

Carl should receive damages for his medical expenses and lost wages resulting from Abe's act. Carl suffered pain in his face by being hit with a basketball. As such, they are unique to him. It is reasonable and foreseeable that Carl may require medical treatment and suffer lost wages while recovering; thus, the damages are not too remote.

Therefore, Carl maybe entitled to special damages.

### **Punitive Damages**

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

Since Abe committed a battery against Carl, his actions where willful and done with the intent to cause injury.

Thus, Carl will be able to recover punitive damages.

### **Carl v. Elementary School**

### **Respondeat Superior – Vicarious Liability**

Under the respondeat superior doctrine, an employer is liable for the torts of its employee that occurs within the course and scope of the employment.

Elementary School is the employer of Abe. Therefore, an employer-employee relationship exists.

Further, Abe's conduct of throwing the basketball and hitting Carl occurred while he was working as the coach for the girl's fifth grade basketball team. Hence, Abe was acting in the course and scope of his employment with Employer. However, Abe's act was intentional. The general rule is an employer is not liable for an employee's intentional act, absent an exception which non apply

Thus, the court should find Elementary School's is not vicariously liable for Abe's conduct.