

**June 2009 Baby Bar  
Question 4 Torts  
Model Answer**

**1. Under what theory or theories might Charlie bring an action for damages against Abel, what defenses, if any, might Abel assert, and what is the likely result? Discuss.**

**Charlie v Abel**

**Assault**

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

The facts indicate the State College of Law was holding its annual faculty softball game and as a result of poor sportsmanship on both sides tempers flared. Charlie, a member of the faculty team, thinking it would be funny threw a ball at the trophy Abel was holding. When the trophy was knocked from Abel's hands, Abel angrily picked up the trophy and approached Charlie. Abel said to Charlie, "If you weren't a professor here, I would take that trophy and stick it in your ear." Abel acted with a substantial certainty to confront Charlie. Thus, his actions were intentional.

Further, the prosecution will argue that Abel's statement accompanied by Abel angrily approaching Charlie could create reasonable apprehension of an imminent harmful touching.

However, Abel will argue Charlie is physically much bigger than Abel and Charlie was a former professional boxer. Therefore, he could not be in apprehension.

Further, Abel's statement, "If you weren't a professor here" indicates he actually had no intent to actually harm Charlie, which negates any apprehension of an imminent harm by Charlie.

Therefore, Abel will not be liable to Charlie for assault.

**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.

Charlie will assert by Abel coming up to him when he was angry and making a threat while in front of everybody exceeded the bounds of decent behavior and was intentional, outrageous conduct.

Further, Abel's statement "If you weren't a professor here, I would take that trophy and stick it in your ear" in front of the whole faculty was calculated to cause distress. The outrageous nature of threatening Charlie without justification is calculated to cause and could cause Charlie to experience emotional distress.

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

### **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.

Charlie should recover for any damages which reasonable and naturally flow from Abel's tortious conduct, which would include the emotional distress damages he sustained.

Therefore, Charlie 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.

Charlie should receive damages for any medical expenses and lost wages resulting from Abel's act.

Therefore, Charlie is entitled to special damages.

### **Punitive Damages**

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

As argued above under Intentional Infliction of Emotional Distress, Abel's acts were intentional.

Therefore, Charlie will be entitled to punitive damages from Abel.

### **Self-Defense**

One is privileged to use force to defend himself as long as the force used is limited to reasonable force and there is a reasonable belief that an attack is imminent.

Based on the facts Charlie threw a ball at the trophy Abel was holding thinking it would be funny. The ball knocked the trophy out of Abel's hands. Abel then picked up the trophy and approached Charlie. Since both teams had flared tempers, Abel approached in order to defend himself. He told Charlie he would stick the trophy in his ear if he was not a professor at the university. Hence, his force was reasonable since the force used was merely words. Further, since Charlie just threw a ball at the trophy Abel was holding he had belief that Charlie would do something else making it imminent.

Thus, self-defense is valid.

**2. Under what theory or theories might Abel bring an action for damages against Edward, what defenses, if any might Edward assert, and what is the likely result? Discuss.**

**Abel v Edward**

**Battery**

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

Edward's conduct of striking Abel with a baseball shows he was substantially certain to hit Abel. Thus, Edward's actions were intentional.

When Edward hit Abel with the baseball bat, he bruised Abel's arm. Hence, Edward's actions resulted in a harmful touching of another.

Thus, a 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.

Abel received a bruise on his arm from Edward hitting him with the bat. He should recover for these damages which reasonable and naturally from Edward's tortious conduct. Pain and suffering damages should be awarded.

Therefore, Abel 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.

Abel should receive damages for his medical expenses and lost wages resulting from Edward's act.

Therefore, Abel is entitled to special damages.

**Punitive Damages**

Defined supra.

As discussed supra, since Edward committed a battery against Abel, his actions were willful and done with the intent to cause injury to Abel.

Therefore, Abel will be entitled to punitive damages from Edward.

### **Defense-Defense of Third Person**

One is privileged to use force to defend another as long as the force used is limited to that which the person defended would have been privileged to use in self-defense under the circumstances.

Edward hit Abel with a baseball bat when he believed that Abel was about to attack Charlie. Thus, Edward was privileged to use force to defend Charlie. Abel will argue that he was not about to hit Charlie. Edward was under a mistaken belief and has no privilege to defend Charlie. However, most courts modernly allow a person to defend another even if there is a reasonable mistake.

Edward hit Abel with the baseball bat on the arm in order to prevent him from attacking Charlie. The force used by Edward was reasonable since Edward did not use a lot of force evident by the fact that Abel only sustained a bruise. Further, Charlie would have been privileged to use such force in self-defense under the circumstances. However, under the majority view you step into the shoes of the victim. Since Charlie was the aggressor evident by the fact that he threw a ball at Abel and started the provocation, there was no right to a defense.

Under the minority view a reasonable mistake is permitted. Since Edward was under the belief that he could defend Charlie, the defense of third person is a valid defense.

Thus, defense of third person is a valid defense under the minority view.