

**October 2009 Baby Bar
Question 4 Torts**

1. Under what theory or theories, if any might Paul bring an action against Dan? Discuss.

Nuisance

Private nuisance is a non-trepassory invasion of another person's interest in the use and enjoyment of his property by defendant.

Paul is a neighbor of Dan. Paul works out of his home as a therapist. Paul will assert that because Dan allowed his nephew to play his electric guitar so loud that it could be heard a block away, he interfered with Paul's therapy sessions with his patients. Thus, Dan interfered with the use and enjoyment of Paul's property. Since Paul's use of his land was affected because of the loud music, it involved the property of another.

Therefore, a private nuisance exists.

General Damages

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

Paul should recover for any damages which reasonable and naturally flow from Dan's tortious interference with the use of his land.

Therefore, Paul 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.

Paul should receive damages for any lost income in his therapy practice resulting from Dan's act.

Therefore, Paul is entitled to special damages.

Negligence

Duty

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

Dan owes Paul a duty to make sure his nephew does not interfere with Paul's use of his property. A reasonably prudent person would take steps reasonably necessary to assure that Billy did not play the electric guitar so loudly that it could be heard a block away.

Therefore, Dan owed Paul a duty.

Breach

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

Paul went to Dan and complained about the loud guitar music. Dan told his nephew, Billy, to lower the sound of his guitar amplifier. Later that day Dan went out and told Billy to keep the music down because of Paul's complaint. However, once Dan left Billy started to play the guitar very loudly. Thus, Dan's conduct of not making sure Billy kept the music down shows Dan fell below the reasonable person standard of care.

However, Dan will argue that he told Billy to keep the music down. He had no prior knowledge that Billy had previous behavior problems. Further, his act of telling Billy to keep the music down shows he acted in the same manner as a reasonable person under the circumstances.

Therefore, Dan did not breach his duty owed to Paul.

2. Under what theory or theories, if any might Paul bring an action against Billy? Discuss.

Assault

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

Billy was angry at Paul for telling him not to play his music so loud. As Paul began to walk back home Billy yelled to Paul "If you ever complain about my music again I will make you pay!" When Paul did not respond Billy threw a large rock at Paul. Since Billy acted with a substantial certainty to harm Paul by his conduct of throwing a large rock at him, his conduct was intentional.

Billy will argue that he is a minor and he could not form the intent to commit an assault, However, courts have held that a minor can form the intent to commit an intentional act.

Therefore, Billy's act was intentional.

Based on the facts, Paul was walking back home when Billy through the rock. We can make an inference that Paul's back was to Billy since Paul did not try to move out of the way when Billy throw the rock at him. Therefore, when Billy throw the rock Paul was not put in reasonable apprehension of an imminent harmful touching given that facts.

Therefore, Billy will not be liable to Paul for assault.

Battery

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

Billy's conduct of throwing a large rock directly at Paul shows he was substantially certain to cause the rock to hit Paul. Thus, Billy's actions were intentional.

The rock missed Paul. Thus, Billy's act of throwing the large rock at Paul and not actually touching Paul was not a harmful or offensive touching of another.

Thus, it appears Paul does not have a claim for battery against Billy.

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.

Paul will argue Billy's threat "If you ever complain about my music again I will make you pay", exceeded the bounds of decent behavior and was intentional, outrageous conduct.

However, based on the facts Paul did not respond and continued to walk home. Billy's act of threatening Paul did not make Paul fearful.

The outrageous nature of threatening another without justification would be calculated to cause Paul to experience emotional distress, but based on the facts Paul did not suffer any distress.

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

General Damages

Defined supra.

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

Therefore, Paul will be entitled to general damages.

Special Damages

Defined supra.

Paul should receive damages for any lost wages resulting from Billy's act.

Therefore, Paul is entitled to special damages.

Punitive Damages

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

As discussed, since Billy committed intentional infliction of emotional distress against Paul, he acted with the intent to cause injury to Paul.

Therefore, Paul will be entitled to punitive damages from Billy.

3. Under what theory or theories, if any might Penny bring an action against Billy? Discuss.

Battery

Defined supra.

Billy's conduct of throwing a large rock directly at Paul shows he was substantially certain to cause the rock to hit Paul. Thus, Billy's actions were intentional.

However, Billy will argue that he did not have any intent for the rock to strike Penny since he was actually aiming at Paul. Without such intent he should not be liable for battery to Penny even though the rock hit her.

Hence, there was no battery.

Transferred Intent

A defendant's wrongful intent is transferred from the intended victim to the actual victim or from the intended tort to the committed tort.

Billy threw a large rock directly at Paul. However, the rock missed Paul. Since Billy intended to cause harm to Paul, he will be liable for the resulting harm to Penny since his wrongful intent is transferred from the intended victim, Paul to the actual victim Penny.

Under the transferred intent doctrine, Billy will be liable to Penny for battery since the rock did result in a harmful touching to Penny.

General Damages

Defined supra.

Penny should recover for any damages which reasonable and naturally flow from Billy's tortious conduct, which would include any pain and suffering damages she sustained.

Therefore, Penny will be entitled to general damages.

Special Damages

Defined supra.

Penny should receive damages for any medical bills or lost wages resulting from Billy's act.

Therefore, Penny is entitled to special damages.

Punitive Damages

Defined supra.

As discussed, since Billy committed a battery against Penny, he acted with the intent to cause injury to Penny.

Therefore, Penny will be entitled to punitive damages from Billy.

4. Under what theory or theories, if any might Penny bring an action against Billy's parents? Discuss.

Vicarious Liability: Parent-Child

Where there is a parent-child relationship between defendants, plaintiff may have standing to sue for vicarious liability against the parent for the act of a child under those parents' charge. At common law, parents are not vicariously responsible for the torts committed by their child. Today, the law has been modified so that vicarious liability will be imposed under certain circumstances.

Billy was the son of the parents, thus a family relationship existed. The parents of Billy were told by the school psychologist, that Billy should be admitted to a facility where he could be treated for his anger problem. Further, the psychologist report stated that there was a 90% certainty that Billy would hurt someone if he did not get proper help. Once the parents of Billy learned of the problem, they ignored the advice and sent Billy to live with his uncle. Billy became angry and threw a large rock which hit Penny. At common law, Billy's parents would not be liable.

However, modernly, Billy's parents knew of the problem and chose to ignore it. Based on their knowledge, they are required to insure if Billy is mentally stable to prevent his anger from harming another.

As such, Billy's parents would be vicariously liable for his conduct.

Negligence

Defined supra.

Duty – Cardozo 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.

Penny will argue that under the Cardozo view, Billy's parents owed a duty of care to foreseeable plaintiffs in the zone of danger. Billy's parents owe a duty to the immediate community to make sure that Billy does not harm anyone.

In this case, Billy's parents knew of Billy's anger problem and sent him to live with an uncle versus getting him help. Since the psychologist told the parents that Billy had a 90% certainty to hurt someone if he did not get help, it is foreseeable that harm would result to anyone that came in contact with Billy.

Billy's parents will argue that the Cardozo view applies a duty of care to foreseeable plaintiffs only. Penny did not come into contact with Billy. She was walking by when the rock was thrown. Thus, Billy's parents conduct in not getting him help and sending him to live with an uncle without disclosing Billy's anger issues created a reasonably foreseeable risk of harm to others that he came in contact with and not Penny.

On the other hand, Penny will argue that the Andrews' view of duty applies. Under the Andrew's view, the conduct of Billy's parents would create a foreseeable risk of harm that Penny would be injured upon the parents' leaving of Billy with uncle rather than get Billy the proper care and treatment for his anger. Under those circumstances it is foreseeable that he would become angry and act in a manner to injure someone such as Penny.

The most likely result is that the court will limit the scope of Billy's parent's duty, as a matter of law, to the persons who potentially could be harmed by Billy's anger, which would extend to Penny.

Therefore, the court will find that Billy's parents owed a duty to Penny.

Breach

Defined supra.

Billy's parents knew that Billy needs to be treated for his anger problem and failed to get him help. Further, knowing of the problem they sent him away to live with an uncle without telling the uncle about Billy's anger problem.

Thus, Billy's parents fell below the reasonable person standard of care.

Therefore, Billy's parent breached their duty owed to Penny.

Actual Cause

But for Billy's parent not getting Billy help, he would not have hurt Penny.

Thus, Billy's parents were the actual cause of Penny's injuries.

Proximate Cause

Billy's act of throwing the rock and hitting Penny is an indirect act. Billy's parent knowledge of his anger problem and sending him off to live with his uncle rather than getting him help to make sure that Billy did not hurt anyone, and there act of not following up and making sure that Billy was stable is an independant act. As such, it is foreseeable that Billy's parents, knowing of Billy's anger problem and that he had a 90% chance of hurting someone, that he would hurt someone, like Penny.

Thus, Billy's parents are the legal cause of Penny's injuries.

General Damages

Defined supra.

Penny should recover for any damages which reasonable and naturally flow from Billy's tortious conduct, which would include the emotional distress damages she sustained.

Therefore, Penny will be entitled to general damages.

Special Damages

Defined supra.

Penny should receive damages for any medical care and lost wages resulting from Billy's act.

Therefore, Penny is entitled to special damages.