

Question 1

After paying for his gasoline at Delta Gas, Paul decided to buy two 75-cent candy bars. The Delta Gas store clerk, Clerk, was talking on the telephone, so Paul tossed \$1.50 on the counter, pocketed the candy, and headed out. Clerk saw Paul pocket the candy, but had not seen Paul toss down the money. Clerk yelled, "Come back here, thief!" Paul said, "I paid. Look on the counter." Clerk replied, "I've got your license number, and I'm going to call the cops." Paul stopped. He did not want trouble with the police. Clerk told Paul to follow him into the back room to wait for Mark, the store manager, and Paul complied. Clerk closed, but did not lock, the only door to the windowless back room.

Clerk paged Mark, who arrived approximately 25 minutes later and found Paul unconscious in the back room as a result of carbon monoxide poisoning. Mark had been running the engine of his personal truck in the garage adjacent to the back room. When he left to run an errand, he closed the garage, forgot to shut off the engine, and highly toxic carbon monoxide from the exhaust of the running truck had leaked into the seldom used back room. Mark attributed his forgetfulness to his medication, which is known to impair short-term memory.

Paul survived but continues to suffer headaches as a result of the carbon monoxide poisoning. He recalls that, while in the back room, he heard a running engine and felt ill before passing out.

A state statute provides: "No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, setting the brake thereon and, when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway."

1. Can Paul maintain tort claims against (a) Clerk for false imprisonment and (b) Mark for negligence? Discuss.
2. Is Delta Gas liable for the acts of (a) Clerk and (b) Mark? Discuss.

Answer A to Question 1

1)

1.

Paul v. Clerk

False Imprisonment of Paul

False imprisonment is an intentional tort. The elements for false imprisonment are that the tortfeasor must have intended to confine the victim in a bounded area and that the victim have no reasonable means of leaving the bounded area. The extent of the false imprisonment is usually not [of] importance[;] mere seconds can amount to false imprisonment. Courts often will forgo the intent requirement in regards to the tortfeasor if the victim suffered harm as [a] result of the confinement.

Here the facts indicate that Clerk intended to keep Paul in a bounded area until Mark, the store manager[,] was able to come back from his errand. Clerk had the requisite intent to confine Paul. Clerk will argue that the area was not bounded as he did not lock the door. Clerk will attempt to argue that Paul had a reasonable means of leaving the area[;] thus he cannot be guilty of false imprisonment.

Paul will reply that Clerk had the requisite intent and that it is not relevant whether the door was locked or not. The area was confined[;] Paul did not have a reasonable means of leaving as Clerk threatened to call the police on him. Paul will argue that even though the door was not locked, he was still confined for purposes of false imprisonment. Furthermore, Paul will argue that even with [sic] Paul did not have the requisite intent to confine him, the harm he suffered will be construed by the Courts as a substitute for intent.

Paul should succeed in his assertion of false imprisonment against Clerk barring any defense, discussed below.

Clerk's defense of Shopkeeper's Privilege

A defense to the tort of false imprisonment is that a storekeeper or his employees are allowed to detain an individual if they reasonably suspect that person of stealing. They are then allowed to detain that individual for a reasonable period of time in order for them to ascertain the validity of the theft. Courts have often held that reasonable usually cannot exceed 30 minutes, at time[s] have held 15 minutes was not reasonable, depending on the circumstances.

Clerk will argue that he was reasonable in his belief because he did not see actually see [sic] Paul pay for the candy, thus allowing him to assert the right. Clerk will also argue he

acted reasonably in taking Paul to the back room, and that leaving him for 25 minutes was not unreasonable. Clerk will argue the 25 minute stay was reasonable because he had to wait for the store manager to come back.

Paul will reply that Clerk's belief was unreasonable because Clerk was not paying attention in the first place, and that all Clerk had to do was look on the counter to see if the \$1.50 was there. If nothing else, Clerk could have simply checked the register. Paul will then argue that the 25 minute detainment was unreasonable because of the type of room he was placed in. Paul will argue that putting him in a [room] that was full of carbon monoxide was unreasonable, even if it was only for one minute.

Paul should succeed in rebutting Clerk's defense of SP b/c it was not a reasonable suspicion and the time constraint was unreasonable.

Clerk's unlawful arrest of Paul

For purposes of demonstrating intent and unreasonable belief, Clerk's arrest of Paul can be analyzed. It has been held that when a citizen arrests another citizen, for purposes of a misdemeanor (which these facts indicate as the candy was only \$1.50), require that the Clerk had been reasonable in his belief that the individual conducted the act, that act was done in his presence, and it had to be a breach of the peace.

Clerk may try to argue that it was done in his presence, and it technically was, but Clerk never actually saw it. Clerk may argue that regardless of [whether] he actually saw it, his belief was reasonable. Clerk may attempt to argue that a theft amounts to a breach of the peace and that he did not unlawfully arrest Paul.

Paul will argue that even if Clerk was reasonable in his belief, this was not a breach of the peace. Paul took \$1.50 worth of candy from a gas station and threw the money on the counter. This simply cannot amount to a breach of the peace, no matter how strict a state's law might be.

Therefore, Clerk unlawfully arrested Paul.

Conclusion

Therefore, because Clerk intended to confine Paul, and did indeed confine Paul (and caused an injury[,] no less), that Clerk did not satisfy the elements of shopkeeper's privilege as the belief was unreasonable, as was the time constrained. Finally, Clerk's unlawful arrest of Paul also goes towards the intent of illegal confin[e]ment. Thus, Paul should succeed in a false imprisonment claim again[s]t Clerk.

Paul v. Mark

Negligence

Negligence is a tort that requires the following factors: Duty, Breach of Duty, Foreseeability (Actual/Proximate Causation), and Damages.

Negligence per se

Negligence per se occurs when there is a[n] ordinance that prohibits some type of conduct that occurred. If it's intended to cover the type of occurrence it speaks to, one may be guilty of it without demonstrating all the elements of negligence.

Here, the statute refers to stopping a car on the curb/highway, and turning the wheels. This would indicate it's to prevent cars from sliding if the parking brakes don't work. Thus, this statute was not intended to protect people from carbon monoxide poisoning.

Thus, negligence per se doesn't work.

Duty

Duty requires that the tortfeasor have some duty to victim. Generally speaking, we all have a duty not to act negligently. Essentially this is requiring that we act in a reasonable manner that does not put others in a[n] unnecessary state of harm. In order to make out a case for negligence, Paul needs to show that Mark owed him a duty.

Mark will argue that he has no general duty to everybody in the world. To hold him to such a high duty is improper. In addition, Mark will argue that the medicine he was taking made him forgetful, thus absolving [him] of his duty.

Paul will argue that nobody's asking Mark to have a duty toward the whole world, just those who enter his store[.] Paul will state that shopkeepers are held to a much higher degree than normal guys just walking on the street. Paul will also argue that Mark's tendency to forget while taking the medicine does not absolve him because he knows that the medicine makes him forgetful. Thus Mark must act in accordance with that knowledge.

In order to properly examine duty, it's necessary to look at the duties owed to a trespasser, licensee and invitee.

Trespasser

An undiscovered trespasser is owed no duty under the common law. Anticipated trespassers need to be warned of active operations and artificial conditions that are unreasonably dangerous.

Mark will try to argue that Paul was a trespasser because (b/c) Mark was being held for alleged shoplifting. Mark will argue that Paul was in an area that is not generally open to members of the public, thus his duties will amount to that owed to a trespasser only. Mark will argue that he was not aware of Paul's presence[;] therefore, he owed Paul no duty.

Paul will reply that holding him as an undiscovered or unanticipated trespasser makes no sense. He was discovered and most likely anticipated, although the facts do state the room was seldomly used. Paul will argue that he was owed, at worst, a duty that's granted to an anticipated/discovered trespasser. Thus, Mark will argue that he was entitled to a warning in regards to the carbon monoxide.

Licensee

A licensee is one who is invited onto the land of another as a social guest. They are owed to [sic] warnings regarding unreasonably dangerous conditions involving active operations, hidden but discovered dangers, artificial and natural conditions.

Because Paul was not invited as a social guest, whether into the gas station or the back room, the licensee standards do not apply to him and need not be discussed here.

Invitee

An invitee is one who has been invited onto the land of [sic] property of another for the property owner's benefit. The rule for invitees is that the property owner owes all the same duties that is [sic] owed to licensees, plus the owner needs to make reasonable inspections for unreasonable dangerous conditions existing on the premises.

Mark will argue that Paul was not an invitee because he had allegedly stole [sic]. Mark will argue that while Paul may have started off as an invitee, by stealing, he exceeded the scope of the invite and became a trespasser. Mark will argue that because of that, Paul is not entitled to the protections of an invitee.

Paul will argue that he was an invitee as he went to the station to buy gas. He was there for the benefit of Delta. Paul will argue that just because he allegedly stole, that does not change his status because he did not in fact steal, that Clerk false[ly] imprisoned him, and the false imprisonment cannot change the scope of duty owed to him.

Paul will then argue that because an invitee is entitled to have the owner inspect the premises for dangerous conditions, this means that there was a duty to inspect the back

room before sticking him in there. Paul will argue that carbon monoxide is an unreasonably dangerous condition.

Was there duty?

The duty owed to Paul was most likely that of a[n] invitee. He was there for Delta's benefit. The fact that Clerk thought he stole does not change that fact b/c Clerk's defenses do not work. Further, the medicine making Mark forgetful cannot be construed against Paul because Mark knew the medicine makes him forgetful[;] thus he had a duty to act extra carefully when on the medicine.

Breach of Duty

This examines whether the tortfeasor breached the duty that's was [sic] owed to the victim in this case.

Mark will argue no duty was breached because he had no duty in the first place. Mark will make the same arguments regarding duty as above. Mark will argue that if he had no duty, he cannot be guilty of breaching it.

Paul will argue that duty [existed] for the same reasons as above. Paul will argue that Mark owed him a duty because he was the store manager and further that Mark owed a duty b/c he knew the medicine made him forgetful.

Thus, there was breach of duty of [sic] Mark's part.

Foreseeability

There are two inquiries in regards to foreseeability/causation: 1) actual (but-for), and 2) legal (proximate cause). But-for cause can be quite broad and is usually easy to satisfy. Proximate cause is a bit more difficult as it requires that the victim be foreseeable. The most prominent test is [sic] the "zone of danger" (or Cardozo test), while the less used one is the Andrews test.

A but-for cause simply asks: but-for defendant's actions, would the injury have occurred? In this case, but-for is easy to satisfy. But-for Mark's actions of leaving the exhaust on, Paul would not have been injured. This test is extremely broad and almost anything can qualify as a but-for cause. Perhaps that is why the courts instituted a legal cause as well.

The Cardozo Test will consider proximate cause satisfied only if the individual was in the zone of danger. Thus, it requires that the chain of events leading up to the injury was

reasonably foreseeable to the defendant. It requires that there not be some superseding (i.e. extremely unnatural consequences that comes in the middle) cause.

The Andrews [test] is extremely broad. It merely says that as soon as a negligent act is done, the zone of danger basically expands to everyone and everything.

Using the Cardozo test, Mark will argue that Paul was not within the zone of danger (ZOD) because Mark simply had left the exhaust on his truck. Mark will argue that by leaving the exhaust on, it was not foreseeable that Clerk would take Paul into a seldom-used backroom and have the Carbon Mono leak into that room. Mark will further argue that Clerk's actions were a superseding cause because if Clerk hadn't taken Paul into the room, there would be no injury.

Paul will reply that he was in the ZOD because the backroom was next to the garage. Paul will say that leaving the exhaust was a legal cause because he was a foreseeable plaintiff. Paul will argue that it is foreseeable that an exhaust, which everyone knows emits carbon monoxide, will seep into an adjoining room. Paul will further argue that while Clerk did falsely imprison him, this does not amount to a superseding b/c generally unless it's an Act of God or crime by 3rd party[,] many acts by another 3rd party do not amount to superseding causes.

Under the Andrews test, Mark really had no arguments b/c it's essentially another but-for test.

Paul should succeed in demonstrating foreseeability/caus[a]tion because it seems pretty clear he was in the ZOD. Paul was placed in a room adjoining the garage[;] most people should have the knowledge that it's dangerous activity. Further, the acts of the Clerk probably will not be construed as a superseding cause, even though it is an intentional tort.

Damages

Damages here would amount to Paul's medical expense and whatever suffering that has occurred.

Defenses

Paul will attempt to argue that he was not contributorily negligent or did not assume the risk.

Contributory negligence requires that the victim do something that contributed to the neglig[ig]ence, thereby depriving of his right to damages (in a c/n jurisdiction).

Mark will argue that Paul was c/n because he should have realized the[re] was CO and that any reasonable person would have ran [sic] out the door or at least pounded on the door.

Paul will reply that CO cannot be smelled, that it simply knocks a person out. Paul will reply that there was no way for him to know that there was CO[;] therefore he cannot be contributorily negligent.

Assumption of risk requires that the victim voluntarily assume the risk of whatever occurred to him.

The facts do not indicate that Paul voluntarily assumed any risk. While the door was unlocked, he could not have voluntarily assumed the risk that there would be CO leaking from the garage. Therefore, AOR is a bad defense for Mark to assert.

Further, comparative negligence will only serve to decrease some of Mark's liability. In some jdx's, one who is over 50% negligent cannot recover. In pure jdxs, P can always recover something, unless she is 100% negligent. The facts do not seem to indicate any negligence on Paul's part[;] therefore Mark will be responsible for 100% of the neglig[ig]ence, as it relates to Paul.

2. Vicarious Liability/Respondeat Superior

Vicarious Liability/Respondeat Superior

Generally, an employer is guilty for the acts of his employees, provided that it is within the scope of his employment.

In the case, Clerk was acting within the scope of his employment. He was trying to protect the store from being robbed. The store may try to argue by falsely imprisoning Paul, Clerk was acting outside of it. Further, store will try to argue that b/c Clerk was talking on the phone, he was also acting outside the scope of employment.

The store's arguments probably will not work because Clerk undoubtedly in [sic] given the privilege by his employer to detain those he believes is stealing. It would appear from the facts that Clerk was acting within the scope of his employment[;] surely his job entails detaining those who he believes was [sic] stealing from the store. Thus, the store cannot relieve itself of Clerk's false imprisonment tort.

Mark, on the other hand, left his truck on while running on a personal errand. The store will try to claim he was acting outside the scope of employment because he was on a detour. The general rule is that when an employee detours from his employment functions, the employer might not be held responsible.

The store will argue b/c Mark left on a personal errand, his actions cannot be attributed to them. This argument probably will not work b/c Mark left his truck at work. Mark did not take his truck on a personal errand and run somebody over. It is given that people

generally take their cars to work, and if that car poses a problem and causes injury to a customer, that is within the scope of the employment.

Therefore, the store will be held under the vicarious liability/respondeat superior theories.

Trespasser/Licensee/Invitee

All of the rules and arguments above apply to the Employer as well.

Since Paul was a[n] invitee, the Store (or its employees) owed a duty to inspect the premises and by failing to do so, Store is liable for the employer's acts.

Defenses

All the same defenses from above apply.

Answer B to Question 1

1)

COMPUTER INC. ("CI") v. STARTUP UNIFORM COMMERCIAL CODE (UCC) vs. COMMON LAW

UCC governs contracts for the sale of goods. Goods are items which are moveable, tangible, and identifiable at the time of formation[.]

This is a contract for the sale of a computer.

A computer is an item which is tangible, moveable, and identifiable at the time of formation. Thus it is a good.

This is a contract for goods; the UCC governs.

MERCHANTS

Those who deal in the product in question or hold themselves out by means of their occupation as having knowledge or expertise peculiar to the goods in question.

CI is a manufacturer of computer equipment. Thus it is one who deals in the goods in question, and will be a merchant.

Startup is a newly formed company, and the exact nature of its business is not clear from the facts. However, it is a business which makes use of computer equipment requiring a special computer with advanced internet capabilities. This may suggest that Startup is in the computer business, or at least is specializing in such a way as to be holding itself by occupation as having skill or expertise in computers. More facts are needed to determine Startup's status.

Thus at least CI (and possibly Startup) is a merchant within the UCC. Merchants are held to a higher standard of good faith and fair dealing.

OFFER/PRELIMINARY NEGOTIATIONS

An outward manifestation of present contractual intent which is definite in terms and which is communicated in such a way as to create in the offeree a reasonable expectation that the offeror is willing to enter into a contract.

Startup faxed an order to CI on January 3 for a computer. This is a communication of contractual intent.

The terms of definiteness[sic] are as follows:

Quantity – 1

Time for performance – not stated; the UCC will fill in a “reasonable time”

Identity of Parties – CI and Startup

Price – not stated

Subject Matter – CI computer with advanced internet capabilities.

However, the subject matter was ambiguous because CI manufactured 16 different computers.

Under the common law, this would be fatal to an offer, because all terms were required in order to have a valid offer.

Under the UCC, the trend is toward leniency, and a court will fill in missing terms as long as it has reasonable grounds for doing so. However, here the court does not have reasonable grounds upon which to decide which of the several computers manufactured by CI would be the computer which Startup is requesting. Thus, even under the UCC, the court will not fill in the terms, and the offer will thus be invalid.

Thus the terms are not sufficiently clear to find an offer. It will [,] however, be an invitation to deal, and be part of the course of dealing.

PRELIMINARY NEGOTIATIONS 2

CI mailed a letter to Startup on June 5, stating that they received the order but could not fulfill it with the ambiguous terms. However, this is not a clear rejection (it could not be a rejection of the offer, because the offer was invalid). It is more likely to be construed as continuing negotiations[.]

OFFER #2

On June 8, Startup mailed an order to CI. This was a present communication of contractual intent.

The terms are as follows.

Quantity – 1

Time for performance – not stated; the UCC will fill in a “reasonable time”

Identify of Parties – CI and Startup

Price - \$4,500

Subject Matter – CI computer model 100 with Delta operating system

A reasonable person in the position of the offeree would understand this to be an offer.

ACCEPTANCE

An outward manifestation of unequivocal assent to the terms of the offer.

CI immediately shipped the computer as ordered. The computer shipped was a model 100,

but it ran on a Gamma operating system and cost \$7,000.

Under the UCC, an offer can be accepted in any manner reasonable under the

circumstances, either by acceptance or prompt and current shipment. CI made a prompt shipment. Thus, this is a valid acceptance under the UCC rules.

However, the item shipped did not conform in all respects to the order. But under the UCC,

shipment of a non-conforming goods is still a valid acceptance but it is also at the same time a breach.

CONSIDERATION

That which is bargained for and given in exchange for performance or a return promise,

requiring mutual benefit and detriment to both parties.

Here, CI shipped a computer, thus incurring a detriment but receiving the benefit of

payment by Startup.

Startup paid a monetary price, incurring a detriment, but receiving the benefit of the

computer.

Each performance was the inducement for the other.

There is a valid consideration[.]

DEFENSES

Statute of Frauds

UCC requires contracts for the sale of goods of \$500 or more (or \$5,000 under the 2003

UCC revision) to be in writing to be enforce[e]able.

Here this is a sale for \$4,500 and thus would be within the original UCC statute of frauds.

Sufficient Memorandum

A sufficient memorandum is a writing evidencing the formation of a contract, containing a quantity term, which is signed by the party to [be] held to the contract.

Here, the offer was made by mail by Startup. This is a writing evidencing a contract. UCC requires it to be signed. But because it came with a check which must have been signed, and the order referred to the check, the documents together will be considered an integration and the contract will be enforceable.

Performance

Because there has been performance by part payment, this is sufficient to remove the contract from the Statute of Frauds to the extent of the payment. The Statute of Frauds will not be an effective defense.

Unilateral Mistake

Where one party is mistaken as to a basic material fact upon which contract is based, and the other party knew or should have known this fact, the contract resulting is voidable by the mistaken, adversely affected, party.

Startup was mistaken in its offer, accidentally requesting the model 100 instead of the model 10 as they intended. The type of computer which was ordered is a basic fact of the contract.

Startup will argue that CI should have known of the mistake, because while requesting the model 100 Startup referred to the operating system and the price, which were not the operating system and price of the model 100 but apparently applied to model 10.

This makes it appear that CI reasonably should have known of Startup's mistake. Because the law does not allow one to "snatch up" an offer known to be mistaken. CI snatched up the offer by immediately shipping. This evidences an occasion when unilateral mistake would be an effective defense.

Unilateral mistake is a valid defense, rendering the contract voidable by Startup.

CONDITIONS

An act or event not certain to occur which unless excused, gives rise to or extinguishes a duty to perform under the contract.

1. Express Condition Precedent

In the negotiations, CI's letter of June 5 required payment in full, including shipping, before shipment. As part of the course of dealing, this statement is admissible to show the parties' intent on the issue of time-of-payment.

Excuse of Condition

Waiver

Here, Startup paid only \$4,500 for the model 100, which actually sold for \$7,000. Because CI accepted the check in part payment and shipped the Model 100 anyway, this was a waiving of the right to insist upon full payment before the duty to ship arose.

Implied in Law (Constructive) Condition

2.

A longer performance is a constructive condition precedent on a shorter performance.

Thus, because the delivery of computer would be longer than the performance of paying, the duty of completing delivery must occur first before the duty to pay the balance arises.

Excuse of Condition

Perfect Tender Rule

Startup's duty to pay the balance never arose, because the performance did not occur in conformity to the contract. Here, CI shipped a computer which did not conform in all respects to the contract: the computer ordered was to run on a Delta operating system, but the computer shipped ran on a Gamma operating system. Under the UCC, shipment of a non-conforming goods is still an acceptance but is also breach.

UCC requires perfect tender of performance. The failure of the shipment to conform justifies the buyer to either:

- (a) reject the whole,
- (b) accept the whole, or
- (c) accept any commercial unit or units and reject the rest.

There are three exceptions to the perfect tender rule. CI will try to argue for application of an exception:

(a) Delivery is made before the duty to perform is expired. The buyer must notify the seller of the nonconformity and must then give the seller time to cure. However, here the time for performance was not specified by contract and so upon receipt of the goods by Startup, CI had no further time in which to cure.

(b) Installment contract. This is a shipment of only one item and is not an installment contract. This exception is inapplicable.

(c) Where the seller ships nonconforming goods, but states that it is only an "accommodation" to the buyer, the buyer may reject the goods, but must give seller reasonable time to cure. Here, the nonconforming goods were shipped without any mention of it being an "accommodation." This exception will not apply.

No exception applies.

Thus, the failure of the sale to conform to the contract excuses the duty of Startup to perform by tendering payment.

BREACH

No duty is likely to be found to have been breached by Startup, due to (1) the fact that the contract is avoidable due to mistake, and (2) the fact that the duty to tender payment of the balance likely did not arise. Thus, Startup will not be found to have breached.

REMEDIES

General Damages

General damages attempt to compensate for the loss of expectancy under a contract, by placing the nonbreaching party in the position he would have been in had the contract been fully performed. The normal measure of damages for a breach by a buyer is for the seller to recover either (a) the difference between the market price and the contract price, or (b) the profits expected under the contract (particularly when the goods sold are of an unlimited supply).

CI cannot recover general damages where the contract is voidable, and no breach is found.

Restitutionary Damages

Even where the contract is voidable, a plaintiff can recover for the reasonable value of the benefit conferred under the contract.

However, CI cannot recover for the computer in this case, because it has refused to take back the computer when Startup offered to return it. Under the avoidable consequence rule, the plaintiff cannot recover damages which he reasonably could have avoided. Because CI could have avoided the damage of losing their model 100 by accepting its return, and refused to so mitigate, CI cannot recover for its loss.