

**June 2004 Baby Bar
Question 4 – Torts**

What Claims, if any, do Carol and Peter have against each other, and what defenses, if any may each assert? Discuss?

1) **Peter v Carol**

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.

Carol owed a duty to lock her car and not leave the keys in the car as a reasonable prudent person would do under the same circumstances.

Therefore, Carol owes a duty of due care to Peter.

Breach

Carol left her keys in the car, with the car unlocked falling below the reasonable person standard of care.

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Therefore, Carol breached her duty owed to Peter.

Actual Cause

“But for” leaving the keys in the car and unlocked, Peter would not have been able to take her car and been injured.

Thus, Carol was the actual cause of his injuries.

Proximate Cause

It is foreseeable that leaving the keys in the car and leaving the car unlocked that someone could enter the car and drive it away and be injured.

Therefore, Carol was the proximate cause of Peters’ injuries.

Damages

Peter sustained injuries as a result of the car crash. Therefore, he would be able to recover for pain and suffering.

Defense -- Contributory Negligence

Conduct of plaintiff which falls below the reasonable person standard of care, which, if proven, is a complete defense to a negligence cause of action.

If Peter had not taken Carol's car he would not have hit the tree with the car and been injured. The act of taking Carol's car without determining the mechanical condition is conduct falling below the standard of care to which Peter should have conformed to protect his own safety. Thus, he contributed to his own injuries.

Therefore, contributory negligence is a valid defense.

Defense Comparative Negligence

Where plaintiff's conduct falls below the standard of reasonable care such that liability, including the amount of plaintiff's negligence, is apportioned according to fault.

Since Peter's conduct fell below the standard of care owed, the court will apportion his own fault against Carol's liability.

Last Clear Chance

It appears from the facts that Carol could have avoided the accident if she had not left her keys in the car, and the car unlocked. Thus, Carol had the last clear chance to prevent the injury.

Assumption of Risk

One who knows of a danger and voluntarily chooses to encounter it will have assumed the risk of injury.

Even though Peter may have known that taking Carol's car was wrong, he was acting in an emergency. His intent was to drive the car to the hospital were his wife had been taken and not knowingly and voluntarily encounter the risk of danger.

Assumption of the risk is no defense.

2) Carol v, Peter

Trespass to Chattel

Trespass to chattel is the intentional interference with the personal property of another.

Carol will assert that when Peter took her car, such conduct was done with intent. Thus, an intentional interference. Since Carol was the owner of the car this is sufficient to show personal property of another.

Peter will be liable for trespass to chattel.

Compensatory Damages

Compensatory damages are those that naturally flow from the wrong and such as will make good or replace the loss caused by the wrong or injury sustained.

Carol will receive damages consisting of the value of Peter's use of the vehicle for the period of use.

Punitive Damages

Damages to punish defendant for an intentional wrongful act.

Carol will be entitled to recover punitive damages from Peter.

Defense -- Necessity

Is a defense but defendant will be liable for any damages.

Peter will argue that he needed to take the car to get to the hospital where his spouse had been taken for emergency medical treatment. Thus, his actions were necessary. If the court finds this to be a valid defense, Peter will still be liable for the damages.

Conversion

Conversion is the intentional exercise of dominion and control over the personal property of another without consent or privilege.

Carol will argue that the taking of her car and the subsequent act of crashing the car into a tree is an act of intentional exercise of dominion and control over her personal property.

Peter will be liable for the conversion of the car.

Compensatory Damages

Defined and discussed supra.

Punitive Damages

Defined and discussed supra.

Defense -- Necessity

Defined and discussed supra.

Negligence

Defined and discussed supra.

Duty

Defined supra.

Peter owed Carol a duty to act reasonable in an emergency circumstance as a reasonable person would under the same and similar circumstances.

Therefore, Peter owes a duty of due care to Carol.

Breach

Peter pulled the fire alarm for medical help, in which the fire truck responded falling below the standard of care. Thus, breach.

Actual Cause

“But for” pulling the fire alarm placing the fire truck in motion Carol would not have been injured.

Thus, Peter is the actual cause of Carol’s damages.

Proximate Cause

Peter will argue that the fire truck hit Carol and is an intervening act. However, Peter’s actions are indirect and independent of the fire truck, but the negligence of the fire truck is foreseeable.

Therefore, Peter was the proximate cause of Carol’s injuries.

Damages

Carol sustained serious bodily injuries as a result of being hit by the fire truck. Therefore, she will be able to recover for pain and suffering and any medical expenses.

Defense -- Contributory Negligence

Defined supra.

Peter will contend that Carol had left her keys in the car and the car unlocked, thus she contributed to her own injury. However, Carol was emerging from her office building when she was hit, such conduct did not fall below the standard of care to which Carol should have conformed to protect her own safety.

Therefore, contributory negligence is not a valid defense.

Defense -- Comparative Negligence

Defined Supra.

As argued above, Carol was not negligent. Thus, there will be no apportionment of fault regarding her injuries.

Last Clear Chance

It appears from the facts that Peter could have avoided the accident from occurring if he did not pull the fire alarm for medical services. Thus, Peter had the last clear chance to prevent the injury.

Assumption of Risk

Defined supra.

Carol had no knowledge of the fire truck, thus is did not voluntarily encounter the risk of danger.

Assumption of the risk is no defense.