California First-Year Law Students' Examination

Essay Questions and Selected Answers

June 2007

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2007 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2007 California First-Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page ii.

ESSAY EXAMINATION INSTRUCTIONS

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Question 1

Daisy was driving on the streets of City to meet her friend Sally for a lunch date.

Realizing that she might be late for the lunch date and, while still driving, Daisy decided to call Sally on her cell phone to let her know that she was running late. While dialing Sally's telephone number, Daisy lost control of her car and hit a telephone pole. The pole broke, fell over, and rolled down the street.

About a block away, the pole rolled toward Frisky, a cat, who was walking across the street. Fearing for Frisky's safety, nine-year-old Owen, Frisky's owner, ran into the street, jumped in front of the moving pole, and pushed the startled Frisky out of its path. Unfortunately, the pole ran over Owen's leg and crushed it. Owen will need medical treatment for these injuries for the rest of his life.

Prior to these events, City had passed an ordinance forbidding the use of a cell phone by an automobile driver while driving. The ordinance was passed in response to community concerns that cell phone use while driving is distracting and causes motor vehicle accidents. The penalty for a violation of the ordinance is $100.

On what theory or theories might an action for damages be brought on behalf of Owen against Daisy, what defenses, if any, might Daisy assert, and what is the likely result? Discuss fully.

Answer A to Question 1

Owen (O) vs Daisy (D)

Owen (O) may bring an action against Daisy (D) under the theory of Negligence. To bring an action under this, O will have to prove that D owes him a duty, which is breach and the breach of D's duty was the actual and proximate cause of his injury.

Duty of D

As a road user, D owes all other road users the ordinary duty of care to drive safely so as not to cause any accident and thus injuries to the road users like drivers and pedestrians.

D's use of the hand phone while driving was the very reason that caused her to lose control of her car and hit on the telephone post. Such use of hand phone while driving was against the ordinance by the city.

Here, O might use D's violation of the statutes to establish negligence.

In a majority of the states violation of statutes is negligence per se while in minority of states, it's just evidence of negligence. Even in the former, O will have to prove that the violation was I) unexcused II) the type of harm he suffered is that the statute is aimed to prevent III) and that O is the group of people under which the statute aimed to protect.

(1) It is apparent that D's violation of the statute is not excused in that calling a friend that she might be late is not an emergency and the type of harm she created is not justified by her need to make that call, no matter how urgent she deemed it to be. In any case, she could always drive to the side of the road, stop her car at a safe place to make her phone call if there is such an urgency.
(2) Apparently the very reason the statute was passed was due to the incident, caused by distracted drivers who were using hand phones while driving. Hence it's the type of harm that statute is trying to prevent.
(3) O, being the road user, is the type of people the statute is trying to protect.

Actual Cause:

O suffers a crushed leg as a result. Had it not been for the negligence of D, O would not have suffered the injury. But-for the negligence of D, O would not have suffered the injury hence D is the actual cause of his injury.

Proximate Cause:

O is clearly a foreseeable plaintiff within the zone of danger for the harm created by O. At the same time the type of harm is created by D is foreseeable and it follows the unbroken chain of events starting from D's negligence. And the harm of injury on person by a rolled up pole is not highly ordinary and bizarre in hindsight. Hence D is the proximate cause of O's injury.

Damages:

O suffered a crushed leg. He is able to claim the pain and suffering (which the court will try to put a monetary value on it) and medical expenses, present and future. For future medical expenses, he might need expert witnesses to estimate the type of medical care needed and the cost.

Defenses:

Contributory negligence

D might claim that O is contributing negligence. In that he had acted unreasonably by running onto the road and jumping in front of the rolling poll. Whether the child has acted reasonably is judged according to a child of like age and experience. If D can successfully claim that O is contributorily negligent, O collects nothing even if he is established to be only 1% negligent. However, it is not unreasonable that an owner of the cat come to the rescue of the cat if he sees that the cat's in danger of imminent injury. So it would appear that O has acted reasonably.

Comparative negligence

In a pure comparative negligence state, a plaintiff's claim for damage is proportionately reduced by his own negligence.
In a modified comparative negligence state if the plaintiff is established to be more than 50% negligent, he collects nothing.
It would appear here that D was not negligent in coming to the rescue of a cat so D is unlikely to succeed here.

Assumption of Risk:

If plaintiff knows of the danger and voluntarily accepts it, then he collects nothing. Here, D may argue that by running onto the road O is aware of the risk of being injured by a car, hence he has knowingly assumed the risk of being injured.
There is no evidence that there are other cars on the road. At the same time O can counter argue that he assumed the role of a rescuer as peril, potential injury to his cat attracts his instinctive reaction of wanting to rescue the cat. Whether

rescuing a cat, an animal, is the same as a person is the same is for the court to decide. If O is successful in establishing his status as a rescuer, then assumption of risk is irrelevant and he can still claim. Even if not, it's not unreasonable for a 9-year old child under an instinctive reaction to rescue his cat, the actual knowledge and full comprehension of the possible risk that he might face can be challenged.

Answer B to Question 1

1)
QUESTION 1

Owen v. Daisy

Owen will bring a negligence action against Daisy, claiming that her conduct created an unreasonable risk of harm that caused his injury. The basic elements he must prove are duty, standard of care, breach of duty, actual and proximate causation, and proof of his damages.

1. **Duty/standard of care:** The basic duty rule is that one acting reasonably has duty of care to avoid harm to all foreseeable plaintiffs. Thus, Daisy must act reasonably to ensure that her driving does not result in harm to others.

2. **Breach of duty**? A key question is whether Daisy's actions in driving her car breached the basic duty she owed to foreseeable plaintiffs. There are several standard approaches to demonstrating that conduct is unreasonable. One is the Learned Hand Formula, in which the Benefit to the defendant for her conduct is weighed against the Probability of the harm she might cause and the Magnitude of that harm.

Negligence per se: Breach of duty may also be found where the defendant has violated a statute. For this standard, the statute must have been intended to protect against the type of harm caused, the plaintiff must be in the class of persons the statute was designed to protect, and the violation must not have been excused.

- Purpose: The facts indicate that the city had an ordinance banning use of cell phone by the driver of an automobile while driving. It is clear that the purpose of the statute was to avoid automobile accidents caused when a driver is distracted by use of the cell phone. Here, Daisy was dialing her cell phone while she was driving, and as a result lost control of her car. Her vehicle then struck a telephone pole. So her accident was clearly the type of conduct that the statute was intended to protect against.

-Plaintiff: The statute does not specify the exact class of plaintiffs intended to be protected. However, it is likely that it was intended to protect against all classes who could foreseeably be harmed by a motor vehicle accident. This could include personal injury to other motorists, to the passengers in the same vehicle, and to pedestrians; it would also include property damage resulting from the accident. Owen was a pedestrian, and therefore was in the class intended to be protected.

-Violation excused? There are no facts that would indicate that Daisy's violation of the statute would be excused. For example, Daisy was not operating under any emergency situation which necessitated her use of the cell

phone. Instead, she was simply trying to call her friend Sally to inform her that she was running late. Therefore, the violation was not excused.

Therefore, Daisy's violation of the statute would suffice to prove breach of duty under the negligence per se standard.

3. **Causation:**

a. Actual case: It is clear that but for Daisy's actions, Owen would not have been harmed. Daisy's car hit the telephone pole and knocked it over, causing it to roll down the street and ultimately hit Owen. Therefore, Daisy was the cause in fact of Owen's injuries.

b. Proximate cause: A more difficult question is whether Daisy's actions were the proximate cause of Owen's injuries. Was it foreseeable that her car accident would result in Owen being struck by a telephone pole more than a block away from the accident? There are two key elements that need to be examined:

1) Foreseeable type of harm? Owen's injuries were not caused by Daisy's car hitting him. Instead, he was struck by a telephone pole that Daisy's car had knocked over. Is this type of harm foreseeable from an auto accident caused by driver being distracted through cell phone use? While traditional common law held that a plaintiff was liable for all results of his conduct (Polemus rule), the modern majority rule is that the type of harm must be foreseeable. Daisy will argue that it was not foreseeable that her car would knock down the telephone pole, causing it to roll down the street. However, telephone poles commonly occur on streets, and it is therefore likely that a motor vehicle could crash into the pole. It is also likely that the pole could be knocked over (although plaintiff may have a claim against the City or telephone company for their negligence in maintenance of the telephone poles), and that the pole could roll down the street. Therefore, this type of harm could be foreseeable.

1) Foreseeable plaintiff? Was Owen a foreseeable plaintiff because he was more than a block away from the accident? Again, there are two approaches that courts have taken. The majority Cardozo rule is that the foreseeable plaintiff must be in the zone of danger. The Andrews dissent view is that the defendant owes a duty of care to all foreseeable plaintiffs. Here, it may be found that Owen was too far away to be considered to be in the zone of danger. However, motor vehicle accidents may result in a chain reaction of events, such as this, that cause injuries. Owen is arguably a foreseeable plaintiff.

4. **Damages**

Owen's leg was crushed, and he will need medical treatment for the rest of his life. He will easily be able to document his injuries, meeting this requirement of the case.

5. **Defenses**

Daisy may claim either that Owen's own negligence contributed to the injury, or that he assumed the risk of the injury by running out into the street.

Comparative negligence: The majority of jurisdictions follow the rule that a plaintiff's own negligence which resulted in the accident will reduce the recovery in proportion to the fault. In pure comparative negligence jurisdiction, it does.

Was Owen negligent in running out into the street? Owen's conduct will be judged on the child standard of care - where his behavior will be compared against a child of like age, education and experience. Was it unreasonable for a 9 year old with Owen's background to run out into the street to rescue his pet cat? A key question for the jury to decide is whether a reasonable child of that background and age would be able to understand the risk involved. His actions may have been more instinctual to rescue his beloved pet Frisky.

In addition, it is also true that creation of peril (such as that caused by Daisy's accident) invites a rescue, so a jury may not find that Owen was negligent.

Assumption of the risk: Alternatively, Daisy may argue that Owen assumed the risk of his own injuries by running out in the street to rescue the cat. Daisy would need to prove that Owen recognized and understood the risk, and voluntarily assumed the risk in taking his actions. Again, the child standard will be used in evaluating whether a child of 9 would have truly comprehended the potential risk to himself in running out in front of the telephone pole. The facts seem to indicate that Owen recognized a risk to his pet cat, and that he was trying to rescue the cat. However, that does not mean that he fully comprehended that he was risking his own life in doing that. It seems more likely that 9 year old would be acting instinctively to save his pet, and would not in that short period of time be able to reflect on the possible risk to himself. Without that level of understanding of the risk, Owen could not have voluntarily faced the risk.

If the jury finds that Owen was also negligent, then his damages will be reduced

in proportion to the fault assigned to him. [The minority rule of contributory negligence would be a complete bar to Owen's recovery.]

CONCLUSION: Daisy would be liable for Owen's injuries due to her negligence, but the damages she may have to pay could be reduced if the jury finds that Owen was also negligent.

Question 2

Victor and Debra were dealers of cocaine, which they brought into the United States from South America in Debra's private plane. On a trip from South America, while Debra was flying her plane, it crashed in a snowy mountainous area in California. Victor was rendered unconscious in the crash. The cocaine they had obtained in South America was hidden inside Victor's coat. Debra, who was uninjured, put on Victor's coat and left to seek help.

Eventually, Debra came to a farmhouse with a truck parked outside. She decided to steal the truck. When she opened its door, however, she found an anti-theft device locked onto the steering wheel. Since this would make it difficult to steal the truck, she decided not to steal the truck after all and called a taxi cab from a roadside telephone a short distance from the farmhouse.

Carl, the cab driver, turned out to be a local drug dealer whom Debra knew. Debra agreed to sell Carl the cocaine she had brought from South America so that he could distribute it. He drove her to his house, where they discussed and finalized the deal. Debra then remembered about Victor, and notified the authorities of the plane crash. By the time the plane wreckage was reached, Victor had died. The authorities concluded that if help had arrived earlier, Victor likely could have been saved.

Carl sold all the cocaine he had obtained from Debra. Unbeknownst to either of them, in South America a strong chemical had been sprayed on the plants that were used to produce the cocaine. As a result, after using the cocaine twenty of the people who purchased the cocaine became seriously ill and all died. Carl has fled the jurisdiction.

What crimes, if any, has Debra committed, and what defenses might she assert? Discuss fully.

Answer A to Question 2

2)

The People v. Debra (D)

Conspiracy
Conspiracy is when an agreement is made between 2 or more people with the specific intent to commit unlawful acts, or commit lawful acts in an unlawful manner.

Conspiracy to import illegal drugs and sell them
The facts don't clearly state that Debra and Victor agreed to sell cocaine; however, since they acted together in bringing the drugs into the United States (US), traveling together to South America using Debra's private plane, they are likely to be found to have conspired. Importing illegal drugs is an unlawful act and so Debra (and Victor) conspired to import illegal drugs when they agreed to bring cocaine into the US.

Importation of illegal drugs
Importing illegal drugs is an unlawful act.
Debra imported cocaine into the US.

Carrying of illegal drugs
The asportation of illegal drugs in unlawful.
Victor's coat had cocaine in it. Debra wore that coat when she left to seek help for Victor. Therefore, she is liable for the carrying of illegal drugs.

Attempt
Attempt is found where there is a specific intent to carry out a crime, and a substantial step has been made to perpetrate that crime.

Attempted Larceny
Larceny is the taking and carrying away of another's property with the specific intent to permanently deprive.

Debra had the specific intent to steal the truck since "she decided to steal the truck." Debra opened the door of the truck and completed the taking element of larceny. However, discouraged by the anti-theft device locked onto the steering wheel, Debra did not carry away the truck. Therefore, D will not be found guilty for larceny.

Since Debra took a substantial step in completing the crime by opening the door of the truck, she knew it was wrong to take the truck without permission since she had "decided to steal the truck" and therefore had the requisite state of mind,

and her approach to truck and opening of door of truck would be found to be beyond the preparation phase of larceny, and into the perpetration phase of larceny. Since her act was not complete, Debra can only be found guilty of attempted larceny.

Homicide
Homicide is the killing of a human being by another human being.

Omission of duty
One is usually not responsible for crimes he doesn't commit, crimes he doesn't participate in the perpetration of, or crimes where he has had no affirmative duty, and that one is not required to act to save someone. However, if it is found that he had a special relationship with someone being injured, he may be required to act to help that injured person. If he doesn't act where a special duty is found, he can be found liable for that crime. Therefore, one is required to act if there exists a special relationship between the parties.

Debra left Victor unconscious at the site of the plane crash. Although she initially went for help, she delayed on her quest for help and left Victor where he eventually died. If there exists a special relationship between Victor and D, D may be liable for his death.

Since Victor and Debra may be found to have been business partners, or to have been involved in a joint venture, D may be found to have a special relationship with Victor and was required to help him when he was injured.

D initially went to Victor's aid by looking to get help for him. But, D got sidetracked on her quest for help and even forgot about him since the facts say she eventually "remembered about Victor" and so delayed getting V the necessary help. Even though she eventually "notified the authorities" about the plane crash and they got to Victor, V died. The authorities even concluded that Victor could have likely been saved indicating that D's omission to get help in a timely manner actually and proximately caused Victor's death.

Murder is the unlawful killing of another human being with malice aforethought. For a finding of malice there must exist an intent to kill, intent to cause serious bodily harm, commission of an inherently dangerous felony, or a wanton disregard for human life.

D did not intend to kill V or intend to cause serious bodily harm, and she even initially went to get him help. D may be seen to have a wanton disregard for human life since she forgot about her ailing unconscious business partner and instead made plans to commit more crimes. If the importation and selling of

drugs is an inherently dangerous felony then Debra could be found guilty of murder.

Murder in the 1st degree requires premeditation and deliberation; ambush, torture, bomb; special statutes calling such behavior murder in the first degree or an inherently dangerous felony. If none of these are found, then D may be found to be guilty of 2nd degree murder which is residually defined from first degree murder or statutorily defined.

If D is found to not have any malice aforethought, then D will be found guilty of involuntary manslaughter.

Involuntary manslaughter is where an unintended death occurs from criminal negligence or from the commission of a malum in se misdemeanor.

If conspiracy to import and importation of drugs is found to be a malum in se misdemeanor, then misdemeanor - manslaughter rule applies and D will be found liable for Victor's death.

Otherwise, D's leaving of Victor at crash site will result in criminal negligence and she will be found guilty of involuntary manslaughter.

Malum in se - misdemeanor manslaughter rule
involuntary manslaughter

Solicitation - intention to induce another to commit or assist with commission of crime.

Facts don't stipulate that Debra induced Carl. Rather seems like Carl solicited Debra since Debra "agreed" to sell Carl cocaine.

There is another Conspiracy to sell drugs (defined above) this time between Debra and Carl. Debra and Carl "drove to his house, where they discussed and finalized the deal."

Accomplice liability - one is responsible for all crimes he helped commit in the planning or perpetration stage even if he didn't actually commit them.

Pinkerton's Rule
Pinkerton's Rule says that one member of a conspiracy is liable for all crimes of other conspiracy members that are committed in furtherance of the agreed upon crime.

Debra is liable for drugs that Carl sells now according to Pinkerton's Rule, and accomplice liability.

Homicide, murder defined above.

D is liable for people dying because of sprayed drugs.

Debra didn't have a specific intent to kill those 20 people, but maybe a wanton disregard for human life by selling drugs, or if selling drugs is an inherently dangerous felony, then she will be found guilty of murder.

Murder rule then 1st degree
If there exist drug trade statutes making selling drugs a 1st degree murder classification then D may be liable. If not, then if her actions are an inherently dangerous felony, then she would be liable in the 1st degree. If not, then 2nd degree murder.

If no malice is found, then D will be held liable for involuntary manslaughter according to the misdemeanor manslaughter rule (defined above) or from criminal negligence in selling an illegal substance that caused people to die.

<u>Defenses</u>
Mistake of fact
Debra will argue that she didn't know the coat had drugs in it. Not likely since she knew what Victor and she were doing in South America. Also, as a coconspirator, she would be liable.

Attempted larceny
Debra will argue that she didn't have the requisite mens rea to commit larceny. Although the facts stipulate that Debra "decided to steal the truck" perhaps she had planned to return the truck and thus the element of specific intent to permanently deprive of larceny wouldn't be found.

Necessity
A necessity may be found to justify a crime.
If attempted larceny found - then D will argue that there was a necessity to take the truck so she could go find help for Victor.

No duty
She will argue that she is not liable for death of Victor because no relationship special relationship to act existed.

Not the proximate cause
She will argue that she is not liable for death of 20 people because she had no involvement in selling those drugs. Not true since she sold drugs to Carl.

Mistake of fact
D will argue that she had no idea and could have no idea about chemical sprayed on cocaine.

Answer B to Question 2

2)

CRIMES DEBRA COMMITTED

LARCENY OF THE COCAINE
Larceny is the taking & carrying away of the personal property of another without consent and with the specific intent to permanently deprive.

Here, D puts V's coat on and since the cocaine was hidden in V's coat, D takes the coat. Furthermore, D left to seek help, therefore there was the movement of the cocaine, therefore asportation and a carrying away of the cocaine. However since D & V were dealers of the cocaine and the facts don't indicate whether the cocaine belonged to V or D or both, D may not be charged with larceny since she can't steal her own personal property. If the cocaine belonged to V then it is the property of another. In this instance, V is unconscious; therefore the cocaine is taken without his consent. And finally, since D left to seek help, it sounds like she might be back, and the facts don't indicate that she intends to permanently deprive V of the cocaine when she takes it; therefore there is no specific intent to permanently deprive.

However, since she took the cocaine, and then decides to sell to Carl, there is a continuing trespass.

In conclusion, if the cocaine is the property of V, D will be charged with larceny.

ATTEMPTED LARCENY OF THE TRUCK
Larceny is the taking & carrying away of the personal property of another without consent and with specific intent to permanently deprive.

Attempted larceny is the specific intent to commit larceny accompanied by an overt act in furtherance of the crime.

Here, Debra (hereafter D) cannot steal the truck because of an anti-theft device; therefore, there is no taking or carrying away. Further, the truck is parked outside a farmhouse and does not belong to D; therefore it is the personal property of another. In this case, D opens the door of the truck and decides that it would be difficult to steal; however, by opening the door, she made an overt act in furtherance of the crime. Moreover, since there is an anti-theft device, D taking of the truck would be without the consent of the owner. Finally, D decided to steal the truck; therefore D has the specific intent to deprive.

In conclusion, since D has the specific intent to take the truck and she goes as

far as she can before she decides not to steal the truck, therefore she will be charged with attempted larceny of the truck.

Defenses

PRIVATE NECESSITY

Under threat of injury of death from natural source, a D commits a crime.

Here, D will assert that she was seeking b/c Victor was unconscious because of the plane crash. Further she needed to take the truck to get help because the plane had crashed in a snowy mountainous area and not just any automobile would do.

In conclusion, since D did not seek help from anyone in the farmhouse, her defense will not succeed.

FACTUAL IMPOSSIBILITY

When a Defendant cannot commit a crime because of the factual impossibility, it will not serve as a defense as long as the mens rea was present.

Here, D decided to steal the truck and had it not been for the anti-theft device, she would have; therefore she had the requisite intent and a factual impossibility will not succeed as a defense.

In conclusion, since D has the requisite mens rea, her defense will not succeed.

HOMICIDE

A killing of one human by another.

Here, 20 people are dead. Therefore there is a homicide.

ACTUAL CAUSATION

“But for” the Defendant’s conduct, the Victim would still be alive.

Here, but for Debra selling the cocaine to Carl, the 20 victims would still be alive. Therefore Debra is the actual cause of the 20 deaths.

PROXIMATE CAUSATION

Analysis of whether the death was a natural and probable result of the D‘s conduct or whether the death was a foreseeable result of the D’s conduct.

Here, since death occurs after ingesting cocaine, Debra is the proximate cause of the deaths.

However, Debra will defend that the strong chemical spray was a superseding, intervening force that she did not know about and could not have foreseen. Since Debra is a dealer of cocaine who regularly brings it back from South America to the United States, she will be found liable since pesticides being sprayed on plants is foreseeable.

In conclusion, Debra is the actual and proximate cause of the 20 people who died as a result of ingesting the cocaine.

MALICE
Malice can be expressed or implied.

EXPRESS MALICE
An outward manifestation of the intent to kill;

Here, there is no express malice.

IMPLIED MALICE
Can be shown by an intent to kill, intent to do serious bodily injury, a wanton/reckless disregard for a high risk of death, or Felony Murder.

Here, there is no implied malice; therefore it will be necessary to analyze the deaths under manslaughter.

MANSLAUGHTER
An unlawful killing of a human being without malice aforethought. Manslaughter can be involuntary or voluntary.

Here, since there is no malice on Debra's part (see above), she committed manslaughter.

INVOLUNTARY MANSLAUGHTER
An unintentional killing during a non-enumerated felony, during a misdemeanor, or by way of criminal negligence - a gross deviation from what a reasonable person would do in the same or similar circumstances.

Here, D did not intend to kill anyone; therefore there is an unintentional killing. However, if D's crime of selling cocaine is a misdemeanor or a felony (non-enumerated for purposes of felony murder rule), she will be found to have committed involuntary manslaughter.

CONSPIRACY TO DISTRIBUTE DRUGS
A conspiracy is an agreement between two people to commit a crime. It is a specific intent crime and does not merge with the more serious crime.

Here, D agreed to sell Carl the cocaine; therefore there are two people, Debra and Carl. Furthermore, Carl & D discussed and finalized the deal at her house, and although the facts don't indicate the details of the deal, D did not give Carl the cocaine, and since she is receiving something from the deal, the two of them have an agreement.

PINKERTON RULE
From the Pinkerton Brothers case, where there is only one actor, but two or more conspirators, all coconspirators are liable for the crimes committed in furtherance of the conspiracy as long as they are foreseeable.

Here, Carl did the selling of all the cocaine; therefore in this conspiracy there is only one actor. However Carl & D are coconspirators (see above); therefore D would be liable for any crime Carl commits in furtherance of the conspiracy. Since 20 people died who purchased the cocaine and deaths as a result of ingesting cocaine is foreseeable, the deaths are a foreseeable result of the conspiracy to sell cocaine; therefore both Carl and D would be liable for the deaths of the 20 people.

ACCOMPLICE LIABILITY
At common law (C/L) there is a principal in the first degree, principal in the second degree, accessories before the fact and accessories after the fact. At modern law, there is just a principal, an accomplice, and an accessory after the fact.

Under <u>Common Law</u>
Principal at C/L is present at the scene and the perpetrator of the crime.

Here, since Carl sold the cocaine, he would be the principal because he was at the scene, selling the cocaine.

An accessory before the fact is one who aids/abets the committing of the crime but is not present.

Here, since D is not present at the crime, but sold the cocaine to C for the purpose of distributing it, and without D's cocaine, C would not have been able to sell it, D is an accessory before the fact because she aided/abetted the commission of the crime.

Under Modern Law
Principal/Accomplice
At modern law the accomplice encompasses common law's principal in the 2nd degree and the accessory before the fact.

Here, Carl would be charged as a principal for the same reasons stated above, and D would be charged as an accomplice for the same reasons stated above.

HOMICIDE
A killing of one human by another.

Here, Victor (hereafter V) is dead; therefore there is a homicide.

ACTUAL CAUSATION
But for the Defendant's conduct, the Victim would still be alive.

Here, but for D's not calling for help, V would likely be saved.

In conclusion, D is the actual cause of V's death.

PROXIMATE CAUSATION
Analysis of whether the death was a natural and probable result of the D's conduct or whether the death was a foreseeable result of the D's conduct.

Here, since D did not call for help, an unconscious victim of a plane crash died and since a death under these circumstances is foreseeable and the natural and probable result, Debra is the proximate cause of Victor's death.

LEGAL DUTY TO ACT
One has a legal duty to act where there is a contractual duty, a statutory duty, a relation (ie: parent/child), a creation of the peril, or a rendering of aid, and the D has the ability and the knowledge of the legal duty.

Here, D created the peril by crashing her plane; therefore she has a legal duty to act. Furthermore, Debra recognizes that V needs help and that he is unconscious; therefore she has the knowledge of the legal duty to act. Finally, Debra has the ability to act because it only requires a phone call to the authorities; therefore D only had to make a phone call.

In conclusion, since D had a legal duty to act, knew and had the ability, she should have acted and since she did not, she will be implicated in the death of Victor.

MALICE
Malice can be expressed or implied.

EXPRESS MALICE
An outward manifestation of the intent to kill;

Here, no express malice.

IMPLIED MALICE
Can be shown by an intent to kill, intent to do serious bodily injury, a wanton/reckless disregard for a high risk of death, or Felony Murder.

Here, since D left V in a snowy mountainous region, unconscious as a result of the plane crash, and without a coat, D showed a reckless disregard for a high degree of risk of death, since V was unconscious and the authorities concluded that V needed help earlier.

In conclusion, there is implied malice.

COMMON LAW MURDER
Common law murder is the unlawful killing of a human being with malice aforethought.

Here, the death of V is not justified; therefore it is unlawful. Further, V is a human being. Finally, implied malice has been shown (above);

In conclusion, D is liable for the murder of V.

MURDER IN THE SECOND DEGREE
Murder in the 2nd degree is aka “abandoned & malignant heart murder” shown by intent to kill, intent to do serious bodily injury, or a wanton/reckless disregard for a high risk of death.

See implied malice above.

<u>DEFENSES DEBRA MIGHT ASSERT</u>
NECESSITY (see above)
FACTUAL IMPOSSIBILITY (see above)

Question 3

Delia, who operates and is the only instructor at a successful dance school, needed a new dance instructor. While at an out-of-town social function, she mentioned the job opportunity to her friend, Fran, saying, "I know you don't have any formal dance training, but you are such a natural athlete that this position could be a good fit for you." Fran immediately quit her job and moved to the town of Delia's school to pursue her prospects as a dance instructor at the school.

Unaware that Fran was moving, Delia contacted Irv, an experienced dance instructor, to inquire about his availability for the position at her school. Delia offered Irv a six-month contract. Irv said, "That is a tempting offer. Can you give me a month to think about it?" Reluctantly, Delia signed a statement that provided that Irv had one month to make his decision based on the "good consideration" of $20 paid by Irv to Delia. In fact, Irv paid Delia nothing.

In the meantime, the landowner of the property at which the dance school operated terminated Delia's lease. Worried about having to find a new site on which to operate the dance school, Delia decided not to hire a second dance instructor just yet. At the end of the month, when Irv called Delia to advise her of his decision to accept the job offer, Delia advised him that she had decided not to hire another dance instructor.

1. Under what legal theory, if any, can Fran sue Delia, and to what relief, if any, might Fran be entitled? Discuss fully.

2. Is Irv likely to prevail in a lawsuit against Delia to enforce their contract? Discuss fully.

Answer A to Question 3

Fran v. Delia

Fran will only be able to pursue a theory of breach of contract if she can prove that there was a valid contract as evidenced by mutual assent consisting of an offer, acceptance and consideration between Fran and Delia.

Does UCC or Common Law Apply?

The Uniform Commercial Code (UCC) controls contracts for the sale of goods which are moveable items that are identifiable to the contract. Otherwise, common law controls.

Here, the proposed contract was for employment as a dance instructor, which is a service and is therefore not included in the UCC. Thus, the common law will control.

Was the Communication between Fran and Delia an Offer?

An offer is a manifestation of present contractual intent comprised of a promise to carry out the terms of the proposed transaction, which terms are definite, communicated to the offeree, thereby creating a power of acceptance in the offeree and which bargains for an act, a forbearance to act or a return promise. Under common law, for an offer to be definite enough it had to include quantity, time of performance, identity of the parties, price and subject matter. The Restatement will find the terms sufficient to support an offer if it is clear the parties intended to contract and there is a reasonable means to assess breach and damages.

Here, Fran will argue that Delia made a job offer to her because she mentioned the job opportunity at her dance school and indicated that, even though Fran had no formal training, she was such a natural athlete that the position would be a good fit for her.

Fran will argue that there was quantity - one job; parties - Delia and Fran, subject - dance instructor.

Fran will counter that there was no price since salary was not discussed, and time of performance was not satisfied because they did not discuss when Fran would be needed or for how long. She will also argue that even under the Restatement there are insufficient terms to determine whether a breach occurred

because they had no time when she was to begin and there is no appropriate measure of damages because no salary was discussed. Given the fact that Fran had no experience as a dance instructor, there is no reasonable basis to determine what a fair salary or payment would be.

Under common law, it does not appear that there were sufficient terms for an offer.

Acceptance

An acceptance is an unequivocal assent to the terms of the offer.

Here, Fran will argue that she accepted the offer by quitting her job and moving to town to commence action. However, under common law, this is not sufficient for acceptance.

Unilateral Contract

A unilateral contract is one where the offeror does not seek a return promise but seeks performance by an action. The Offeror is prevented from revoking the offer for a reasonable period of time after the offeree has begun performance.

Here, Fran will attempt to argue that this was a unilateral contract that she accepted by commencing performance. However, this argument will fail because the offer was not sufficiently definite.

If there was a valid offer, did it lapse?

Offers are deemed to lapse and cannot be accepted after a reasonable time. Oral offers are usually deemed lapsed at the end of the conversation.

Here, even if the Court deemed the terms of the offer sufficiently definite, the offer would have lapsed at the end of their conversation and since Fran did not accept within a reasonable time, the offer could no longer be accepted.

Is Fran Entitled to Relief Under a Theory of Promissory Estoppel?

A promise which is not otherwise enforceable may be enforced in equity to avoid injustice if the Promisor made a promise upon which the offeree reasonably relied and such reliance caused her damages. The measure of damages is the reasonable value of her reliance on the promise.

Here, Fran will argue that Delia should be estopped from contending that there was no valid offer or acceptance because Frank reasonably relied on Delia's statements that she had 1) a job opportunity; 2) that Fran would be a good fit for.

Based on that promise, Fran reasonably quit her job and moved to the town where Delia had her dance study to pursue being a dance instructor.

Delia will argue that a reasonable person would not rely upon such a vague statement without further clarification and would require, at a bare minimum, some indication of how long she would be needed and how much she would be paid, especially given the fact that Fran has no professional experience or training as a dance instructor. It was unreasonable for Fran to simply quit her job and move without further discussions with Delia.
It is unlikely that the court will find that Fran reasonably relied upon a promise by Fran and she would not be entitled to damages under this theory.

Irv v. Delia

Contract, defined supra.

UCC or Common Law, defined supra.

Here, again, the offer involves a service contract and the common law will apply.

Offer, defined supra.

Here, Delia manifested her intent to be bound to her offer to hire Irv, an experienced dance instructor, for six months. Although a specific salary was not discussed, the court could imply a salary similar to what Irv was currently earning in his position as a dance instructor and under the Restatement, it is likely that the court would find that the terms of this offer were sufficiently definite to constitute an offer, i.e., quantity - one dance teacher; time of performance - 6 months; parties: Delia and Irv, price - Irv's normal salary as a dance instructor; and subject matter: dance instruction.

Acceptance, defined supra.

Here, Irv did not accept the offer because he did not agree to the terms but requested one month to think it over.

Rejection:

A rejection is an indication that the party does not intend to enter into the contract.

Here, Irv did not reject the offer, but simply asked for a month to consider it.

Therefore, there was no rejection.

Option Contract

An option contract is a separate agreement to hold an original offer open for a certain period of time in exchange for consideration.

Here, Delia signed a statement indicating that she would hold the offer open for one month in exchange for Irv paying her $20. Delia will argue that this option contract was not supported by consideration because Irv did not in fact pay the $20 to her. However, courts have held that this is not a valid defense so long as there is a recital that valid consideration has been paid within the statement indicating that the offer will remain open.

Therefore, this is a valid option contract.

Statute of Frauds

Under common law, certain contracts must be in writing signed by the person to be charged to be enforced. These include contracts that cannot be completed in one year of the date of contract, those involving marriage, surety for the debts of others, executor's guarantees of payments and contracts involving land.

Since both the contract for employment and the option contract do not fall into any of these areas, the Statute of Frauds is not an issue. With respect to the Option Contract, since Delia did sign the contract, the statute would be satisfied.

Was Irv's Telephone Call a Valid Acceptance?

Acceptance, defined above.

Irv called Delia within the option period because he called at the end of the month. At that time, he advised her that he had decided to accept the job offer. Since it appears that this was unequivocal assent to the terms of the offer, this was a valid acceptance. Further, under an option contract the acceptance is valid as long as it is received by the Offeror prior to the termination date of the option contract. Because Irv called and advised Delia at the end of the month, prior to the option running, it was valid.

Was Delia's Revocation Valid?

A party can revoke an offer prior to acceptance unless there is a valid option contract and then the party cannot revoke until after the option period has lapsed.

Delia did not effectively revoke her offer for two reasons: 1) Irv had already accepted the offer because he had told her he accepted her job offer; and 2) the option period had not run and she was not entitled to revoke the offer.

Can Delia claim Impossibility?

A party to a contract will be freed from all obligations under the contract if, through no fault of their own, it has become impossible to perform.
Here, Delia will claim that the fact that her landlord had terminated her lease made it impossible for her to hire another dance instructor because she had no place for him to teach. She will argue that this was through no fault of her own because she did nothing to cause the termination and had no knowledge that the landlord intended to do so. However, this argument will fail because she was already looking for a new site for the school and clearly intended to continue operating the school.

Therefore, it is not impossible for her to perform.

Can Delia Claim Impracticability?

Some contracts will be discharged if it becomes sufficiently impracticable for them to perform. However, this involves substantial hardship usually involving at least ten times the cost of a contract as anticipated.

Here, the simple fact that Delia is having to move her studio is insufficient to support that it is too impractical to hire Irv since she plans to continue to operate a dance school given the fact that she was looking for a new studio.

Can Delia Claim Duress?

A contract entered into due to duress will not be enforced if the duress is sufficient that it would overcome the will of a reasonably firm person.

Here, Delia will argue that she did not want to enter into the option contract and did so reluctantly. However, there is no indication that Irv put any pressure on her; he simply asked her for a month to think the offer over. There is no evidence to suggest conduct that would overcome the will of a reasonably firm person.

This defense is unlikely to succeed.

Breach:

A breach is an unexcused failure to perform a duty which gives rise to damages. A minor breach is one wherein the non-breaching party is given a substantial benefit of his bargain and does not excuse his continued performance but requires that the breaching party pay damages for the breach. A major breach involves the essence of the bargain and the non-breaching party is entitled to stop performance and sue immediately for damages.

If Delia refuses to perform by allowing Irv to begin work as a dance instructor, this would be a major breach and Irv would be entitled to stop performance and sue for damages.

Anticipatory Repudiation:

An anticipatory repudiation is a clear expression that a party does not intend to perform under the terms of the contract. The non-breaching party is relieved from all further duties under the contract and may immediately bring a suit for damages.

Here, Delia clearly advised Irv that she did not intend to perform under the contract because she told him she had decided not to hire another dance instructor. So unless Delia immediately repudiates that statement, she has committed an anticipatory repudiation.

Damages;

Irv is entitled to his compensatory damages which would consist of six months salary at his normal rate.

Mitigation:

A non-breaching party is not entitled to recover for damages that he could reasonably avoid.

If Irv is able to find another job as a dance instructor, Delia would be entitled to an offset for any earnings he had during those six months.

Answer B to Question 3

3)

Does UCC or common law rule in this transaction?

Since UCC rules in contracts for goods, and common law in all other contracts, and this contract deals with employment services, not goods, common law will rule this transaction.

Did Delia make a valid offer to Fran?

Offer is an assertion of present intent to be bound by clear and specific terms.

In this case, Fran and Delia were in a social situation, so a reasonable person would probably have not concluded that this was a formal offer. Under the objective theory of contracts, the parties are bound to the interpretation given by a reasonable person. Also Delia said that the position "could be a good fit" for Fran; that does not seem like a serious or definite offer.

Therefore, there are no reasons to believe that an offer was made because Delia was only making a general comment that should have not been construed as an offer.

Can Fran recover under a promissory estoppel doctrine?

If the defendant makes a promise to another, wherein the promise is foreseeable that induces reliance in the other person, and the other person in fact relies on the promise to his detriment, the defendant will be liable for reliance damages.

Here, we see clearly that Fran relied on Delia's comments. However, it seems that Delia did not expect Fran to rely on her statement. This was a social situation; maybe Fran could work towards becoming an instructor since she did not have any formal training, but it does not seem like an employment offer as discussed herein above.

Therefore, Fran will not likely be able to recover from Delia under promissory estoppel since a reasonable person would have not believed that he was inducing reliance on Fran.

What relief can Fran expect?

As previously discussed, we do not believe that Fran will be entitled to relief for

anticipatory repudiation. However, if the court decided that the reliance was foreseeable, she could be entitled to recover for her expenses and the loss of her job. The court would try to put Fran in the same situation as she was before the promise.

Did Delia make Irv an offer?

Offer, see supra.

Clearly Delia made an offer, since she put it in writing that she would give Irv one month to make his decision.

Is the offer revocable?

When an offeror receives consideration to keep an offer open, an option contract is created wherein the offer is irrevocable for the amount of time stipulated.

Here we have a signed writing that creates an option contract because Irv offered the consideration of $20 to keep the offer open for a month. Even though the consideration was not paid, this does not make the options contract invalid. Delia will be able to recover the $20, but she will not be able to revoke her offer. Delia tried to revoke her offer, but she did not have a right to do so because it was the end of the time stipulated in the options contract.

Therefore, the offer is irrevocable because there was a valid Options contract.

Is there a valid acceptance?

Acceptance is the unconditional assent to the terms in the offer.

Here Irv called to advise Delia of his “decision to accept.”

Since he Irv still had the power of acceptance because of his Options contract, the acceptance is valid.

Is there a valid contract?

To form a contract, it is required to have an offer, acceptance and consideration. Consideration is what is bargained for by the parties.

Here we have consideration because it is an employment contract, services for pay.

Since we have valid offer and acceptance, as discussed herein above, plus mutual consideration, we have a valid contract.

Did Delia perform an anticipatory repudiation?

If a party asserts that she will not fulfill her duties in the future before performance is due, it is said that he has committed anticipatory repudiation and will be liable for breach of contract.
Here we have a valid contract, but Delia told Irv that she had decided “not to hire another dance instructor.”

Since Delia reneged on the contract, we have anticipatory repudiation and she will be liable for breach of contract.

Can Delia use the defense of impracticability?

If the occurrence of an event, whose non-occurrence was a basic assumption during contract formation, makes delivery unduly hard, and the party does not bear the risk for this kind of event, then the contract will be discharged for impracticability.

The event here is that Delia’s lease was terminated, but this is an event that Delia should have forecasted as a business owner; therefore she bears the risk because she knew about her lease situation.

Since Delia bore the risk of the lease being terminated, she won’t be able to use the defense of impracticability.

Can Delia use the defense of impossibility?

If events after the formation of the contract make delivery impossible, the contract will be discharged.

Here, performance is not impossible because Delia can find another place for her school, so impossibility will not work as a defense either.

Can Delia use the defense of frustration of purpose?

If an event, whose non-occurrence was a basic assumption, occurs after formation and destroys the purpose for which a party entered into the contract, then the contract will be discharged for frustration of purpose.

Again, Delia is the one responsible for managing her lease and bears the risk. Also, she still has the purpose to continue with the school in another location.

Therefore frustration of purpose will not work as a defense since the school will be operating in another location and Irv can work as an instructor there.

Can Delia use the Statute of Frauds to avoid contract enforcement?

The Statute of Frauds requires that some contracts must be in writing and signed by the party to be charged. However, an employment contract like this will be enforceable even though the contract was oral. It could even be considered that the offer was in writing with the Operations contract, but facts do not clearly indicate if just the option contract was in writing or both offer and options contract were in writing.

What damages will Irv recover?

Expectation damages will be awarded to give the non-breaching party the benefit of the bargain. Specific performance may be imposed by the court when damages are not adequate and it is easy to enforce the delivery of performance.

In our case, it is not likely that the court will impose specific performance because it is very hard to implement in employment contracts. Irv would likely get compensation damages for the salary he could have made, plus other incidental and consequential expenses that he may have had. He has the duty to mitigate and find similar employment, and then the damages will be discounted by the amount mitigated.

Therefore, Irv will be entitled to recover for salary expected to be received and other related damages as consequence of the breach, but he must mitigate by searching for similar employment.

Question 4

Eight-year-old Hannah attended Camp, a children's summer camp. Some of the children at Camp were resident campers who spent each night in cabins, and others, such as Hannah, were day campers who attended Camp between 9:00 a.m. and 4:00 p.m. and rode bicycles to and from their nearby suburban homes daily. The bicycles were locked outside each day camper's cabin, with the camper keeping the key to the bicycle.

Rick, a Camp counselor, owned a baseball autographed by Babe Ruth that he had brought with him to Camp to show the campers. One day at 3:00 p.m. after a baseball game at Camp, Rick discovered that his autographed baseball had been put into the ball bag and used in the game. He was very upset to find that Babe Ruth's autograph had been all but worn off as a result.

Rick learned that Hannah had been seen coming out of Rick's cabin a few minutes before the baseball game and that she had sat near the ball bag before the start of the game. He told Hannah that he would not let her ride home until she admitted what she had done. Very upset, Hannah continually protested her innocence until Rick finally told her at 6:30 p.m. that she could get her bike and ride home. She lived approximately one-half mile from Camp.

When Hannah's parents asked the Camp Director why their daughter had been so late in getting home, the Director told them what had happened. The Director added that he would never have allowed Rick to keep Hannah so late had he been aware of it. He also told Hannah's parents that Hannah had not taken Rick's ball. In fact, her eight-year-old campmate, Jessie, confessed that she had placed Rick's autographed baseball in the ball bag.

1. On what theory or theories, if any, might an action be brought on Hannah's behalf against Rick, what defenses might Rick assert, and what is the likely outcome? Discuss fully.

2. On what theory or theories, if any, might an action be brought on Hannah's behalf against Camp, what defense might Camp assert, and what is the likely outcome? Discuss fully.

Answer A to Question 4

Hannah v Rick

False Imprisonment?

A false imprisonment is an intentional confinement of a defendant to a bound area. Rick kept Hannah from leaving camp at her regular 4pm end time. He kept her until 6:30pm, which is a very long time considering Hannah is only 8 and her parents did not know where she was and would be worried she got hurt riding her bike home. It is unclear to what area Hannah was bound but Rick certainly asserted his authority intentionally to prevent Hannah from leaving because he wanted Hannah to confess to taking his Babe Ruth ball. Hannah continued to protest, showing she was forced to stay somewhere, which shows she was confined. Damages are presumed for intentional torts. Rick is guilty of false imprisonment.

Intentional Infliction of Severe Emotional Distress (IIED)?

IIED exists where a plaintiff intentionally causes severe emotional distress through extreme and outrageous conduct. Hannah was very upset from Rick‘s conduct, but this would not suffice for a IIED because of more severe emotional distress required than being very upset.

Negligence?

If Hannah can show a duty was owed by Rick, he breached that duty, which was the actual and proximate cause of damages, then she will prevail on negligence.

Duty?

One generally owes a duty of reasonable care to prevent harm to others. A special relationship may exist when one has control over another. Rick was the counselor at Hannah’s camp, thus owed a heightened duty to prevent risk of harm to Hannah.

Breach?

Breach is established when the burden of preventing the harm considering the utility of the conduct is less than the probability of harm times the magnitude of the harm (Hand Formula). Rick’s burden of calling the parents, having the conversation the next day at camp, or other alternatives to holding her over the end of the day are very slight. The probability of an 8 year old being harmed

when forced to stay at camp accused of stealing, then riding home late in the day on a bike for .5 miles after a long day would be great and the type of harm could be great if she was injured on her bike. Here, given Rick owed a special duty, he breached his duty to Hannah.

Actual Cause?
But for the act of holding Hannah over, she would not have been very upset and suffered from the incident. Rick's actions were both the but-for cause and a substantial factor.

Proximate Cause?
There are no superseding or intervening acts to discuss.

Damages?
The only damages appear to be emotionally being upset and Hannah's suffering.

Defenses?
The comparative and contributory negligence of Hannah does not apply.

Defamation?
Defamation is a defamatory statement made of and about the plaintiff which caused harm.

Defamatory Statement?
Rick accused Hannah of stealing without sufficient facts to prove the statement was true. Since both parties are private and this didn't concern a public matter, there is no malice or negligence requirement and falsity is presumed. The falseness was also later shown when Jessie confessed. Rick should have done more investigation before accusing Hannah because he based his accusation on the fact Hannah had been coming out of his cabin and near the ball bag. Here, the statement was of and about Hannah and defamatory.

Published?
It is not clear if this statement was published, but possibly others overheard Rick's accusations due to his negligence in having loud conversations. Since a statement that Hannah steals is a crime, the slanderous statement would have presumed damages.

Here, Rick will be liable for defamation for any negligent publishing that Hannah had stolen the ball. Since Rick believed the statement was true, he can defend that he based his accusation of overhearing Hannah had been in his tent and near the ball bag.

False Light?
A false light claim exists when the defendant portrays the plaintiff in a false way that a reasonable person would offend to. Rick may have communicated to others that Hannah steals and a reasonable person would object to being seen in this light because no one wants to be seen as a criminal. The statement turned out to be false, so here, a claim for false light exists.

Defenses

Defense of property?
Rick may defend that the ball was his property and his acts towards Hannah were to protect his property. However, since Rick was not in hot pursuit and did not have enough support for his accusations, he was not privileged to use force.

Contributory Negligence?
One generally owes a duty to prevent harm to themselves for risks created by others' conduct. D will defend O was contributorily negligent to completely prevent recovery unless D had the last clear chance. The standard for children is evaluated giving weight to what the average child of the age, education, and experience would do. Hannah was not contributorily negligent because she continually protested to go home and acted to prevent any further harm to herself.

Comparative Negligence?
Generally, when a claim for damages is found under negligence, but the plaintiff was partially at fault, comparative jurisdictions will reduce the damages by the amount the plaintiff was at fault in a pure jurisdiction, and only award the reduced damages if the plaintiff's fault was less than 50% in partial jurisdictions. As discussed above, Hannah was not comparatively negligent because she continually protested to go home and acted to prevent any further harm to herself.

Privilege?
Rick may assert he was privileged to accuse Hannah to prevent others from being victims as a defense to defamation and false light. However, since his claims were unfounded and an eight year old is unlikely to present a danger of theft to others, this defense will fail.

Hannah v Camp

Because Rick is an employee of the Camp, the Camp will be vicariously liable for Rick's act in the scope of his employment under respondeat superior. However, the camp is not responsible for Rick's intentional torts. The director of the camp

told the parents he would never have allowed Rick to keep Hannah and had he known so this was not interference of the scope of employment. Because Rick‘s false imprisonment was intentional, Camp will not be liable for his actions, but could be vicariously liable for his negligence.

Negligent hiring?

If Hannah can show Camp was negligent in their hiring of Rick, she may prevail. This action will depend on what level of investigation the Camp performed on counselors. If the camp knew or had reason to know of Rick‘s tendencies to make quick accusations and give very harsh punishments without regard to the fact the campers are only 8 years old, they may have breached a duty owed to Hannah, which was the actual and proximate cause of her injuries.

Answer B to Question 4

(3) H v R

A. False Imprisonment - is the act of causing the plaintiff to be confined or restrained in a bounded area without consent or privilege.

1.) The act must be voluntary, not involuntary, and we are given no facts that suggest that R suffers from epileptic seizures or the like. Here, R, presumably an adult, under color of authority "told" Hannah she couldn't go home unless she "admitted" her wrongdoing.

2.) Confined or restrained - R's words that he "would not let her" go home imply that H did not feel she could leave. H does not have an adult's capacity to leave anyway. She is taught that she is under the authority of her teacher, parent or camp counselor. Therefore, H may think she cannot leave. It is not important whether H is confined or restrained but that she believes she is (a reasonable belief).

3.) bounded area - If the camp is far from anywhere in a forest of trees, H could be deemed in a bounded area. Negating this element is that H is obviously expected to be able to ride home every evening, only a half mile. Therefore, this element may not be proven. Arguably, H's age may cause her to believe she is in a bounded area.

(4) Defenses

A.) Consent - implied or express

R could argue that H consented to stay even though she knew how and where to ride home. Negating this defense is H's age. She is unable to consent.

B.) Assumption of the Risk - does not appear to apply because H assumed no risk in a dangerous way.

C.) Privilege - R can argue he was privileged as camp counselor, much as a schoolteacher, to discipline a camper who was misbehaving. This privilege will likely be
effective because if R had a reasonable belief that H had the baseball, this is permissible, even if mistaken.

He can only detain her for a reasonable time in a reasonable manner. If this is summer camp, at 6:30pm, it is still light and H had time to go home. No facts are given to suggest R confined H in an unreasonable manner.

R will not be liable for False Imprisonment. However, if he is liable, damages are presumed.

B.) Intentional Infliction of Emotional Distress (IIED) - R's conduct must be extreme and outrageous causing severe emotional harm.

Here, nothing in R's conduct would rise to the level of extreme and outrageous conduct. He simply detained H until he realized that H was innocent.

Here, however, reckless conduct can satisfy IIED. If a jury believes it was reckless of R to keep H so late, clearly she rode home alone at 6:30pm, H may

collect damages if she had either physical or other symptoms, such as headache.

Physical harm is no longer required.

C.) Negligent IED

Although founded in negligence, this could arise from an intentional tort such as false imprisonment.

R's conduct doesn't appear to be negligent, however, but intentional.

He intentionally kept her at camp; there was no negligence involved.

D.) Assault - is the act of causing immediate apprehension of harmful or offensive touching.

Here, if H was apprehensive that R might strike her or physically restrain her, this tort could be proven. Under the doctrine of transferred intent, if R is liable for either Assault or False Imprisonment, the intent can transfer to the other tort.

Again, damages are presumed.

II. H v C

A.) False Imprisonment - Although an employer is generally not responsible for the intentional acts of its employees, there are exceptions:

1.) Past Conduct - If C knew that R had a habit of prior conduct of accusing young children of stealing, and false imprisonment, etc. C can be liable under a theory of respondeat superior. This means that an agency relationship exists between R and C. Here, R is C's agent as camp counselor.

Generally, however, an employer is not liable unless R had exhibited prior conduct of a bad nature.

2.) Course and Scope of Duties -

Here, we are told by C that C does not allow children to be kept at camp so late. If C has conveyed this to its counselors and R disregarded this instruction, R has exceeded the course and scope of his duties. Unfortunately, this is probably a difficult defense for C as C would be responsible for this agency relationship. If it is held R exceeded the scope of his duties, C would be liable.

B.) Negligent Hiring -

If C did not exercise reasonable care (a higher degree of reasonable care for an employer) in searching R's background, criminal record and other facts C could be liable to H.

If R had other facts in his background that were known to C that precluded R from working with children, C will be liable to H.

Most likely, C will be liable to H for a tort.