

Question 1

Homeowner kept a handgun on his bedside table in order to protect himself against intruders. A statute provides that "all firearms must be stored in a secure container that is fully enclosed and locked." Burglar broke into Homeowner's house while Homeowner was out and stole the handgun.

Burglar subsequently used the handgun in an attack on Patron in a parking lot belonging to Cinema. Patron had just exited Cinema around midnight after viewing a late movie. During the attack, Burglar approached Patron and demanded that she hand over her purse. Patron refused. Burglar drew the handgun, pointed it at Patron, and stated, "You made me mad, so now I'm going to shoot you."

Patron fainted out of shock and suffered a concussion. Burglar took her purse and fled, but was later apprehended by the police. Cinema had been aware of several previous attacks on its customers in the parking lot at night during the past several years, but provided no lighting or security guard.

Under what theory or theories, if any, might Patron bring an action for damages against Homeowner, Burglar, or Cinema? Discuss.

Answer A to Question 1

Patron (P) v. Homeowner (H)

The issue is under what theories P might bring an action against H.

Negligence

Negligence is an action where a plaintiff asserts that a defendant breached a duty and caused damages. In order to prevail on a claim of negligence, the plaintiff must prove (1) Duty; (2) Breach; (3) Actual Causation; (4) Proximate Causation; and (5) Damages.

(1) Duty

Duty determines the level of care a defendant must exercise. Everyone owes a general duty to avoid harming others. In certain circumstances, an individual owes a higher duty of care. Under the Cardozo majority test, the duty is owed to those in the “zone of danger,” meaning, those in the vicinity who may be harmed by the action. Under the Andrews minority test, the duty is owed to all foreseeable plaintiffs.

Applying the Cardozo test, H will claim that he did not have a duty to P, because she was not in his home when the event occurred. Under the Andrews test, P will claim that H did owe a duty because it was foreseeable someone could use the firearm to go out and shoot someone, or injure someone, or put someone into fear, as B did in this case. Depending on where H lives, and whether it is a community where burglaries often occur, P may succeed in showing it was foreseeable that a burglar could come in and take the handgun.

The court will likely agree with P, because it was foreseeable the gun could be used on a person, so H owed a duty to P.

Standard of Care

The next issue is what the standard of care is, meaning how H must exercise his duty.

The court determines the appropriate standard of care. While the standard of care might be adjusted based on such things as physical conditions or professional

occupations, the court does not consider mental or emotional individual characteristics in setting the standard of care.

In this case, P will claim that H owed a duty of a reasonable person in his circumstances, meaning the reasonable care of a handgun owner. H may claim that he owes less of a duty because for some reason he is particularly afraid of people breaking into his home. However, this argument will fail, because the court does not consider mental or emotional individual characteristics in setting the duty of care. It does not appear that there are any particular physical characteristics of H that alter this standard of care, or that he was a professional or a child, in which case the standard of care would be higher or lower.

Therefore, the standard of care is a reasonable handgun owner.

It should be noted that though H is a landowner, the issues of landowner liability do not apply to H in this case, because the injury was not to a person on his land (B), but rather to another person (P).

Negligence per Se

P may further attempt to invoke the doctrine of negligence per se. Negligence per se is a doctrine that allows the court to substitute the standard of care with the words of a statute. Where the defendant has violated the statute, that is sufficient to prove breach of duty. The plaintiff must still prove the three other elements of negligence, actual causation, proximate causation, and damages. In order for negligence per se to apply, the plaintiff must prove that (1) her harm was the type of harm the statute was designed to protect and (2) she was in the class of persons the statute was designed to protect.

In this case, P will try to apply the statute that provides that “all firearms must be stored in a secure container that is fully enclosed and locked.” She will claim that this is the standard of care.

As for the first requirement, P will argue that her harm is the type the statute was designed to protect, because it was designed to protect people from being injured by handguns. She was injured by a handgun. The court will likely agree.

However, as for the second requirement, H will argue that P was not in the class of persons, because the requirement that the guns be stored in a secure container seems to protect children in the home. It does not seem to protect people who will be harmed by guns that are stolen, because if that were the case, the requirement might be that guns be kept in a “hidden” location, or that they must be kept in rooms with locked doors, but not necessarily in “secure containers.” P will argue that the statute is broader, and legislative intent may show that it was designed to protect all people who might be injured by guns. The court will likely agree with P and that she was in the class. Therefore, the standard of care will be the statute and H will have breached. P must still prove the other elements of negligence.

However, if the court finds that the statute does not protect P, P will need to prove Breach.

(2) Breach

Breach determines whether the defendant met the standard of care, as established above. The standard of care in this case is the care of a reasonable handgun owner.

P will claim that H breached this duty because he kept a handgun on his dresser by his bed, and a reasonable handgun owner would be aware of the risks of doing that and put it somewhere more secure. He would also comply with the statute. H may claim that it was reasonable to keep it there because it was for self-defense, but P will claim he could have kept it under the bed or at least with some sort of a safety lock on it so that someone who came in and stole it would not be able to use it. Additionally, she will claim he should have put it away while he was “out,” so that it could not be stolen. This may depend on whether B had a home alarm system.

The court will likely agree there was a breach.

(3) Actual Causation

Causation is satisfied if the defendant's act was the "but-for" cause of the plaintiff's harm. Where more than one thing contributes, the causation is satisfied if the defendant's act was a "substantial factor."

In this case, P will argue that H's act was the but-for cause because if he had not kept the gun out, B would not have gotten it and would not have brought on her damages. H will claim that a burglar is likely to find a gun in someone's house, so even if he had not had it in his, B would have found a gun somewhere else and the harm would have occurred anyway.

The court is likely to find H's argument tenuous, and find that H's breach was the but-for cause.

(4) Proximate Causation

The next issue is whether H's breach was the proximate cause. This is likely to be H's strongest argument. Proximate cause determines whether it was foreseeable that the harm would occur and whether it would be fair to hold H liable.

In this case, H will argue that it was not foreseeable that someone would break in, steal the gun, and use it to commit a tort against someone else. Typically, the court finds that criminal acts of third parties are "superseding intervening causes," meaning that they break the chain of causation. Therefore, H will argue B's burglary and criminal assault should break the chain. P will argue that it was foreseeable this harm would occur, as discussed above, because people often steal guns when they break into homes. Where a homeowner had notice that he was in a dangerous neighborhood, it is more likely proximate cause will be found. Additionally, it would be relevant whether H's home had ever been broken into before.

H will also claim the chain of causation was broken because P was leaving a midnight movie in a dangerous neighborhood, so that made it more likely she would be attacked. This argument will likely fail, because people often see late movies without getting assaulted at gunpoint. H will also claim that P was not injured because of his leaving

the gun out, but rather because she “made [B] mad,” and he was going to shoot her for that reason. If she had handed over the purse, he would not have taken out the gun.

Therefore, the court will likely agree with H and find no proximate cause.

(5) Damages

However, if P were to succeed in showing proximate cause, she would also need to show damages. In this case, she will claim that the damages were the shock she suffered, the concussion, and perhaps any emotional damages.

Damages must be foreseeable, certain, unavoidable, and caused directly by the defendant’s action. The foreseeability of P’s harm is discussed above, and H may argue it was not foreseeable she would faint but rather that she would be shot. The damages from the concussion and medical bills are certain, but future damages like time away from work and emotional distress may be less certain. P could have mitigated the damages by not seeing a movie at that hour. Causation is discussed above.

Conclusion

Therefore, the court will likely find that there was no negligence on the part of H because there was no proximate causation.

Defenses

If negligence is found, H may assert defenses.

Contributory Negligence

Contributory Negligence is mostly abolished. However, if the jurisdiction retains it, the defendant argues that the plaintiff should receive no recovery because his [sic] negligence contributed to the harm. H would argue that P owed a duty to exercise care for her own safety, and failed to do so because she saw a movie late at night, was approached by a burglar who demanded her purse, and failed to give it to him. This was the but-for cause of her harm and also a foreseeable result of her failing to give over the purse. However, a court would likely find that a reasonable person would not necessarily give over their purse, because she might think that a security guard could

come help her or that the burglar was not armed. This would depend on whether P knew it was an area where attacks had happened before and if she saw the gun in B's pocket before he drew it.

On these facts, P was likely not negligent, so there was no contributory negligence.

Comparative Negligence

Comparative negligence reduces the plaintiff's recovery by the percentage of her negligence. Modified comparative negligence only allows the plaintiff to collect if her negligence was less than the defendant's.

For the reasons above, P was not negligent.

Assumption of Risk

This defense requires the assumption of a known risk. This would depend on whether P knew it was a dangerous area. It will also depend on whether she knew that B might be armed. It is unclear whether she knew these facts.

P v. Burglar (B)

P may bring various actions against B. It is important first to note that B may be guilty of several criminal acts, but they are not causes upon which P may bring an action for damages.

Assault

Assault is the (1) intentional (2) placing a plaintiff in fear of an imminent battery plus (3) causation and (4) damages.

Intent

Intent is desire or substantial certainty to cause a result. In this case, P will argue that B intended to place P in fear, because he said "I'm going to shoot you." He might have done it intending to frighten her into giving over the purse, but at least should have known it would cause fear.

Fear of an imminent battery

Battery is a harmful unconsented touching. P will argue that B's action put her in fear of this, because she saw the gun and through she was going to get shot. She was "shocked." Assault requires that the plaintiff be aware of the danger, and in this case P was. Therefore, this element is met.

Causation

P will argue that B's action caused the fear, and the court will agree.

Damages

As discussed above, P will claim that her damages are her concussion, her emotional distress, any medical bills, and perhaps time off work. As discussed above, these must be foreseeable, unavoidable, certain, and caused. There was nothing P could do to mitigate because she could not control fainting, and the harm was caused by B's act, so the requirements of unavoidability and causation are met.

In terms of certainty, it will be more difficult for P to prove her future time off work. Additionally, B may claim that it was not foreseeable she would faint and get a concussion. However, the defendant must take the plaintiff as he finds her, and, therefore, he is responsible for any damages that might occur, regardless of a plaintiff's extreme sensitivity. Therefore, P will succeed in proving damages, and may recover these damages from B provided that the court finds they are certain enough.

Conclusion

P will succeed in proving assault.

Battery

Battery is an unconsented harmful or offensive touching, harmful or offensive to a reasonable person. In this case, there was no touching, so this does not apply. P's hitting the ground does not count as a touching, because though B caused it, it was not direct enough.

Intentional Infliction of Emotional Distress

Intentional Infliction of emotional distress requires (1) extreme or outrageous conduct (2) intentionally or recklessly caused (3) that in fact causes extreme emotional distress.

Extreme Conduct

P will argue that B's saying "You made me mad so now I'm going to shoot you" is extreme and outrageous. It would be outrageous to an average person, because they might think they were going to die. They might think about their children or live lives, and be very disturbed. Therefore, this is met.

Intent

B need not have intended to cause extreme emotional distress, he just need have recklessly done so. Recklessness is extreme indifference and beyond gross negligence. A person would clearly know this action would cause extreme emotional distress.

Emotional Distress

P will claim this is met because she fainted, and the court will likely agree. It may be bolstered by psychiatrist testimony.

Conclusion

Therefore, P will succeed in proving this tort.

Negligent Infliction of Emotional Distress

This occurs where a defendant negligently inflicts emotional distress, and it causes physical damages. Because B's act was likely intentional, this will not apply. However, if it were found to be negligent instead, this would apply because P suffered physical manifestations – fainting.

Conversion/Trespass to Chattel

Conversion is an intentional and extreme interference with a plaintiff's property.

B intended to take the purse.

P will argue this applies because B stole her purse and took it away, which had many valuables in it. B will argue this was not extreme because she was able to get the purse back when he was apprehended by the police, so it was instead Trespass to Chattel, which is a minor interference with a plaintiff's property right. This may depend on whether all of P's belongings were in the purse at the time she got it back. She may argue that a purse is particularly important to a woman, so even taking it for a brief period is conversion. The court will likely determine this based on whether P got it back intact, or if it was permanently damaged. If the police did not return it, the suit will be conversion.

False Imprisonment

False imprisonment is intentionally holding a plaintiff captive, or preventing her from escaping. This occurs where there is no reasonable means of escape. P will argue that for the brief time she was held at gunpoint, she was falsely imprisoned. A plaintiff need not be held for only a second. He need not physically tie her up; merely holding at gunpoint is sufficient.

B may argue that P provoked him and "made him mad," but this is no defense to this intentional tort.

Therefore, P will likely succeed on this charge.

Negligence

Negligence does not apply because, as discussed above, B's act was intentional.

Defenses

It is unlikely that any defenses will apply. D may try to claim self-defense, but there is absolutely no evidence that P attacked him in any way.

P v. Cinema (C)

P may have a suit against Cinema for negligence. There are 5 elements to negligence, as discussed above.

(1) Duty

Duty is defined above. As discussed above, some people owe higher duties, and one such category is landowners. Landowners owe a duty to protect people on their premises. While the modern trend is a duty of reasonable care under the circumstances, under traditional rules, duty depends on what kind of an individual is on the land.

No duty is owed to an undiscovered trespasser. A slightly higher duty is owed to a known trespasser, and a higher duty to a person on the land for social purposes. The highest duty is owed to someone known as an "invitee," who is on the land for profit. In this case, the court will find that P was an invitee, because she was there to see a movie, and therefore for a business purpose. The parking lot belonged to Cinema, so C was the landowner and owed a duty to P as an invitee.

A landowner owes a duty to an invitee to inspect for dangerous circumstances and make them safe or warn the invitees.

Additionally, applying either [the] Cardozo or Andrews test, P was in the zone of danger (the parking lot) and she was a foreseeable plaintiff.

(2) Breach

Breach is defined above.

In this case, P will argue that C's failure to protect its customers was a breach. P will argue that C should have installed lighting, security guards, or some sort of a fence to protect the premises. It could have also warned patrons, so that if P had known, she could have been more on her guard walking through the lot. She might not have refused to give over her purse.

Therefore, there was a breach.

(3) Actual Causation

C will claim its action was not the but-for cause, because the burglary and P's fainting might have occurred even if C had put in a security system. However, the court will likely find that if C had taken some sort of security measure, it would have indeed prevented this event.

(4) Proximate Causation

This is defined above.

C will claim the chain of causation is broken by the criminal act of a third party. However, this does not protect a landowner from liability where the risk was known to the landowner. In this case, C was "aware" of "several" previous attacks in the parking lot in past years. C may claim that they were spread out over many years. C may also introduce evidence that the neighborhood has become more safe recently, or that there is a greater crackdown by the police so it had less reason to worry. But absent this sort of evidence, P will argue that if there were "several" attacks, C should have done something more to protect. It was foreseeable there could be another attack, particularly because C shows movies at midnight, when crime is more likely to occur.

B's stealing the gun will not affect this, because it happened before the attack. It is foreseeable that a burglar would have a gun, regardless of how he obtained it. It is also foreseeable that a victim could faint and get a concussion, because people are frequently afraid of guns.

The court will likely agree with P, and find proximate causation because it was foreseeable. The court will also find it fair to hold C responsible, because it was in the best position to avoid the danger and prevent this from happening. Customers rely on their businesses to protect them. P could analogize to common carriers and claim that businesses should also owe a duty of care, because customers put themselves in their hands for protection.

(5) Damages

The damages analysis is the same as above, and it will be determined by the court on the same bases.

Defenses

The defenses of contributory and comparative negligence and assumption of risk do not apply, as discussed above.

Answer B to Question 1

Patron v. Homeowner

Negligence: Keeping the Handgun on Bedside Table

Patron will contend that Homeowner was negligent in failing to keep his handgun in a secure locked container as directed by the statute. In order to prevail in an action for negligence, Patron must prove that Homeowner owed him a duty, that he breached the duty, that his breach caused Patron's injury, and that he suffered damages.

Duty

Under the Cardozo view, a duty is owed only to foreseeable plaintiffs. Under the Andrews view, a duty is owed to the whole world. In this case, Patron will argue that it was foreseeable that a thief could steal an unsecured handgun and use it to perpetuate crime such as a robbery.

Negligence per se: Violation of Statute

When a statute proscribes certain behavior, the violation of that statute establishes a breach in the standard of care when the harm is of the kind that the statute is designed to prevent, and the plaintiff is among the class of people the statute is designed to protect. Here, Homeowner will argue that the statute is intended to prevent small children from gaining access to dangerous guns and hurting themselves or others. However, Patron can persuasively counter that it was also designed to prevent thieves or criminals from obtaining weapons that they would then use to perpetuate crime. The legislative history of the statute might shed some light on the purposes of the law. If its purpose includes preventing criminals from stealing unsecured weapons, then Patron, a crime victim, would be within the class the statute was designed to protect, and Homeowner's breach would establish per se negligence.

A reasonable Person would have Secured the Gun

Alternatively, Patron can argue that even without the statute, Homeowner was negligent in leaving the gun in a place where it was easily accessible to any burglars. He would argue that a reasonable person would foresee that the gun would be noticeable and would be stolen by a burglar. He will also argue that the mere

presence of the gun, which Homeowner kept to ward off intruders, indicates that Homeowner did in fact foresee the possibility of violent criminals entering his home.

Breach

Homeowner kept the gun on his bedside table. There is no indication that the gun was kept in a locked drawer, but rather out on his table. Therefore he violated the statute.

Causation

But-for Cause: Homeowner's act of leaving the gun on the table was the but-for cause of Burglar's assault on Patron. If he kept the gun in a locked container, Burglar would not have had access to it.

Proximate Cause: Homeowner will argue that Burglar's intervening criminal acts of breaking into his house, and then robbing Patron, were superseding causes of Patron's injury. However, an intervening act by a criminal will not interrupt the causal chain if it is foreseeable. As discussed above, it was foreseeable that a criminal could break into the house and use the gun on another unsuspecting victim. Therefore, Homeowner's argument will fail.

Damages

Patron suffered shock and a concussion as a result of Burglar's robbing him [sic]. Therefore, if Burglar's act is a foreseeable result of Homeowner's negligence in failing to secure his handgun, Homeowner can be liable for Patron's injury.

Patron v. Burglar

Burglar confronted Patron in the parking lot and demanded her purse. When Patron refused, Burglar pointed the gun at Patron and threatened her. Patron fainted, suffering a concussion, and Burglar took her purse and fled.

Assault

The prima facie case for assault is met when the defendant (1) performs an act that places the plaintiff in reasonable apprehension of imminent harmful or offensive

contact with his person, (2) the defendant had the intent to place the plaintiff in apprehension, and (3) causation. There must be some physical conduct, not mere words, to constitute assault.

Here, Burglar drew his handgun and stated “You made me mad, so now I’m going to shoot you.” His words, combined with pointing the gun at Patron, created in Patron an apprehension that Burglar was going to immediately shoot her. Further, Burglar had the intent to make Patron believe he was going to shoot her. This act caused Patron to faint and suffer a concussion. Therefore, Burglar can be liable for assault.

Battery

Battery consists of (1) harmful or offensive contact with the plaintiff’s person, (2) intent by the defendant to cause the touching, (3) causation.

Here, Burglar intentionally took the purse from Patron’s person after she fainted. Taking an object from someone’s person satisfies the offensive touching element. Further, the fact that Patron may have been unconscious when Burglar seized her purse does not negate the offensiveness of the touching he caused. Therefore, he can be liable for burglary.

Trespass to Chattels

Trespass to chattels occurs when the defendant (1) interferes with the plaintiff’s possession of her chattel, (2) had the intent of performing the act that interferes with possession, (3) causes the interference, and (4) plaintiff suffers damages.

Here, Burglar grabbed Patron’s purse and ran away with it, interfering with her right to possess it. He did so intentionally. The police later apprehended Burglar. If he still had the purse and it was returned to Patron, she may recover for any damages that resulted from her temporary loss of possession.

Conversion

Conversion occurs when the defendant (1) interferes with the plaintiff’s possession of her chattel, and the interference is so extensive as to warrant payment for the full

value of the chattel, (2) has the intent of performing the act that interferes with possession, (3) causes the interference. When defendant's act amounts to an exercise of dominion and control over the chattel, conversion is more likely to be found.

Here, Burglar seized the purse with the intent to completely and permanently deprive Patron of possession. If Burglar's later apprehension by the police restored the purse to Patron's possession, she may not be able to obtain the full value. If, however, Burglar disposed of the purse before he was apprehended, Patron can recover the full Value of the purse and its contents at the time Burglar seized it.

Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress occurs when the defendant (1) engages in extreme and outrageous conduct (2) with the intent to cause severe emotional distress, or is reckless as to the likelihood of causing severe distress, (3) causation, and (4) damages: severe emotional distress.

Burglar's conduct in pointing a gun at Patron, demanding her purse, and stating that he was going to shoot her is conduct "beyond all bounds of decency in a civilized society." Theft and threats to inflict serious bodily injury are extreme and intolerable. Burglar clearly intended to cause Patron emotional distress, as he likely hoped his threat and menacing her with the gun would convince her to hand over the purse. Patron fainted out of shock and suffered a concussion. She is likely to suffer emotional distress including fear of being out at night by herself following this robbery. Therefore, she can prevail under this theory.

Negligent Infliction of Emotional Distress

Patron could also prevail under a negligence theory because she suffered physical harm (shock and concussion) as a result of her emotional stress from her encounter with Burglar. However, because Burglar's conduct was at least reckless with respect to her emotional distress, she will not need to rely on a negligence theory.

In sum, Patron can recover for her physical injuries, emotional distress, and the deprivation of her purse.

Patron v. Cinema

Duty to make Safe for Invitees

Patron was robbed in a parking lot belonging to Cinema, just as she was exiting the Cinema around midnight after viewing a late movie. She will argue that Cinema breached the duty of care owed to her as an invitee by failing to provide lighting or a security guard in the parking lot.

A person who comes onto the land for the economic benefit of the landowner, or as part of the general public is invited onto the premises, is an invitee. Patron was an invitee because she entered Cinema's property, which was open to the public, and paid to see a movie. Cinema's duty to invitees is to make safe or warn of any latent dangers, manmade or natural, that are known or discoverable with reasonable inspection.

Cinema knew that there had been several previous attacks on customers in the parking lot in previous years, yet failed to provide any lighting or a security guard. Because the threat was known to Cinema, there was a duty to make a reasonable effort to enhance security.

Negligence

Cinema can also be liable under a negligence theory (see above). A duty of care is owed to all foreseeable plaintiffs, and Patron was a foreseeable victim of crime because she was exiting the cinema after midnight in an area where there was a known risk of assault. A reasonable theater owner would have provided either a security guard or bright lighting to discourage crime. Providing lights is [a] fairly low cost and would significantly improve safety. Therefore, Cinema's failure to do so was a breach of duty.

The lack of lights or a guard was a but-for cause of the attack because Burglar would not have been emboldened to attack Patron if there was a security guard present or if bright lighting would increase his risk of apprehension.

Proximate Cause: Cinema will argue that Burglar's intentional tortious and criminal act was a supervening cause of Patron's injury. However, as discussed above, a defendant can be liable where his negligence increases the risk of subsequent criminal acts. Here, the failure to provide lighting or a guard, despite the known attacks on other patrons, was a substantial cause of the burglary.

Joint and Several Liability

In a jurisdiction permitting joint and several liability, a plaintiff can recover the full amount of any damages proximately caused by the combined tortious acts of two or more defendants, whether acting independently or in concert, that result in a single indivisible harm. If this jurisdiction follows joint and several liability, Patron can recover from any of the defendants, and they can seek contribution from one another.