



**California
First-Year
Law Students'
Examination**

**Essay Questions
and
Selected Answers**

June 2010

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2010 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the June 2010 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.

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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

Adam accepted an invitation from his friend Dot to attend a baseball game. The seats Dot had purchased were very good, a few rows up from the field, and just past first base. Adam had recently immigrated to the United States and knew nothing about baseball.

During the game, a player, Brad, hit a ground ball toward third base. The third baseman fielded the ball and threw to the first baseman. Brad thought he was “safe,” but the first base umpire called him “out.” Brad began to argue with the umpire, and in frustration, Brad threw his batting helmet to the ground. The helmet, made of a strong, hard plastic material, bounced on the ground and flew into the stands, striking Adam on the side of the head, causing a serious injury. Adam never saw the helmet coming towards him because he was looking around the stadium at the time rather than at the play on the field. As he was unfamiliar with the game of baseball, he did not know that objects occasionally fly into the stands during a baseball game.

What arguments would Adam make in support of a claim of negligence, what defense(s) can reasonably be asserted, and who is likely to prevail in a lawsuit filed by:

1. Adam against Brad? Discuss.
2. Adam against Dot? Discuss.

Answer A to Question 1

Adam v. Brad

Negligence:

Negligence is the failure to conform one's conduct as a reasonable person would under the same or similar circumstances. The prima facie elements of negligence are Duty; Breach; Causation and Damages.

Duty:

In general there is no duty to act; however, when one acts affirmatively they have a duty to act as a reasonable person would under similar circumstances. Under the Cardozo majority view as posited in the Palsgraf case, a duty exists to those within the foreseeable zone of danger. Under the minority Andrews view if a duty extends to one foreseeable plaintiff it is extended to all actually and proximately injured.

Here, Brad had a duty to act as a reasonable professional baseball player. Brad breached that duty when he argued with the umpire, threw his helmet to the ground and it injured Adam. Adam was in the foreseeable zone of danger because he was seated in good seats [sic] a few rows from the field and just past first base, where the incident between Brad and the umpire took place.

Therefore, Brad owed a duty to Adam.

Standard of Care:

The standard care is a measure of the duty owed. Here Brad will be held to the standard of a professional baseball player. Brad must conform his conduct to that of a reasonable professional baseball player under the same circumstances. The facts tell us that Dot purchased the tickets, and therefore it is implied that a player is being paid for his services if attendees are paying for their seats.

Brad may later argue that he was an amateur player and thus his standard was that of a reasonable baseball player. However, under either Standard of Care, Brad will be obligated to act as a reasonable person.

Breach:

Breach occurs when a person who owes a duty of care acts unreasonably, thereby causing harm to the plaintiff. Here Brad breached his duty to Adam when he threw the baseball helmet so forcefully to the ground that it shattered and a shard of the helmet flew in the stands. The measure of one's breach can be calculated through the Hand formula, which states that $B < P * L$. The Hand formula states that if the burden (B) to reduce the injury is less than the probability (P) of the harm times the magnitude (L) of the harm, then the party has breached.

Here, if Brad had acted as a reasonably prudent professional baseball player or, for that matter even a reasonably prudent person, he would not have argued so forcefully with the umpire and he would not have, in an unsportsmanlike manner, thrown his helmet to the ground. The burden for Brad to have acted differently was relatively minor; it was merely a question of conduct, and Brad chose to act in a manner that showed poor judgment. The probability of harm occurring was great; as witnessed here, the helmet broke into shards and small pieces of flying plastic can injure others. Furthermore, the magnitude of harm can be severe and, as seen here, the shard caused a serious injury.

Therefore Brad has breached his duty to [care] because his actions caused the harm to [Adam] and it was unreasonable for him to act this way to the public and in particular to Adam.

Causation:

Causation exists in two forms, Actual and Proximate.

Actual Cause:

In order to be liable the breach must be the cause of the harm. In order for proximate cause to exist factual cause (actual cause) must first exist. Actual cause is said to exist

when but for the act the injury would not have occurred. Here, but for Brad throwing the helmet to the ground Adam would not have been injured.

Therefore, Brad's act of throwing the helmet is the actual cause of injury to Adam.

Proximate Cause is a foreseeability test.

Here, Brad, by throwing his helmet so hard against the ground, caused it to shatter and impact Adam, who was in the stands. The force of the throw must have been substantial for the helmet to break and fly that far. It is also foreseeable that even if the helmet had not broken into pieces the helmet itself could have been propelled in the stands and struck a patron. Thus the act of throwing the helmet and having it or a piece of it strike a patron was foreseeable.

Brad may argue that the umpire who called him out at first base caused him to lose control and thus this temper flared; thus this act by the umpire was an intervening and superseding event that broke the chain of causation. However, the umpire's call came before Brad's act occurred and it was not intervening or superseding.

Therefore, Brad is the proximate cause of Adam's injury.

Damages:

Damages occurred when Adam was struck by the helmet that Brad threw to the ground. Adam was seriously injured by the flying shard of plastic; thus injury occurred. Therefore Brad has caused injury to Adam through his breach of duty which was the cause of harm and he will be liable to Adam under a claim of negligence.

Defenses:

The defenses that exist are comparative negligence, contributory negligence and assumption of the risk. There, Brad will assert that Adam assumed the liability through implied assumption of the risk when he came to the game. Baseball is a sport and like all sports it carries a risk of harm. However, the risk of harm is extended to those who have consented to the harm and have willfully assumed the risk.

Here Brad is the player; he most likely consented to the risk associated with playing baseball. However, Adam was from out of the country. He recently immigrated to the United States and he knew nothing about baseball and how baseball players behave or what the potential for injury was when he agreed to attend the game. Therefore, he did not know of the risk nor did he assume the risk either directly or impliedly, because he was not informed, and he had no reason to know the risk.

Furthermore, Adam had no way of knowing, nor should he have known, that Brad would act in an unsportsmanlike manner. Therefore, Brad is liable to Adam for his negligent conduct.

Adam v. Dot

Negligence

Duty:

Defined supra: Here Dot had a duty to act as a reasonable person to take such action so that an unreasonable risk of harm would not occur to Adam. In general there is not duty to act. However, having gratuitously undertaken to invite Adam to the baseball game he had a duty to act as a reasonable person would. Here Adam will contend that Dot breached that duty when she did not inform him of the possibility of being harmed. Thus Dot owed a duty to Adam.

Breach:

Defined supra: In order to be liable, the breach must be the cause of the harm. In order for proximate causation to exist, actual cause must first exist.

Causation:

Actual cause is said to exist when but for the act the injury would not have occurred. Here but for Brad throwing the helmet the injury would not have occurred. Thus, the actual cause of injury is Brad throwing the helmet. There are no indications that Dot had reason to know that Brad would throw the helmet, or that he contributed in any manner to the injury. A reasonable person would not expect a baseball player to throw

a helmet. Furthermore a reasonable person would merely explain the game and the rules to their friend, not explain every potential possibility of an injury. Therefore actual causation does not exist and because of this Dot will not be the cause of Adam's harm.

Therefore, Dot was not the cause of Adam's injury and because the element of actual causation is missing, she will not be liable to Adam under a cause of negligence.

Defenses:

Adam may attempt to find Dot breached her duty by not informing him of the potential harm, thereby denying him the opportunity of deciding if he should assume the risk. However, this does not appear to be a viable defense, as Dot was not under a duty to be Adam's parent or guardian, nor did she have a contractual or statutory obligation, nor did she create the peril or assume the risk merely by extending the invitation.

Therefore, Adam will not be successful in his claim of negligence against Dot.

Answer B to Question 1

What arguments would Adam make in support of a claim of negligence what defenses can reasonably be asserted, and who is likely to prevail in the lawsuit filed by:

1. Adam v. Brad

Here, Adam, a baseball spectator, was injured during a game when a player threw his helmet on the ground. Adam will bring a cause of action against Brad based on negligence.

Negligence:

For a prima facie case of negligence Adam must prove that Brad owed him a duty of due care, that Brad breached that duty and Adam suffered injuries which were actually and proximately caused by Brad's breach of duty.

Duty:

Brad owed Adam a duty of due care of a reasonably prudent player under the same or similar circumstances so as to avoid unreasonable risk of harm to Adam.

Standard of Care:

The standard of care would be of a reasonably prudent baseball player. Here, Brad had a duty to behave like a reasonable player. When Brad was called out he began to argue with the umpire and become frustrated. He threw his batting helmet to the ground, which bounced on the ground and flew into the stands, striking Adam on his head, causing serious injury.

Foreseeable Plaintiff: Adam will argue that he is a foreseeable plaintiff because unreasonable conduct by any baseball player in the face of a foreseeable risk may cause him harm and, here, it did cause him harm as discussed below. Brad will argue that Adam is not a foreseeable plaintiff because he was a spectator and the helmet accidentally bounced on the floor [sic] and flew into [the] stands. Hence, he was a remote plaintiff. Brad will argue under Justin Cardozo majority view in **Palsgraf v. Long Island Railroad** duty is owed to only those who are foreseeable plaintiffs in a foreseeable zone

of danger facing foreseeable risk of harm. Adam will counter that under Justice Andrew's minority view, even if Adam is not a foreseeable plaintiff, he is still owed a duty of care, because if duty is owed to anyone it is owed to all, the "whole world". Hence, Adam is a foreseeable plaintiff.

Therefore, Brad owed a duty of reasonable care to Adam so as to avoid foreseeable risk of harm to spectators like Adam.

Breach

Breach is a failure to exercise duty of due care of a reasonable baseball player under the same or similar circumstances.

Here, when Brad became frustrated at the umpire calling him out, though he thought he was safe, he argued with the umpire and threw his batting helmet to the ground, the helmet bounced off the ground and flew into the stands, striking Adam and causing him serious head injury. Adam will argue that by throwing his helmet, Brad's conduct was unreasonable because of risk of injury to other baseball players and spectators because the helmet made of a strong hard plastic may bounce off and hit someone.

Brad will counter that incidents like throwing helmets on the ground are quite common during baseball games and it is rare that helmets usually bounce off the ground and fly into stands. Furthermore, Brad will argue that if Adam had seen the helmet coming he would have dodged and moved out of its way, but Adam did not move out of the helmet's way because he was not looking at the play but looking around the stadium, and hence he was not paying attention to the game. Adam will counter that it is only because of Brad's unreasonable conduct that he got injured because the possibility of a base, bat or helmet bouncing off and flying and injuring a spectator is always a foreseeable risk if someone is unreasonably careless.

Here, Adam will prove that Brad's conduct was reasonable based on Justice Learned Hand's formula in *US v. Carroll Towing Company*, where burden of prevention or mitigation was less than the probability and magnitude of harm. In other words if the probability and magnitude of harm is greater than the burden of prevention, the

defendant's conduct is unreasonable. Adam will argue that the probability of someone getting injured by throwing [a] helmet made of hard plastic and bouncing and flying into the stands is much greater; furthermore, the gravity of harm here, a serious head injury, is much greater than the burden of prevention or mitigation. Here, Brad should have played by the rules of the game and respected the umpire's decision even if he thought he was safe.

Another test used to determine unreasonable conduct is by balance test. If Brad's risk of his conduct outweighs the utility of his acts then his conduct is unreasonable. Here, Adam will prove that there was no utility of Brad's unreasonable conduct of arguing, becoming frustrated and throwing his batting helmet to the ground. In contrast the risk of harm was greater because someone would get hurt.

Actual Causation:

But for Brad's unreasonable conduct, Adam would not have been injured.

Hence, Brad is the cause in fact of Adam's injury.

Proximate Causation:

Here, Adam will prove that his risk of harm or injury was foreseeable and not too remote. It is foreseeable that if someone throws a hard helmet on the ground the risk of it bouncing off into the stands and hitting someone is high. Adam will argue that there was no intervening event which broke the chain of causation. Brad may argue that by not paying attention and not looking at the playing field, Adam's conduct was an intervening event which broke the chain of causation. Adam will counter that negligent conduct of someone like him is always foreseeable.

Damages:

Here, Adam suffered a serious injury when the helmet bounced off the ground.

Defenses:

Contributory Negligence:

This measures conduct on part of the plaintiff which falls below a standard of care to which he is required to conform to for his own protection and which contributes to his injury.

Adam will argue that he did not contribute to his head injury. He had a very good seat in the first few rows and never saw the helmet coming towards him. Brad will argue that Adam was looking around the stadium rather than at the play on the field. Adam will counter that it is usual for the spectator to look around at other spectators making noise or celebrating. Hence, Adam did not contribute to his injury. Adam was unfamiliar with the baseball game, and he did not know that objects occasionally fly into the stands during the game.

Adam did not contribute to his injury; hence, there is no complete bar to his recovery.

Comparative Negligence:

This compares the negligence of the plaintiff and defendant based solely in terms of blameworthiness and apportions the damages accordingly.

Here, Adam will argue that his conduct was not comparatively negligent.

Assumption of Risk: One who knows and appreciates a known risk and voluntarily chooses to encounter it assumes the risk.

Here, Adam did not know the risk because he did not know that objects occasionally fly into stands during baseball games. Hence, he did [not] appreciate the known risk of such injury. He did not voluntarily choose to encounter this risk of the injury because an ordinary prudent spectator would not voluntarily choose to encounter such head injury.

Remedies:

General Damages/Compensatory are those damages which flow naturally from the harm and as such will make good or replace the harm or injury sustained.

Adam will plead, past, present and future pain and suffering.

Special Damages are all economic losses and expenses that arise from the harm sustained and will include past, present, and future economic losses including lost profits, lost wages, medical bills, etc.

Here, Adam will plead past, present and future economic losses including medical expenses, testing procedure, lost wages, lost profits, etc.

Punitive Damages is where the harm sustained by the plaintiff is aggravated by willful or wanton conduct of the defendant.

If the court finds Brad's conduct to be willful and wanton and intentional then Adam may be awarded punitive damages.

Nominal is declaration of plaintiff rights. Since, here, Adam has a serious head injury he will recover in general, special and maybe punitive damages.

Who will Prevail? Here, Adam will prevail in a negligent cause of action against Brad and recover general, special and even punitive damages if Brad's conduct is found to be willful and wanton conduct.

2. Adam v. Dot

Negligence

For a prima facie case of negligence Adam must prove that Dot owed him a duty of due care, that Dot breached that duty and Adam suffered injuries which were actually and proximately caused by Dot's breach of duty.

Duty

Dot owed Adam a duty of due care of a reasonably prudent person under the same or similar circumstances so as to avoid unreasonable risk of harm to Adam.

Standard of Care

The standard of care would be of a reasonably prudent person; here, Dot was a friend of Adam who invited him to a baseball game. She may have been aware that Adam had recently migrated to the United States and knew nothing about baseball.

Foreseeable Plaintiff: Adam will argue that he is a foreseeable plaintiff because unreasonable conduct or acts by this friend may cause him risk of foreseeable harm.

Therefore, Dot owed a duty to Adam as a friend inviting [him] to a baseball game.

Breach

Breach is a failure to exercise duty of due care of a reasonable baseball player under the same or similar circumstances.

Here, Adam may argue that Dot should have known that he did not know anything about baseball and that he was not warned about injuries during baseball games. Dot will counter that even if Adam did not know anything about the baseball game, it is highly unlikely that [a] helmet could bounce off the ground and fly into stands and cause Adam a serious head injury. Even if he had known about the baseball game an injury to him caused by negligence of a baseball player would still be possible. Furthermore, Dot purchased seats that were very good and past the first base.

The court finds that Dot breached a duty of due to Adam by not warning him.

Actual Causation

But for Dot's unreasonable conduct of not warning Adam about the baseball game accidents, Adam would not have been injured.

Hence, Brad is the cause in fact of Adam's injury.

Proximate Causation

Here, Adam will argue that if someone does not know that objects occasionally fly into the stands and someone who has no knowledge about baseball, then it is, likely that he may not move out of the way of a flying helmet, bat or hard ball and get injured. Dot will counter that it was the intentional act of Brad of throwing his helmet which caused it to fly into stands that caused injury to Adam and not her unreasonable conduct. Intentional or criminal acts of someone are not foreseeable.

Therefore, Dot will not be liable to Adam in view of absence of proximate causation. Furthermore, she did not do anything unreasonable or unreasonably careless that would have caused Adam's injury.

Outcome

Therefore, Adam will not succeed in his negligent claim against Dot.

Question 2

Dawn lives in an apartment with her dog Fluffy and her boyfriend Bill. A year ago Bill began buying and selling illegal drugs.

One day Bill asked Dawn to deliver a plastic bag containing a white powder to a house on Main Street. Dawn believed the bag contained cocaine and refused, saying, "I wish you would stop dealing cocaine. I want nothing to do with your dirty business."

Bill flew into a rage. He said, "I am sick and tired of your superior attitude. If you don't deliver this bag, then I am going to kill Fluffy." He then grabbed the dog and held a knife against its side until Fluffy began to squeal.

Afraid for Fluffy's well-being, Dawn agreed to deliver the bag and its contents. She put the bag in her purse, got into her car, and drove towards Main Street. She drove very carefully and within the posted speed limit to avoid getting stopped by the police. As she approached Main Street, a two-year-old boy, Victor, darted out in front of Dawn's car. Her car struck Victor before she had a chance to apply her brakes. Victor was killed immediately by the impact.

While still at the accident scene, the police arrived and arrested Dawn. In searching her purse they discovered the white powder. Chemical analysis revealed that the white powder was cocaine.

With what crimes may Dawn be charged and what defenses could she raise? Discuss.

Answer A to Question 2

I. Criminal Charges against Dawn

Accomplice

An accomplice is one who encourages, assists, aids, or abets in the commission of a crime. Here, Dawn delivered a plastic bag containing a white powder, later to be discovered as cocaine, to a house on Main Street. This act alone is sufficient to establish charging Dawn as an accomplice. Dawn, however, may have defenses to these actions discussed infra.

Dawn also, however, lives in an apartment with her boyfriend Bill and we are told that Bill began buying and selling illegal drugs a year ago. Dawn believed that the bag contained cocaine and attempted to refuse his request, saying, "I wish you would stop dealing cocaine. I want nothing to do with your dirty business." If Dawn had been living with someone that she knew possessed and sold cocaine, some jurisdictions may hold her liable as an accomplice for this act alone and it may not be subject to the defenses discussed infra.

Conspiracy

Conspiracy occurs when there is an agreement between two or more people to do an unlawful act or a lawful act by unlawful means and the defendant commits an overt act in furtherance of the conspiracy. Here, Dawn agreed with Bill to deliver the bag that she believed contained cocaine and its contents (unlawful act) for Bill. Dawn's act of putting the bag in her purse, getting in her car, and driving towards Main Street is an overt act in furtherance of their conspiracy. Dawn, however, did not have a "guilty mind" per se, as she did not want to commit the crime in question (infra). This fact and the defense of duress discussed below, however, may be a successful defense against conspiracy. Nonetheless, Dawn may be charged with conspiracy.

Pinkerton Rule

Under the Pinkerton Rule, coconspirators are guilty of the crimes that are a reasonably foreseeable consequence of the commission of the crime. Here, Dawn may be charged

with any crimes that are a reasonably foreseeable consequence of her conspiracy with Bill.

Murder

Murder is the killing of another human being (homicide) with malice. Malice is established if the defendant acted with intent to kill, intent to cause grave bodily harm, with willful/wanton disregard for human life (depraved heart), or the homicide was committed during the commission of a dangerous felony (felony murder rule). Here, Victor darted out in front of Dawn's car and her car struck Victor before she had a chance to apply her brakes. Dawn's actions caused the death of Victor. Dawn, however, did not have an intent to Kill Victor, an intent to cause him grave/great bodily harm, nor did she act with wanton/willful disregard for human life. In fact, Dawn was driving very carefully and within the posted speed limit to avoid getting stopped by the police. Application of the felony murder rule, however, warrants discussion.

1st Degree Murder

1st degree murder requires an intent to kill that is premeditated (thought about the act of killing before doing so) and deliberated (cool mind capable of reflection) or if the felony murder rule applies. From the facts, the only way Dawn can possibly be guilty of 1st degree murder is under the felony murder rule. Any other form of murder would be 2nd degree murder.

Felony Murder Rule

The felony murder rule holds that if the actor kills another human being while they are engaged in the commission of an inherently dangerous felony, the homicide is held as 1st degree murder. Here, Dawn killed Victor while she was delivering cocaine for Bill. If Dawn's crime is considered an inherently dangerous felony, she may be charged with 1st degree murder under the felony murder rule. Dawn, however, will have a defense against the underlying crime of being an accomplice and/or transporting/possession of a controlled substance (infra) and these defenses may also impact her likelihood of being successfully charged with murder and mitigate her charge accordingly to either voluntary manslaughter or, more likely, involuntary manslaughter.

Voluntary Manslaughter

Voluntary manslaughter is murder that is mitigated due to provocation (heat of passion), unreasonable mistake, coercion, or necessity. Here, Dawn may be able to mitigate a charge of murder to voluntary manslaughter due to acting under duress from Bill. A fortiori, however, Dawn had no intent to kill and murder will only need to be mitigated if Dawn is guilty under the felony murder rule. If there is no murder, involuntary manslaughter is the more likely charge.

Involuntary Manslaughter

Involuntary manslaughter is the accidental killing of another human being due to gross criminal negligence/recklessness. Here, Dawn killed Victor by hitting him with her car. This act appears to be involuntary manslaughter on its face. Dawn, however, does not appear to have been operating her vehicle with gross criminal negligence. She was driving very carefully and within the posted speed limit to avoid getting stopped by police. The court, however, may find that the reason she was driving in the first place (delivering cocaine) suffices to establish gross criminal negligence for her conduct. Dawn may be charged with involuntary manslaughter of Victor.

Possession of Controlled/Illegal Substance

Illegal possession of a controlled or illegal substance is a crime in the majority of jurisdictions. Here, Dawn was delivering cocaine for Bill and, while the police were at the accident scene of her and Victor, they found the cocaine in Dawn's purse. Chemical analysis revealed that the white powder was cocaine. Also, Dawn believed that the powder was cocaine before she began the delivery and prior to the analysis confirmation. Thus, whether the jurisdiction holds such possession as a crime requiring knowledge of the substance or it is a strict liability crime (guilty without fault), Dawn will be charged with possession of a controlled/illegal substance. Defenses, however, may apply (infra).

Attempt to Distribute Controlled/Illegal Substance

Attempt requires that the defendant have the specific intent to perform acts which, if they are carried out, will result in the target crime and the defendant takes a substantial step in furtherance of her goal. Here, Dawn technically intended to perform the act of

delivering the controlled substance. Her act of placing the cocaine in her purse, getting in her car, and driving towards Main Street is a substantial step in furtherance of the goal. Dawn, however, was doing so under duress and did not have a criminal or guilty state of mind when committing these acts. Thus, her charge may be successfully defended against. Nonetheless, she may be charged with attempting to distribute a controlled/illegal substance.

Defenses:

Duress (conspiracy, attempt, possession, murder)

Duress is a defense holding that the defendant reasonably believed she was under the threat of imminent physical harm or death unless she committed the crime in question. This defense essentially holds the key to Dawn's guilt on most of the aforementioned charges. Here, Dawn agreed to deliver the cocaine and actually did so only because Bill was threatening to kill Dawn's dog, Fluffy. Dawn initially resisted Bill's solicitation of her to commit the crime, saying, "I wish you would stop dealing cocaine. I want nothing to do with your business." Bill, however, flew into a rage, saying "If you don't deliver this bag, then I am going to kill Fluffy." Bill then grabbed the dog and held a knife against its side until Fluffy began to squeal. Importantly, the threat of harm/death was to Fluffy and not Dawn. The fact dogs are considered property and not on level legal ground with humans will play a factor. Nonetheless, many people form strong bonds with their animals and would not want to see them harmed or killed and may be willing to commit the crime in question to save their dog. If this threat of imminent physical harm or death to Fluffy is enough to make a reasonable person commit the crime in question, then Dawn may have a successful defense against the charges noted supra.

Answer B to Question 2

State v. Dawn

Conspiracy:

A conspiracy is an agreement between two or more persons to commit an unlawful act or a lawful act in an unlawful manner.

Here, Dawn agreed to deliver the bag and its contents. Dawn made the agreement with Bill. Dawn believed the bag contained cocaine. Since cocaine is illegal, the delivery of which [sic] would be an illegal act.

Some jurisdictions require an overt act in furtherance of the conspiracy. The facts that Dawn believed the bag contained cocaine, put the bag in her purse, got into her car and drive towards Main Street, all attest to overt acts in furtherance of the conspiracy.

Absent a valid defense, Dawn could be found guilty of conspiracy.

Defense(s)

Duress: Dawn will raise the defense of Duress.

Duress is the act of committing an unlawful act under threat or fear of harm.

Dawn will assert that she initially refused Bill by stating that she wished Bill would “stop dealing cocaine” and she wanted “nothing to do with” Bill’s dirty business.

However, once Bill threatened Fluffy’s life, then she had no choice but to deliver the cocaine.

This defense may fail, because Bill did not threaten Dawn or another human being. Fluffy is a dog and a dog is property.

However, since a dog is a living creature, evidenced by Fluffy's squeal, a person such as Dawn may feel compassion and not wish the dog to be harmed.

The facts clearly state that Dawn was afraid for Fluffy's well being. Overall, the defense for duress will most likely fail.

Feigned Agreement: A person may not be found guilty of conspiracy if they feigned the agreement.

Dawn, afraid for Fluffy's well being, did agree to deliver the cocaine.

Attempt to deliver illegal drugs.

An attempt is the specific intent to commit an act. It must go beyond the mere stages of preparation to perpetration.

Dawn placed the bag of cocaine in her purse, got into her car and drove towards Main Street. Dawn had agreed to deliver a plastic bag she thought contained cocaine. Absent striking and killing Victor, the crime would have been completed. Therefore, Dawn could be found guilty of attempt to deliver illegal drugs, absent a valid defense.

Defenses

Duress: Discussed supra.

Homicide:

The killing of a human being by another.

Here, Dawn's (D) car struck Victor (V). V was killed immediately by the impact. V was a human being.

Therefore, a homicide was committed.

Murder:

Murder is a homicide committed with malice aforethought.

Malice can be found by (1) Specific intent to kill, premeditation & deliberation, (2) Intent to cause grave bodily injury, (3) Wanton & Willful disregard for human life ("Depraved Heart"), or (4) Felony Murder.

Here (D) did not have the specific intent to kill V. Nor do the facts support intent to cause grave bodily injury.

D drove very carefully and within the posted speed limit, thus there is no indication of wanton or willful disregard to the value of human life.

Felony Murder: At common law if an innocent person died during the commission of a felony, such as burglary, arson, rape, robbery or mayhem, then the act of committing the felony would impute malice for murder.

Here D was delivering a bag of cocaine, which is not one of the big five felonies at common law.

Modernly the felony has to be inherently dangerous.

The driving of a bag of cocaine in and of itself is not inherently dangerous.

Therefore malice would not be imputed via felony murder.

Causation:

D would need to be both the actual and proximate cause of the death of V.

Actual Cause:

But for D striking V with her car, V would not have been killed. D is the actual cause of V's death.

Proximate Cause:

D struck V before she had a chance to apply the brakes. V was killed immediately. D is the proximate cause of V's death.

Involuntary Manslaughter:

Is when a homicide is committed without malice while conducting yourself in a lawful manner.

D was the actual & proximate cause of V's death. D was driving carefully and within the posted speed limit. Therefore, D was conducting herself in a lawful manner.

However, D was delivering cocaine, a misdemeanor.

Misdemeanor Manslaughter Rule:

If a person is killed during the commission of a misdemeanor then the defendant may be found guilty of manslaughter.

Here, D was delivering cocaine, a misdemeanor, and V was killed during the act of the crime.

Therefore, D may be found guilty of manslaughter.

Defenses

Duress – supra.

Question 3

Ann wanted to purchase a gift for her boyfriend, Ben. Ann and Ben went to Ritz Jewelry to select the gift. Charles, the store manager, assisted them. Ann explained to Charles that she wanted to purchase a gift for Ben, and that Ben could select whatever he wanted. Ben chose a large gold chain costing \$2,400.

Ann and Ritz executed a written installment sales contract which identified the chain as "solid 18K gold," stated the purchase price of \$2,400 which was to be paid by Ann in twenty-four equal monthly payments, and stated that the contract was not assignable.

Ben wore the gold chain proudly, but the relationship with Ann ended a few months later. When the two parted, Ann made it clear that Ben could keep the gold chain. Ben subsequently took the chain to another jeweler for cleaning and then discovered that the chain was not solid gold after all, but rather was gold plated and the thin gold plating was wearing off the chain. Ben decided to make a claim directly against Ritz for misrepresenting the chain's quality, without involving Ann.

When Ben made the claim against Ritz, Ritz informed Ben that Ritz had assigned the contract and its right to receive payments from Ann to CreditCo, a finance company. Ritz had previously notified Ann of the assignment. Ann had paid six of the twenty-four payments due under the installment sales contract. However, when Ann learned that the gold chain was not solid 18K gold as represented, she stopped making any more payments to CreditCo.

1. Can Ben prevail in a breach of contract action against Ritz? Discuss.
2. Is the assignment by Ritz to CreditCo effective? Discuss.
3. Can CreditCo prevail in a breach of contract action against Ann? Discuss.

Answer A to Question 3

1. Can Ben prevail in a breach of contract action against Ritz?

Here Ben and Ritz are not in privity of contract. To determine if Ben has a right [to] enforce the written contract made by Ritz and Ann, it must first be determined if Ann and Ritz had an enforceable contract.

UCC

Under contract law the UCC governs contracts for the sale of goods. Goods are movable things at the time of identification to the contract for sale.

Here, the Ann/Ritz contract involved a sale of a chain which is a good, because of being moved from location to location.

The UCC governs.

Merchants

A merchant is one who regularly deals in the goods.

Here, Ritz is a merchant because the deal is chains. Ann is not a merchant because she is a one time buyer.

Therefore, Ritz is a merchant and will be held to a higher standard of good faith and fair dealing.

Valid Contract

A valid [contract] consists of an offer, acceptance and consideration.

Offer

An outward manifestation of present contractual intent, requiring definite, and certain terms, which are committed to the offeree.

Here Ann and Ritz executed a written sales contract, thus manifesting their present contractual intent to be bound to a sale of a chain.

Under the UCC, the only term received is quantity. The terms state 1 golden chain. Thus, the terms were definite.

The fact that both parties signed the contract shows the terms were communicated.

Acceptance

An unequivocal assent to the terms of the offer.

The parties executed a written contract, thus removing any issues of acceptance.

Consideration

That which is bargained for, and given in exchange, for a return promise, requiring benefit or detriment.

The parties exchange a chain for money.

Valid consideration exists.

A valid contract exists. Does it raise rights in Ben?

Third Party Beneficiary

A third party beneficiary contract is one wherein performance by a promisor will benefit a third party.

Ann and Ritz's contract was entered into with the intent to benefit Ben.

Generally, only those in privity of contract can sue; there is an exception for the third party beneficiaries. (Lawrence v. Fox).

When Ann entered into the contract with Ritz, she told Charles the Store Manager that “she wanted to purchase a gift for Ben.” Therefore, Ann displayed an intent to benefit Ben. Additionally, performance was to run directly to Ben from Ritz (promissor).

Because Ann was bestowing a benefit on Ben, he will be classified as a donee third party beneficiary; or intended third party beneficiary under the second restatement.

Under the second restatement, vesting takes place when a third party gets notice of and assents to the promise, materially changes her position in justified reliance on the promise, or brings suit to enforce the contract.

Here, not only did Ben assent to the contract, but he brought suit to enforce it: “Ben decided to make a claim directly against Ritz.”

As a third party beneficiary Ben can enforce the Ann/Ritz contract, and may prevail in a breach of contract action against Ritz if Charles made a misrepresentation.

Misrepresentation

A misrepresentation of material fact which induces another to enter into a contract.

Charles stated that the chain was “solid 18K gold.” The chain was only “thin plated gold.” This was a misrepresentation because it was a false assertion of fact.

It was a material fact because a reasonable person would care about it in connection with the transaction.

The fact that it was gold induced the parties to enter into the contract.

Therefore, Ben may succeed against Ritz.

2. Is the assignment by Ritz to CreditCo effective?

Assignment

An assignment occurs when a party to an existing contract transfers their rights under the contract.

Contract favors the free assignability of contract rights. Therefore rights are assignable unless they are too personal or prohibited by contracts. The assignment of monies is not too personal.

Ann will claim that the assignment was prohibited by contract. However, generally an anti-assignment clause only destroys the right to assign, not the power. To destroy the power, the contract language would have to say: "All assignments are null and void." This language is not present.

The assignment is effective.

3. Can CreditCo prevail in a breach of contract action against Ann?

As discussed supra, the assignment was effective. The effect of a valid assignment is that the assignee (CreditCo) steps into the shoes of the assignor (Ritz), and enjoys all rights to enforcement.

However, the obligor (Ann) may assert any defenses against the assignee that she could assert against the assignor.

As discussed supra, Charles made a misrepresentation on behalf of Ritz. Additionally, Ritz is responsible for Charles' express warranty – "solid 18K gold." The chain was not in fact solid gold. As such, Ann may raise both these defenses to formation against CreditCo.

Both the misrepresentation and breach of express warranty gives Ann the power to void the contract.

Therefore CreditCo will not prevail in a breach of contract action against Ann.

Answer B to Question 3

1. Can Ben prevail in a breach of contract action against Ritz?

Applicable law that applies here is the UCC since it deals with goods, here being a gold chain.

Status of the Parties:

Ritz Jewelers deals in jewelry and goods the kind and as such are/is a merchant.

Ben is the bearer of a gift, gold chain. He is not a merchant.

In order to establish that a breach of contract has occurred, it is necessary to determine that a contract has been formed. Here we are told that Ann executed a written installment sales contract for a gold chain with a purchase price of \$2,400. Since the facts make it clear that a written agreement was executed, mutual assent, offer, acceptance, and consideration are in order. There are no formation issues in the contract between Ann and Ritz.

Status of Ben

3rd Party Beneficiary

A 3rd party beneficiary is one who receives benefits of a contractual agreement as long as certain requirements are met.

- 1) They have to be named at the time of the agreement.
- 2) Benefit was directly to the party identified.
- 3) The relationship or reason for the benefit is apparent to both contractual parties. A 3rd party beneficiary rights vest once they learn of the benefit and assent to it. Here, Ben goes into the store with Ann. Ann explains to Charles that the purchase was a gift for Ben, thus identifying him at the time of the agreement. Ben selected the gold chain

and wore it. The relationship between Ben and Ann was apparent, as she explained that it was a gift. Since there was no consideration given to Ann by Ben for the chain and the relationship between them is of boyfriend and girlfriend he is deemed a 3rd party donee beneficiary and his rights under the contract between Ann and Ritz vested once he assented to the chain.

Express Warranty (breach)

An express warranty is one which a merchant makes that is either a description of the goods, affirmation of fact regarding the goods, promise to repair the goods if broken, or an exhibition or model of what the good will look like. Here, Charles, a manager for Ritz, assisted in the purchase of the chain. The contract identified the chain as being solid 18K gold. Ben found out from another jeweler that it wasn't as described in the contract. Ritz has breached an express warranty and by their nature express warranties cannot be disclaimed. Based on Ben's status as of a 3PB he will prevail in a breach of contract action against Ritz.

[2.] Assignment by Ritz to CreditCo. effective?

Assignment of rights to a contract are prohibited in three situations:

- 1) The contract states as such that it can't be assigned.
- 2) The law prohibits the type of assignment.
- 3) The assignment changes the performance or the performance is too personal to be completed by another party.

Here the facts don't indicate that the assignment was prohibited or that personal performance would prevent the assignment. The only arguable point is the clause in the contract stating that the contract was not assignable. According to the law this type of statement doesn't prevent the right to assign the contract; it only takes away the privilege. Parties are still able to assign interest rights but are held liable for the damages that may result of the assignment. Furthermore, the facts state that Ann

implied assent by continuing to pay the monthly installment after notification. She only stopped payment after the breach of express warranty. She did not stop payment after learning of the assignment.

3. Can CreditCo prevail on a breach of contract against Ann?

Assignment of rights along with delegation of duty passes along with the entire contract once the assignment is made. Here Ritz became the assignor by assigning its rights under the contract to CreditCo; CreditCo in turn became the assignee. Ann is still deemed to be the obligor under the original contract and regardless of her relationship with Ben. She purchased the chain as the primary party to answer for the cost. The chain was a gift to a 3PB, Ben. Ann still owes the remainder of her installments to CreditCo as a result of the assignment.

Breach of Warranty (express)

Defined supra.

Here, Ann can claim that as a result of the chain not complying with the express warranty she is entitled to stop payment. The failure of the express warranty can be considered a breach by CreditCo, not Ann, since as the assignee of the contract CreditCo must effectively stand in the shoes of Ritz. Here because of the breach of warranty π is Ann, who can claim that the breach did not occur on her side of the contract; rather, it was the opposite end. If the assignment of the rights of the contract between CreditCo and Ritz was for consideration then CreditCo's better chance of recovery is against Ritz, not Ann.

Question 4

Employer hired Driver to operate a delivery van. Before allowing Driver to operate the van, Employer checked Driver's prior job references, required Driver to undergo a physical examination by a medical doctor, and provided Driver with extensive training in motor vehicle safety. Medic, the medical doctor who examined Driver, discovered that Driver had a sleep disorder that caused Driver to spontaneously fall asleep and that Driver had on several occasions fallen asleep while driving. Driver pleaded with Medic not to inform Employer of the sleep disorder. Medic agreed, and omitted this information from the physical examination form that he sent to Employer. Medic also sent a letter to Employer assuring Employer that Driver was "in all respects fit for employment as a delivery van operator." Employer then provided Driver with a daily delivery route and paid him a monthly salary.

While Driver was making deliveries for Employer, the van left the road and struck Pedestrian, who suffered severe injuries as a result.

Pedestrian filed a lawsuit for the damages as a result of the injuries sustained in the accident against Driver, Employer, and Medic.

1. Can Pedestrian prevail under the doctrine of *res ipsa loquitur* concerning Driver's alleged negligence? Discuss.
2. What arguments will Pedestrian make in support of his claims of negligence, what defenses can reasonably be asserted, and who is likely to prevail in a lawsuit filed by Pedestrian against:
 - a. Employer? Discuss.
 - b. Medic? Discuss.

Answer A to Question 4

Pedestrian v. Driver

Driver may be liable for negligence if it can be determined that he owed a duty of due care; that he breached that duty; and that Pedestrian suffered personal injury actually and proximately caused by Driver's negligence.

Duty

Driver owes a duty under the circumstances to conform to a standard of care of a reasonable prudent person for the protection of others against unreasonable risk of harm.

Driver owes a general duty of care to drive safely for the protection of others on the roads. Here, Driver knew that he often fell asleep on the road and by operating the delivery van he owes a duty to exercise reasonable care to others on the road.

Breach

Breach is a failure to conform to the standard of care for the protection of others against unreasonable risk of harm.

Driver failed to conform to required standard of care when his van left the road and struck Pedestrian because he knew that he was susceptible to falling asleep and took the risk that he would not cause harm to others by operating the van.

Therefore, there was a breach of duty.

Res Ipsa Loquitur

Res Ipsa Loquitur may be used to prove breach of duty if it can be shown that the breach of duty is not the type that normally would have occurred if the Driver was not negligent, the instrumentality was under the exclusive control of Driver, and that the Pedestrian did not cause his own injuries.

Here, the fact that Driver left the road and struck Pedestrian is not a type of accident that happened only if the Driver was negligent. There are many other situations that could have caused the Driver to veer off the road, including mechanical failure, defective steering wheels, or emergency reaction. Thus, Drivers negligence is one of the many possible causes. This factor makes it highly unlikely that Res Ipsa Loquitur could be used in such [a] situation. Even if the Driver has exclusive control of the car that struck Pedestrian, and Pedestrian did not cause his own injuries, Res Ipsa Loquitur cannot be used if the Driver can show that accidents like this can happen due to the above mentioned factors.

Therefore, Pedestrian cannot establish breach of duty under Res Ipsa Loquitur doctrine.

Causation

The breach of duty must be the actual and proximate cause of Pedestrian's injury.

Here, there is not enough information from the facts to show that the accident was actually caused by Driver's breach of duty of care.

Assuming that Res Ipsa Loquitur can be used to establish breach, then Pedestrian's injuries were actually and proximately caused by the Driver's negligence.

Damages

Pedestrian must suffer personal injury in order to recover under negligence.

Here, Pedestrian suffered severe injuries.

Therefore, there was an injury.

Conclusion

Because there was a duty, breach of duty, causation and damages, Driver will be liable for negligence.

Pedestrian v. Employer

Vicarious Liability

An employer is vicariously liable for the negligence of his employees committed within the scope of the employment relationship.

Here, Driver was negligent as discussed supra. Employer hired Driver to operate the van and is thus an employer within the meaning of vicarious liability. Driver's negligence occurred within the scope of the employment relationship because Driver was making deliveries for Employer when the van left the road and struck the Pedestrian.

Therefore, Employer will be held vicariously liable for the negligence of Driver.

Negligent Hiring/Training/Supervision

Employer may be liable for negligence if it can be determined that he owed a duty of due care; that he breached that duty; and that Pedestrian suffered personal injury actually and proximately caused by Driver's negligence.

Duty

Defined supra. The Employer has a duty to make reasonable investigation of the employees it hires for the protection of others against unreasonable risk of harm.

Breach

Defined supra.

Here, Employer made reasonable efforts to investigate Driver's prior job references and physical conditions.

Causation

Defined supra.

Here, Employer did cause the Pedestrian's injury since but for the hiring of Driver, Pedestrian would not have been injured. Further, Driver's negligence was the proximate cause since it was foreseeable to Employer that if its employees were negligent while driving the delivery van, the company would be liable.

Damages

Defined and discussed supra.

Conclusion

Since Employer did not breach its duty of care, it would not be liable for negligent hiring or supervision.

Pedestrian v. Medic

Negligence

Defined supra.

Special Duty

A special duty to control the act of third parties exists where there is a special relationship based on contractual relationship.

Because Medic is under a contract with Employer to make any information through the physical examination of Driver known to Employer, Medic owes a duty of care to give vital information about Driver's health to Employer.

Breach

Defined supra.

Medic breached the duty when it did not inform Employer about Driver's medical condition that would be crucial to Employer's decision to hire Driver.

Therefore, Medic breached the duty of due care.

Actual Causation

Defined supra.

But for Medic's information in the physical examination of Driver, Employer would not have hired Driver and Driver would never have caused the injuries to Pedestrian.

Therefore, there was actual causation.

Proximate Causation

Defined supra.

Medic would assert that the consequence of Driver injuring Pedestrian was not the type of risk that makes their breach of duty a foreseeable type of harm. This argument would not succeed since Medic knew that Employer's Driver was required to make deliveries as part of the jobs.

Therefore, Medic's breach of duty was the proximate cause of Pedestrian's injury.

Intervening Cause

An intervening cause that is unforeseeable breaks the chain of causation and relieves Medic of further liability.

Medic would argue that Driver's negligence in driving, knowing that he is susceptible to falling asleep, was an intervening cause that cuts off Medic's liability for harm to Pedestrian.

However, this argument would not succeed since Driver's negligence is foreseeable and Medic, Driver and Employer would be held jointly liable for Pedestrian's harm.

Damages

Defined and discussed supra.

Conclusion

Since there is a duty, breach of duty, causation and damages, Medic will be liable for negligence.

Answer B to Question 4

1. Res Ipsa Loquitor

“The Thing speaks for itself.” Res Ipsa Loquitor is a doctrine that is used to prove negligence when there is no actual proof of the act, when the result does not occur in the absence of negligence, and when the instrumentality is in exclusive control of the defendant.

Here the facts show that the Driver, while making deliveries in his work van, left the roadway and struck Pedestrian. Pedestrian was severely injured. The van was under the exclusive control of Driver. But the event could have occurred in the absence of negligence. For example Driver could have suffered an epileptic seizure or been not paying attention. There are too many other ways that Driver might have come to hit Pedestrian for this doctrine to apply.

Res Ipsa Loquitor will not apply.

2. Pedestrian v. Employer

Vicarious Liability

When an employee is in the course and scope of his employment responsibilities then the company he works for will be held responsible for his action.

Here Driver is an employee of Employer, hired to drive a delivery van. Driver was in the course of work when he hit and injured Pedestrian. Employer will be held vicariously liable for Driver’s actions.

Negligent Hiring

Negligence is the duty owed to another, a breach of that duty and that the breach of that duty is the actual and proximate cause of damages to the plaintiff.

Duty

Employer had the duty of a reasonable delivery service to insure not to create risk to those around them. This included the duty to insure that their hiring procedures are adequate.

Breach

When Employer was hiring Driver they went to great lengths to ensure that he would be an adequate driver. They checked his prior job references. They required him to undergo a physical exam with [a] medical doctor. They provided him with extensive training in motor vehicle safety. The facts show that they went beyond the normal here and were very safety conscious. It would be up to Ped's lawyers to prove that employer breached, but it would be difficult.

Employer will be found not to have breached their duty of care.

Actual Cause

But for Employer hiring Driver, Ped would not have been injured.

Therefore Employer is the actual cause of Ped's injury.

Proximate Cause

Employer will argue that Driver's actions, in convincing Med to falsify his response was a supervening cause that cut off liability to Employer.

The facts indicate that while at his medical appointment that the Dr. found a sleep disorder. This disorder would cause Driver to spontaneously fall asleep. Driver even told Med that he had on several occasions fallen asleep while driving. Medic agreed to omit this info from the examination form he sent to Employer and also sent a full letter stating that Driver was "fit for employment in all respects as a driver." Had Employer known the truth they would not have put Driver to work as a driver. Due to Medic's deceit this is too remote a possibility for Employer to [be] responsible for. In fact it is criminal on Medic's part, and criminal behavior will be found to break the chain of causation.

Employer will be found to not be the proximate cause of Ped's injuries.

Damages

Employer will not be held liable for any damages to Ped. Although if Ped is successful against Employer then Employer will be allowed to sue Driver and or Medic to recover their costs.

Defenses

Supra

Ped v. Medic

Negligence

Supra

Duty

Here Medic had a duty to act as a reasonable medical doctor. He will be held to a standard of care of that of reasonable doctors in the same field of medicine in his local area. Modernly Drs. have started to be held to the standard of their nationwide community of Doctors.

Medic had a duty of care.

Breach

When Medic agreed to omit this critical information from the medical exam he showed a conscious disregard for the standard of care of a reasonable Dr. A reasonable Dr. would see that people who spontaneously fall asleep should not be driving delivery vans, or even driving at all. Driver even admitted to having fallen asleep before while driving. Instead of this alerting Dr. to a real problem, Dr. chose to ignore it. He was being paid by Employer just to check if these people were safe to drive.

Medic breached his duty.

Actual Cause

But for Medic falsifying the medical records, Ped would not have been injured.

Medic is the actual cause of Ped's injury.

Proximate Cause

There was no break in the chain of causation between Medic's falsifying of the medical record, and it is foreseeable that information, if omitted, would cause Driver to hit Ped.

Medic is the proximate cause of injury.

Damages

Medic will be held responsible for all of Ped's general damages that flow from the tort, medical expenses and pain and suffering.

Defenses

It would be difficult for Medic's lawyers to find any defense for Medic's behavior.