



California First-Year Law Students' Examination

**Essay Questions
and
Selected Answers**

June 2017



The State Bar of California
Committee of Bar Examiners / Office of Admissions

180 Howard Street • San Francisco, CA 94105-1639 • (415) 538-2300
845 South Figueroa Street • Los Angeles, CA 90017-2515 • (213) 765-1500

ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2017

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the June 2017 California First-Year Law Students' Examination and two selected answers for each question.

The answers were assigned high grades and were written by applicants who passed the examination. The answers were produced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. They are reproduced here with the consent of the authors.

<u>Question Number</u>	<u>Subject</u>
1.	Contracts
2.	Criminal Law
3.	Criminal Law
4.	Torts

June 2017

ESSAY QUESTIONS



California First-Year Law Students' Examination

Answer all 4 questions.

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 that are not pertinent to the solution of the problem.

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

QUESTION 1

Mary, a football fan, owns an old-looking football seemingly autographed by Bart Starr (the winning quarterback in the *first* Super Bowl in 1967), that she bought for \$100 at a flea market. Mary and her friend Dan both assumed that it was a genuine autographed game ball used in that 1967 Super Bowl. Dan offered Mary \$10,000 for the ball. In response, Mary wrote in pen on a napkin, "Dan agrees to buy Mary's Bart Starr football for \$10,000 on or before December 1, 2016." Dan signed the napkin in pen, and Mary kept the napkin without signing it.

As December approached, Dan was unable to come up with \$10,000. Dan's friend Ed, who also assumed the ball was a genuine autographed 1967 Super Bowl game ball, wanted the ball, so Dan typed a document which read, "Dan hereby assigns all of his rights to buy Mary's football to Ed; Ed hereby assumes all of Dan's obligations under Dan's contract with Mary to buy her football." Dan and Ed both signed three copies, each keeping one copy and sending one copy to Mary.

After some internet research, Ed discovered that while the Bart Starr autograph on the football was genuine, the football was not the type used in the 1967 game; it was instead a consumer product manufactured after 2005. The ball is worth about \$1,000. Dan and Ed no longer wanted the ball. On December 2, 2016, Mary sued Dan and Ed for breach of contract.

1. Can Mary prevail on her lawsuit? Discuss.
2. If so, what damages, if any, is Mary entitled to recover, and from whom? Discuss.
3. What defenses, if any, may Dan and Ed reasonably assert, and will they be successful? Discuss.

QUESTION 1: SELECTED ANSWER A

PREVAILING LAW

The UCC governs all contracts for the sale of goods, goods being defined as anything moveable at the time of identification of the contract, except the money which is to be paid. The common law governs all other contracts, including those for services.

The contract between Mary and Dan is for the purchase of a collectable football. This football is considered to be a good, as it a moveable item and not the money which is to be paid per the contract. The contract is not for a service involving the football, but for the football itself.

As the contract is for the purchase of a good, the football, the UCC will govern this contract.

ARE THE PARTIES MERCHANTS?

A merchant is defined as someone who holds himself or herself to have specific knowledge of the goods involved through profession or having an agent holding such specific knowledge.

Mary herself is a football fan, but it does not seem as though she is an avid collector of such memorabilia. Dan also does not seem to hold knowledge specific to collectable football memorabilia. Both were assuming incorrectly that the ball that Mary bought for \$100 was a very valuable collectable. A knowledgeable collector would have been able to ascertain if it was indeed the ball he or she thought it was before buying the ball.

Neither party here is a merchant.

WAS THERE A VALID CONTRACT BETWEEN MARY AND DAN?

A valid contract must have mutual assent to the essential terms of the contract and consideration between the parties.

MUTUAL ASSENT

Mutual assent to the terms of the contract indicates an offer posed by the offeror and accepted by the offeree.

Here, Mary and Dan mutually assented to the terms that Dan would purchase the football for \$10,000 on or before Dec. 1, 2016. Dan had offered Mary \$10,000 for the ball and Mary wrote up an affirmation of the contract on the napkin which Dan signed and Mary kept. This shows the intent of both parties to enter into a contract for the sale of the collectable football.

There was mutual assent to the terms of the contract.

CONSIDERATION

Consideration is the bargained for exchange between the parties that leaves a detriment to the promisee. A detriment is refraining from doing something that one is legally entitled to do or doing something that one is not legally bound to do.

Here, Mary was going to give Dan the collectable Bart Starr football in exchange for Dan giving Mary \$10,000. Neither party was already legally bound to do either act and had equal bargaining power, and thus, were dealing at arm's length.

There is valid consideration and, therefore, a contract between Mary and Dan.

ASSIGNMENT OF RIGHTS

An assignment is the transfer of a contractual right to a third party. An assignment that declares "all of my rights" or similar language is both an assignment of rights and a delegation of duties. A delegation is the transfer of a contractual duty to a third party.

Here, Dan drafts a document that assigns "all of his rights to buy Mary's football" to Ed. This is both a delegation to Ed that he is now obligated to pay Mary, as Dan was supposed to under the original contract, and now Ed is also the one entitled to the ownership of the ball, per that assignment of Dan's right under the original contract. As Mary is still a party to the contract, both are liable to Mary for the purchase of the football.

Dan assigned his right to the contract and delegated his duties of the contract to Ed.

1. Can Mary prevail on her lawsuit?

As there was a valid enforceable contract between Mary and Dan, to which Dan assigned his rights to Ed, when neither Dan nor Ed performed under the contract by the stated date, Mary was entitled to bring an action against both Dan and Ed. Mary would be successful in her suit against both Dan and Ed if there are no valid defenses (discussed below).

2. If Mary is successful in her suit, what is Mary entitled to recover and from whom?

EXPECTANCY DAMAGE

The damage amount that the plaintiff would have received had the contract been fulfilled.

Here, Mary's expectancy was that the football would be sold for \$10,000. This amount is what she would have received had the contract been fulfilled by either Dan or Ed, as it was the amount agreed to in the contract.

Mary's expectancy damages are \$10,000, the contract price.

Both Dan and Ed are still responsible to Mary for the contract as there was never a novation to let Dan out of the restraints of the contract. Even though Dan assigned his rights of the contract, he is still responsible for making sure that the contract is performed.

This would entitle Mary to her expectancy damage under the contract for the amount of \$10,000.

3. What defenses may Dan and Ed assert and will they be successful?

STATUTE OF FRAUDS

The statute of frauds requires certain contracts to be contained in a writing to be enforceable. Such contracts include ones for the sale of goods with a value of \$500 or more. The writing must contain the essential terms of the contract and be signed by the party to be charged.

Per the contract, Dan is to pay Mary \$10,000 for the purchase of the football. This would entitle this contract to be contained in a writing to satisfy the statute of frauds.

The statute of frauds would apply to this contract.

IS THE STATUTE OF FRAUDS SATISFIED?

As stated above, the statute of frauds must have the essential terms of the contract and be signed by the party to be charged to be enforceable.

Here, Mary wrote on a napkin that " Dan agrees to buy Mary's Bart Starr football for \$10,000 on or before Dec 1, 2016." Dan then subsequently signed the napkin and Mary did not. The note contained all the essential terms, what the contract was for (Bart Starr football), how much it was to be sold for (\$10,000), the parties selling and purchasing (Mary and Dan), and the date the transaction was to take place (on or before Dec, 1 2016). Although Mary did not sign the napkin herself, she is the one bringing suit and does not need to have signed the note.

Dan subsequently assigned his right to Ed for the purchase of the football. Ed and Dan both signed a written document of the assignment of Dan's right to the football contract to Ed. As both are being named in the suit brought by Mary, the statute of frauds would have been satisfied by the signed writings of both parties.

The statute of frauds was satisfied and would not be a valid defense to the contract.

MISTAKE

A mutual mistake can void the contract if both parties are honestly mistaken about a material fact of the contract.

Here, both Mary and Dan believed the football to be one that was used by Bart Starr in a championship game and then signed by Starr. This was a material fact that the contract was founded on, as that ball would be a very valuable collectable and be worth \$10,000. It was later found that the signature was indeed that of Starr, but the football was not the championship ball and was made in 2005, making it worth only around

\$1000. This indicates a mistake by both parties of a fact that the contract was founded on, that the ball would be the championship ball and a very rare collectable.

The court may void the contract as there was a mutual mistake.

FRUSTRATION OF PURPOSE

When the purpose of the contract is frustrated, the performance of the contract may be excused.

As the football was not the championship ball worth \$10,000, the purpose of buying the collectable at the price is frustrated and likely to be excused by this doctrine. The court would not likely order Dan and Ed to purchase a ball worth \$1000, not the bargained for ball that was bargained for, at a price ten times what it is worth. As most of the time the court will not dispute the terms of the bargain, this would give Mary a huge windfall and is not likely to be upheld by the court.

Dan and Ed would be excused from performing the contract under the doctrine of frustration of purpose.

QUESTION 1: SELECTED ANSWER B

1. Can Mary prevail on her lawsuit? Discuss

Mary v. Dan/Ed

GOVERNING LAW

Under contract law, the UCC Article 2 governs the sale of goods. Goods are tangible, movable items at the time of identification of the contract. Otherwise, common law will govern the sale of land or services.

Here, the parties are contracting for the sale of a football which is a tangible, movable item. Since the football is a good, then the UCC will govern.

Therefore, the UCC governs.

MERCHANTS

Merchants are parties who hold themselves out to have special knowledge or skill or who frequently deal with the goods involved.

Here, Mary is not a merchant because Mary is only a football fan that bought the football for the first time. Thus, Mary does not have special knowledge about footballs signed by players. Additionally, Dan and Ed are not merchants because they do not frequently purchase footballs.

Therefore, Mary, Dan, and Ed are not merchants.

FORMATION

An enforceable contract consists of mutual assent between both parties with an offer, acceptance, consideration, and no defenses.

Offer

An offer is an outward manifestation of present intent communicated to the offeree with certain and definite terms.

Here, there was present intent because Dan offered Mary \$10,000 for the ball. The present intent was communicated to the offeree because, in response, Mary wrote in pen on a napkin the terms of the contract. Under the UCC, the only term required in a contract is quantity. Under common law, all essential terms are required.

The following terms were included in the contract:

Quantity: 1 football

Time of Performance: By December 1, 2016

Identity of Parties: Mary and Dan

Price: \$10,000

Subject Matter: football signed by quarterback

Since all the essential terms are included in the offer, including quantity, then the terms were certain and definite.

Therefore, since all the elements of an offer are met, then there is a valid offer.

Acceptance

Acceptance is the unequivocal assent to the terms of an offer communicated to the offeror.

Here, there was unequivocal assent to the terms of an offer because, in response to the offer, May wrote in pen on a napkin the terms of the contract discussed supra. It was communicated to the offeror because Dan signed the napkin in pen.

Consideration

Consideration is a legal detriment incurred by both parties because of a bargain for exchange or bargain for promise.

Here, Mary incurred a legal detriment by giving the football, but incurred a benefit by receiving payment (\$10,000) for the football.

Here, Dan incurred a legal detriment by paying \$10,000 for the football, but incurred a benefit by receiving the football.

Therefore, there was consideration.

DEFENSES

Statute of Frauds

Under the statute of frauds, contracts for goods over \$500 must be in writing.

Here, Dan will assert that since contracts for goods over \$500 must be in writing, then the contract between Dan and Mary must be in writing because the football was over \$500. It was \$10,000.

Therefore, the statute of frauds applies.

Sufficient memo

A memorandum with all the essential terms signed by the party that is charged is a sufficient writing to satisfy the statute of frauds.

Here, Mary will assert that the writing written on the napkin with a pen is sufficient to satisfy the statute of frauds because the writing contained all the essential terms. It is irrelevant that it was on a napkin and not on paper. Additionally, the napkin was signed by the person charged because Dan signed the writing and Dan is the person that is

being charged. It is not necessary that the writing contain Mary's signature.

Therefore, statute of frauds is satisfied.

Mutual Mistake

If both parties to the contract are mistaken about a material fact in the contract or the assumption of the contract, then parties may seek a rescission.

Here, Dan will argue that Mary and Dan were both mistaken about a material fact because the football was signed by Bart Starr and was genuine, but the football was not the type used in the 1967 game. Instead, the football was a consumer product manufactured after 2005. Thus, the football was not used in the first Super Bowl in 1967. This would have made the football worth \$1000, instead of \$10,000. Both Mary and Dan believed the football was used in the first Super Bowl in 1967 and that is why Mary and Dan believed the football was \$10,000. Since both parties were both mistaken about a material fact, then the parties may consider to rescind the contract.

Therefore, there was a mutual mistake.

Constructive Conditions

Constructive conditions are implied conditions that must occur in order for one party to perform.

Here, Mary will assert that since Ed or Dan did not tender payment for the football, Mary was unable to give the football.

Therefore, there are constructive conditions that were not met.

Breach

A breach is a failure to perform to the contractual obligations of the contract.

Here, Mary will assert that there was not tender of the payment for the football on December 1, 2016 as stated on the contract.

Therefore, there was a breach.

Major Breach

Here, the breach was major because the contract terms were not substantially performed. Since Dan or Ed did not provide payment, then Dan and Ed performed a major breach.

Therefore, there was a major breach.

Assignment

Assignment is when a party transfers his or her rights under the contract to a third party not in the contract.

Here, there was an assignment because Dan types a document which read, "Dan hereby assigns all of his right to buy Mary's football to Ed." Since there was no prohibition or clause that said the assignments are not allowed, the assignment was effective. Additionally, the assignment was written and signed and a copy was sent to Mary.

Therefore, there was an assignment.

Delegation

Delegation is when a party under the contract transfers his duties or burdens to a third party not in the contract.

Here, Dan transferred his right under the contract to Ed because the document stated that Ed hereby assumes all of Dan's obligations under Dan's contract with Mary to buy her football.

Therefore, there was a delegation.

Assignment Rights

Here, the contract was assigned to Ed. Thus, Dan no longer has any rights under the contract. However, Mary will be able to use the same defenses against Ed as she would have used against Dan.

Delegation Rights

Here, since all duties are assigned under the contract, the delegator is still liable if Ed does not perform under the contract.

2. If so, what damages, if any, is Mary entitled to recover, and from whom?

Mary will be able to recover damages from Ed.

DAMAGES

Expectation damages

Expectation damages are those recovered by the non-breaching party to place that party in the position had the other party performed.

Here, Mary will assert that the damages that Mary can recover is the difference between the contract price and the market value at the time of the breach.

Therefore, there are expectation damages.

Specific performance

Specific performance is an equitable remedy sought when the legal remedy is inadequate. The court will inform the breaching party to perform or face contempt to the court charges. Specific performance is provided for unique items like the sale of land.

Here, Mary will assert that Ed must perform and purchase the football because the football is a unique item. Mary will assert that the football is unique because the football was signed by Bart Starr.

Ed will argue that the football is not unique because the football was not in the first Super Bowl in 1967 and it was only autographed by the football player. Another football just the same would not be difficult to find.

Therefore, there is specific performance if the football is considered a unique good.

Consequential Damages

Consequential damages are special damages that are foreseeable and reasonable at the time of the formation of the contract.

Here, Mary will assert that Mary is able to recover special damages due to any lost profits because of the breaching party.

Therefore, there are consequential damages.

3. What defenses, if any, may Dan and Ed reasonably assert, and will they be successful? Discuss.

MUTUAL MISTAKE

Defined and discussed supra.

Mutual mistake will be a successful defense. Dan and Ed will both seek rescission of the contract.

QUESTION 2

Donna was walking down an alley with her twelve-year-old daughter Alice. As they passed a parked car with its windows down, Alice said, "Look, Mom, there is a purse on the seat of that car." Donna stopped and said, "Alice, I want you to go to the corner and shout to me if you see a police officer coming." After Alice walked to the corner, Donna reached into the car and grabbed the purse. She opened the purse, removed the cash from the wallet, and threw the purse back into the car.

During these events, Alice kept looking for police. Because no police officer appeared, she did not shout.

Donna and Alice were not aware that the purse had been placed in the car by police officers as part of an undercover crime investigation. Officer Oscar observed everything that Donna and Alice said and did.

1. What crimes, if any, has Donna committed, and does she have any defenses? Discuss.
2. What crimes, if any, has Alice committed, and does she have any defenses? Discuss.

QUESTION 2: SELECTED ANSWER A

What Crimes has Donna committed?

Solicitation. Solicitation is asking another person to commit an unlawful act with the intent that they do such act.

Donna solicited Alice by asking Alice to perform an illegal act of being an accessory to the crime of larceny. Donna asked Alice to act as “lookout” while Donna committed the crime of larceny. From the fact pattern, Donna intended Alice to do such illegal act.

Therefore, Donna committed solicitation. Note that she would not be charged with solicitation as it merges into conspiracy.

Conspiracy. Conspiracy is when two or more people agree to commit an unlawful act or to commit a lawful act unlawfully. Most jurisdictions require an overt act in furtherance of the conspiracy

Conspiracy need not be by express agreement. It may be implied by conduct.

Alice pointed out the purse to Donna. It could be argued at that point that Alice was implicitly suggesting that Donna steal it and that an agreement was implicitly made that Alice would act as lookout while Donna stole the purse. This agreement between two parties (Donna and Alice) to commit larceny (an illegal act) would be conspiracy. The overt act could be the agreement or Donna taking the purse.

Larceny is the trespassory taking and carrying away of the tangible personal property of another with the intent to permanently deprive the owner of its use.

Donna did not have consent to take the purse (or its contents) from the car; therefore, the taking was trespassory. The fact that she moved the purse, if only for a few feet,

was carrying away (satisfying that element of larceny). A purse and its contents are movable goods; therefore, they are tangible personal property and the fact that she took the cash from the wallet is evidence that she intended to deprive the owner of it.

Therefore, Donna committed larceny.

Entrapment is when police or their agents offer inducements to people to commit crimes that, without such inducements, they would not commit the applicable crime. The majority rule is that one has been entrapped if the inducement causes one to commit a crime that one is not predisposed to do. The minority rule is that one is entrapped if the inducements offered by the police would cause a reasonable man to commit the subject crime.

Two Guilty Minds

A conspiracy cannot be formed unless there are at least two guilty minds. If it is determined that Alice is too young to form the necessary intent to commit a crime. Under common law, there is a rebuttable presumption that those aged between 7 and 14 are too young to form the necessary intent to commit a crime. If this presumption cannot be rebutted then Donna cannot commit conspiracy as there would only be one guilty mind.

MPC would allow unitary theory and Donna would still be liable for conspiracy.

No burglary because there was no breaking and no robbery because there was no person and no force or threat of force.

Donna's Defenses

Entrapment. Donna could claim that the police placed the purse in such an easy place to take it that they induced her to commit a crime that she was not predisposed to do.

From the fact pattern, it cannot be ascertained that Donna was or was not predisposed to commit larceny, but on balance there was no entrapment.

What Crimes has Alice Committed?

Solicitation – definition supra.

Alice's saying "Look Mom, there is a purse" could be interpreted as a solicitation to take such purse which would be a request to perform an unlawful act.

Therefore, Alice has committed the crime of solicitation. Note that she would not be charged with solicitation as it merges into conspiracy.

Conspiracy defn supra

Alice agreed implicitly with Donna to work with Donna to steal the purse. Alice agreed to act as "lookout" and Donna would steal the purse which would be an agreement between two people to commit an unlawful act; therefore, Alice committed conspiracy.

Accomplice (aiding and abetting)

One who aids, abets, encourages another to commit a crime with the intent that such crime be committed is liable for crimes committed by the principal.

Alice acted as a lookout for Donna. Thus was aiding Donna to commit the crime of larceny by ensuring that Donna would have adequate warning if Alice saw the police.

Therefore, Alice committed larceny through the theory of accomplice liability.

Alice's Defenses

Entrapment see Donna's defenses – supra

Infancy – see Donna's defenses – supra

Alice's infancy would be a defense to all crimes she committed. However, since she was between the ages of 7 – 14 the presumption that she could not form intent may be rebutted.

QUESTION 2: SELECTED ANSWER B

Crimes of Donna

Conspiracy

A conspiracy is an agreement between two or more persons to commit an unlawful act, or to commit a lawful act by unlawful means, followed by an overt act in furtherance of the conspiracy.

Here, Donna asked her daughter to be her lookout and inform her if a police officer was coming with the intent for Donna to commit burglary and larceny (taking the purse & money from the car with the open windows.) The daughter then complied with her mother's request. The daughter acting as a lookout would be seen as an overt act in furtherance of committing the larceny. While there was no express agreement from Alice, in some jurisdictions there only need be one party that has criminal intent in order for there to be a conspiracy. However in most jurisdictions, there still needs to be an agreement between two or more persons.

Depending on the jurisdiction, Donna could be charged with conspiracy.

Solicitation

A solicitation occurs when one asks, induces, or incites another to commit a crime with the intent that they commit that crime.

By Donna asking Alice to be her lookout, she essentially asked her to be her accomplice in her efforts to take the purse from the car. There need not be an agreement for there to be a solicitation. The mere asking is enough.

Donna could be charged with solicitation, which would then merge into the completed crime of conspiracy or larceny.

Burglary

At common law, a burglary was the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony therein. Modernly, burglary has been expanded to include other structures beyond dwellings and a breaking is no longer required.

Donna noticed the car with its windows down and decided to take the purse from therein. Donna would argue that the windows were down and that she didn't break in, but as discussed above, the State would successfully argue that a breaking is no longer required and that the mere entry into the car to take the purse was sufficient enough and showed her intention to take the purse as well.

Larceny - Purse

A larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

Donna took a purse that was not hers from a car that was not hers clearly indicating that this was the personal property of another and she did not have any rights to those items, which establishes that her presence was trespassory. Once she moved the purse outside of the car, as evidenced by the fact that she ultimately "threw the purse back into the car," she carried it away as any mere distance is sufficient to constitute a carrying away. However, the facts tell us that she only took the contents from the purse and not the purse itself. Therefore, she did not have an intent to permanently deprive the owner of their purse.

Therefore, Donna has not committed larceny of the purse.

Larceny - Money

Larceny is defined supra.

Donna took cash out of the purse and threw the purse back into the car. By keeping the

money, which was not hers, she intended to permanently deprive the owner thereof as there is nothing to indicate she intended to give it back.

Donna has committed larceny of the money.

Defenses - Entrapment

Entrapment occurs when a police officer, or law enforcement official, induces a party to commit a crime he or she was not already predisposed to committing.

Here, Donna will argue that she was entrapped by the police officers who left the car accessible with the windows down. However, the state will successfully argue that given the totality of the circumstances, and that the officers observed everything they did, the fact that Donna told her daughter to be her lookout, that she reached into the car and removed the purse, took the money from the purse, and returned the purse to the car showed that Donna was already predisposed to committing such an act and it was likely not her first time doing so. Furthermore, this argument will fail, because, as we are told, no police officer appeared. So without the presence of a police officer, it's pretty difficult to entrap someone, since the inducement by an officer is required.

As such, this defense would fail.

Crimes of Alice

Accomplice Liability

An accomplice is one who aids, assists, or encourages one to commit a crime.

Knowledge

Alice was the one who pointed out to her mother, Donna, that there was a purse on the seat of a car, so when Donna, asked Alice to act as a look out for the police, it is likely that she understood why and what her mother was going to do.

Intent

By helping her mother, Alice had the intent to notify her mom about the police in an effort to further her mother's desire to take the purse.

Active Assistance

Alice stood at the corner looking for police. She may not have ever notified her mother of their presence, because she did not see them, but she stayed at the corner and "kept looking for police". She was an active participant in her mother's criminal activity.

Alice could be charged as an accomplice.

Defenses - Infancy

Children of certain ages are presumed to have limited ability to form intent depending on how many years of age they are at the time of a crime. Children 0-7 are presumed to be unable to form intent, while children ages 7-14 have a rebuttable presumption of the ability to form intent.

Here, Alice was 12 years old. Thus, she falls into the category where the state can argue facts that support her having the intent to commit a crime, in this case, assisting or acting as accomplice to her mother. The state would likely be successful in this argument since it would be able to show, as discussed above, that Alice pointed out the purse to her mother, agreed to keep watch for police, and stayed in place the whole time, not questioning why she was there or what her mom was going to do. Alice will claim she didn't know what was going on or what her mother was going to do. However, she was the one who told her mom that there was "a purse on the seat of that car," not that the windows were down, or some other fact. She specifically stated the purse as if she knew what was normally kept in a purse and saw this as an opportunity, which was why she pointed it out to her mother.

This defense would likely fail.

QUESTION 3

Tom lived next door to his girlfriend Heather, and often helped her tend her yard. To do so, Tom used the tools that were stored in Heather's wooden toolshed, which abutted Heather's house, such as a lawnmower and edger, both of which were filled with gasoline.

One day when Tom thought Heather was away at work, he went to Heather's house to mow the lawn. However, through the backyard window, Tom was surprised to see Heather kissing another man.

Tom felt queasy and left. He went to the drug store and bought Anxiety-Fix, an over-the-counter anti-anxiety medication that he had never used before, and headed home. Tom took three Anxiety-Fix pills, even though the instructions on the box stated that a person should take no more than two pills every eight hours. Two hours later, still feeling anxious, Tom took four more Anxiety-Fix pills, and fell asleep. Tom awoke in the middle of the night due to a nightmare he had about Heather.

Tom then lit several firecrackers in his yard, and threw them at Heather's house. He wanted to wake her up to discuss what he had seen. Two of the firecrackers landed in the toolshed, setting it afire. The sound of the firecrackers awakened Heather and, upon seeing flames, she grabbed a can of lighter fluid, opened some windows on the side of the house near the shed, and squirted the flammable fluid on the windowsills. Heather had been having a hard time selling her house and thought that, as long as the shed was going to burn down, the house could just as well burn with it since her insurance would cover the loss.

Meanwhile, Tom used a garden hose to extinguish the fire in the toolshed before it spread. The inside of the toolshed suffered smoke damage. All of the items inside of it were destroyed.

1. Can it be reasonably argued that Tom is guilty of arson? Discuss.
2. Does Tom have any valid defenses? Discuss.
3. Can it be reasonably argued that Heather is guilty of any crimes? Discuss.

QUESTION 3: SELECTED ANSWER A

State v Tom

Arson

Arson, at common law, is the malicious burning of a dwelling house of another. Modernly, arson is the malicious burning of a structure.

Malicious

Arson requires a malicious intent. This is an intent to either do ill will, with reckless disregard of the risk of harm to others or property, or the intent to cause some sort of harm.

Here, Tom (T) throws firecrackers at Heather's (H) house. The throwing of firecrackers, which are essentially a flammable and explosive device, should be known to a reasonable person of being capable of starting a fire. Therefore, the throwing of the firecrackers themselves is dangerous, especially when thrown on someone's lawn, which may be flammable. Further, T was well aware that there were devices that used gasoline in H's shed, because T had frequently used them. Therefore, not only did T act recklessly, but he knew that there was even more reason to use caution because there was flammable liquid, gasoline, contained in the shed.

Therefore, T acted maliciously when throwing the fire crackers.

Dwelling House/Structure

At common law, the burning was required to be of a dwelling house. A shed, which is where the fire started and stayed, is not a place where someone actually lives. Therefore, it is not a dwelling house. However, most common law jurisdictions have

included those structures that immediately abut the dwelling house. H's shed does in fact abut her house and thus would be included in the definition of a dwelling house.

Modernly, a structure is anything with four walls, a ceiling and can be secured. The shed has four walls and a ceiling and is likely to be able to be locked through some device. Therefore, the shed is also a structure.

Since T does not own either the shed or the house, then this is a dwelling house of another and falls within the modern definition of a structure.

Burning

At common law, burning actually required that the dwelling house actually become ablaze. Modernly, any charring is sufficient.

Here, T will argue that he cannot be charged with arson because the shed itself did not actually burn. The tools within the shed did burn, but the structure itself only suffered smoke damage. Smoke damage does not constitute a burning because it does not actually char the building and further, this indicates that the open flame of the fire never actually touched the shed. Thus, T should be found not guilty of the charge of arson.

The state will argue, however, that the smoke damage is sufficient. Further, the fire may have actually burned the floor of the shed, depending on how the shed was built. However, there are no facts that indicate that the shed had a floor to it. Therefore, it is unlikely that the state would be able to counter T's argument that the smoke damage is insufficient to show a burning.

Arson is an inherently dangerous felony.

However, for argument's sake, assuming the court found smoke damage sufficient to show a burning, then T would be guilty of the crime of arson, subject to any valid

defenses.

Defenses

Intoxication

Intoxication can act as a defense, if the defendant was unable to form the requisite intent to a specific intent crime where the intoxication is voluntary, or if the defendant could not understand the nature and consequences of their actions, or understand that what they were doing was wrong if the intoxication was involuntary.

Here, T takes anxiety pills. The taking of these pills beyond the recommended dose, which is what T does when he takes a total of seven pills when the recommended dose was two, is a voluntary action. T is not under duress from any other person; no one else tells T to take the pills; and no one else forcefully places the pills in T's mouth or body. Therefore, T has voluntarily ingested the pills and thus has become potentially voluntarily intoxicated.

The level of intoxication is irrelevant because every defendant is different in their tolerance. Therefore, a voluntary intoxication will act as a defense if it negates the intent required by the crime. However, arson is a general intent crime.

General Intent

A general intent crime is a crime that requires only that the act set in motion by the defendant be required. As opposed to a specific intent, whereby the act and subsequent consequences of that act are intended by the defendant.

Arson requires a malicious intent. This is a reckless disregard for the act and the consequences thereof or the intent that the act itself be set in motion. Therefore, voluntary intoxication cannot be a defense to arson.

Thus, T would not have any valid defenses for the charge of arson.

Attempted Arson

An attempted arson is a substantial step towards the commission of an arson with the intent that arson is committed.

The only reason why the arson as described above was not completed was because the shed only suffered smoke damage and T had put the fire out before it spread. This would be a substantial step towards the commission of an arson because T is within the zone of perpetration, which is where the fire is burning. Therefore, the intent element would be the only element in question.

Here, T throws the firecrackers in H's yard to wake her. There is no evidence that shows that T actually wanted to or intended to burn the house. Therefore, T will argue that there is no intent to commit an arson because he merely wanted to wake H up.

The state may argue against this, stating that his actions show that he acted with such a reckless disregard, and the knowledge he had of the gasoline tools in the shed show that even if the evidence does not express an intent, one can be inferred. Especially since T had seen H kiss someone else. Therefore, T may be inclined to burn the house down out of revenge.

Therefore, an attempted arson charge, which is a lesser crime than arson, may be more appropriate, pending any valid defenses.

Attempted arson is a lesser charge of arson, but likely still a felony.

Defenses

Intoxication

This defense is defined above.

Since voluntary intoxication is a valid defense to a specific intent crime, and an attempted arson is a specific intent crime because it requires that the defendant actually intend that a specific crime is committed, then this may act as a defense against the attempted arson.

Here, T will assert that he was extremely anxious, as indicated by his need of the anxiety pills, and was acting so nervous and uncontrolled that he was not in a state of mind to consider that his throwing of the firecrackers would cause a fire. He may have known that they would cause a loud noise, but since they are small, they are unlikely to cause a fire and thus he would have no way of intending to actually commit the arson.

However, the state will argue that it would have taken a conscious effort to select the fire crackers to use, light them on fire, and throw them over. This would establish that T was able to understand what he was doing and thus his intoxication was not so bad as to negate the intent of causing an arson. This is further enforced due to the fact that T does not exhibit any other odd behavior and acts rationally and effectively to put out the fire.

Therefore, the intoxication would not negate the requisite intent to the attempted arson and T would be found guilty of this crime.

State v Heather

Attempted Arson

An attempted arson is a substantial step towards the commission of an arson with the intent that arson is committed.

Arson

Arson is defined above.

Here, Heather (H) sprays lighter fluid on the fire that is within her shed in hopes that it will spread to her house. This shows an intent that her house and shed be burnt down. Since the shed was previously defined as a structure or part of the dwelling house, and H's house is in fact her dwelling house and therefore a structure, H is intending that her dwelling house or structure be burned down.

At common law, a dwelling house of another requires that the house be of another person and not the owner, unless the burning was for insurance fraud. Here, H was hoping that the insurance would pay for the house because she could not sell it. Therefore, H was burning her own house, but for insurance fraud. Thus, the burning of her own house would be sufficient to show an arson at common law or modernly.

Attempt

As defined above, H must make a substantial step towards the commission of the arson. She would be required to be within the zone of perpetration.

Here, H is spraying lighter fluid on the open fire. Therefore, she is within the zone of perpetration because she is physically placing more fuel on the fire that would have been sufficient to extend the flames to her house and then finish engulfing the shed, had T not put the fire out with the hose. Therefore, there is a substantial step towards

the commission of the arson.

Thus, all elements are satisfied and H would be found guilty of the attempted arson.

Attempted arson is a lesser charge of the felony arson, but is likely still a felony.

Attempted Theft by False Pretenses

An attempted theft by false pretenses is a substantial step towards the commission of a theft by false pretenses with the intent that the theft occurs. A theft by false pretenses is a taking and carrying away the personal property of another, whereby title of the property was procured through a false statement, with the intent to permanently deprive the owner thereof.

False Pretenses

Here, H is trying to get money for her house from the insurance company by burning her house down. An insurance company would not pay a claim on a house that an owner intentionally burned down. Therefore, the personal property H is trying to recover is money from the insurance company, through a false statement, that her house burned down on its own.

H will argue that because T started the fire, that her house would have burned down regardless and thus there was no false statement. However, the state will argue that because H poured the lighter fluid on the fire intending to burn the rest of the house, she was a substantial factor in the cause of the fire because her actions alone could have caused the entire home to burn down. Therefore, H would have made a false statement because she aided in the entire house burning.

Further, H would not have claimed anything through the insurance if she intended to give the money back, especially because the facts indicate that she was trying to sell

her home. Therefore, H's intent in receiving the money would be to not give it back and thus permanently deprive the insurance company of the money.

Therefore, all elements of the false pretenses theft are met if the burning completed and the insurance company would have paid out.

Attempt

As defined above, H would have to take a substantial step and be within the zone of perpetration.

As discussed above, H was in the zone of perpetration for the attempted arson, which would have led to the house burning and would have led to the false insurance claim. Therefore, the state will argue that she was within the zone of perpetration for the theft as well, because she was attempting to perpetrate the arson, which would be the only way she could collect on the insurance money.

However, H will assert that she was not within the zone of perpetration because the state would be unable to prove that she would have gone through with the actual filing of the claim. Should she have burned her house down, she may not have actually taken steps toward taking money fraudulently from the insurance company. H will argue that the zone of perpetration for this crime would be somewhere where she is actually preparing the documents or actually filling the claim. H will argue that burning her house is in preparation of filing an invalid insurance claim at the most. Further, since her only real crime here is the intent to file a fraudulent claim, the state is trying to charge her with a criminal mind, which is not constitutional.

Since H has not actually taken any steps towards procuring the money from the insurance agency, H's argument would be much stronger and thus, she would not be found guilty of this crime.

Malicious Mischief

Malicious mischief is the malicious destruction of property.

Here, H places the lighter fluid on the fire, resulting in the burning of everything within the shed. The state will argue that the burning of the items within the shed constitutes a destruction of property. Because H was pouring the lighter fluid in reckless disregard for the well-being of the item and the shed itself, and further, for the purpose of letting her entire house burn down, she was acting maliciously.

Therefore, all elements are met and H would be found guilty of this crime.

Depending on the severity of the property damage, this may likely be a misdemeanor.

Accomplice

H may be found as an accomplice for T's act, should the crime of arson actually be established. An accomplice is anyone who aids and abets a perpetrator in the commission of crime with the intent that the crime be committed.

As discussed above, T was involved in what could have been an arson. H was helping him by placing lighter fluid on the fire, with the intent to burn the entire house down, which is an arson. Therefore, since T was engaged in an arson, and H intended that the crime be committed while aiding T, H can be found guilty as an accomplice.

An accomplice is liable for the substantive crime as well as the foreseeable crimes naturally arising from the target crime. Since there are no other crimes committed from T's act, should an arson charge be established against T, H would be found guilty of the arson as an accomplice.

QUESTION 3: SELECTED ANSWER B

STATE V. TOM

ARSON:

Arson is the malicious burning of a dwelling house of another. At common law, the individual was permitted to burn their own dwelling house. Modernly, an individual may no longer burn their own dwelling, especially for insurance fraud purposes. Also the requirement that it had to be a dwelling has been modified to any structure or curtilage to a structure and would suffice a charge of arson.

Here, the facts state that Tom lit several firecrackers in his yard, and threw them at Heather's house. This act would satisfy the malice required for this crime. Tom's actions were willful and deliberate. When two of the firecrackers landed in the toolshed, setting it afire, this would satisfy the element of burning. The facts also state that the wooden toolshed was abutted to Heather's house. Therefore, the element of a dwelling house of another would be satisfied.

Tom will argue that he did not have the mens rea required to satisfy the element of arson. Arson requires that Tom's actions be malicious, which is intentional, willful and with a complete reckless disregard for another's safety. Tom may argue that Heather was his girlfriend and that he never intended to cause her great harm or act reckless in any way that would cause her harm. He may state that his only intent was to use firecrackers to wake her up to discuss what he had seen. In fact, the sound of the firecrackers awakened Heather. Tom may also argue that there was no malice as he used a garden hose to extinguish the fire in the toolshed.

The state will argue that Tom stored his tools in Heather's wooden toolshed, which included a lawn mower and edger, both of which were filled with gasoline. Tom's actions of lighting several firecrackers and throwing them at Heather's house knowing

that it abutted Heather's house was reckless and showed a complete disregard to Heather's safety and property.

In order to satisfy the burning element, there must be a charring of the structure. Simple smoke damage will not satisfy this requirement. The facts state that two firecrackers landed in the toolshed, setting it afire. If there was in fact a charring of the structure, then this element would be satisfied. However, the facts state that the inside of the toolshed suffered smoke damage and that all of the items inside of it were destroyed. If the items inside the toolshed were destroyed due to a charring or burning of them, then arson would be met. If the items were destroyed due to smoke damage, then arson would fail.

Lastly, at common law, there was a requirement that the structure needed to be a dwelling house. Tom may argue that he set afire to the toolshed, which should not be considered a dwelling. However, the State may argue that under modern law, the dwelling element has been modified to any structure attached to a dwelling or curtilage. Since the facts state that the wooden toolshed was abutted to Heather's house this element would be satisfied.

In conclusion, I believe that it can reasonably be argued that Tom is guilty of arson.

Defenses:

Diminished Capacity:

Tom may argue that his actions were done only because he had a diminished capacity to understand and appreciate the nature and danger of his actions due to his witnessing his girlfriend, Heather, kissing another man. Tom will argue that this caused him great anxiety, leaving him queasy. Furthermore, he may argue that he was restless and that what he had witnessed caused him great distress, which can be seen in his reaction to waking up in the middle of the night due to a nightmare he had about Heather.

Intoxication:

Involuntary Intoxication:

Tom may argue that his actions were a result of involuntary intoxication, because he consumed an over-the-counter anti-anxiety medication, Anxiety-Fix, that he had never used before. If the effects of taking Anxiety-Fix rendered Tom unable to understand and appreciate the danger of his conduct, then involuntary intoxication will prevent Tom from being guilty of arson.

However, the defense usually only applies to individuals who consume medication or prescriptions they are provided and consume as recommended or instructed to do. The facts here state that Tom took three Anxiety-Fix pills even though the instructions on the box stated a person should take no more than two pills every eight hours. It also states that Tom took four more Anxiety-Fix pills two hours later. The most that Tom should have consumed was two pills every eight hours. Tom consumed seven (7) pills in three hours before falling asleep.

Since Tom consumed far more than what he was instructed to take, and since it was an over-the-counter medication and not a prescription, this defense will fail.

Voluntary Intoxication:

Voluntary Intoxication is a defense which may be raised in order to eliminate the specific intent of a crime, lessening the severity of the actions.

Under the current circumstances, Tom's actions of arson do not require the mens rea of specific intent. The mens rea of arson is malice. Therefore, this defense may not be raised.

Voluntary intoxication will not be a valid defense.

STATE V. HEATHER:

ARSON:

Supra.

Here, upon Heather's awakening by the sound of firecrackers, she grabbed a can of lighter fluid, opened some windows on the side of the house near the shed, and squirted the flammable fluid on the windows.

The state may argue that by squirting the flammable fluid on the windowsill, that she satisfied the burning element. The malicious intent can be argued that she had been having a hard time selling her house and thought that, as long as the shed was going to burn with it, her insurance would cover the loss.

At common law, an individual was permitted to burn his or her own dwelling house. Heather may argue that under the common law element that her actions were not criminal in nature and, therefore, she did not commit arson. However, the State will argue that modernly, you may not burn a dwelling house, including your own, and therefore you are guilty of arson.

The biggest question of fact would be was there an actual burning of the dwelling house or of the toolshed. If there was not a charring from the flames, then there would not be an arson. The facts state that all the items inside the toolshed were destroyed, so if it were due to flame damage, then she should be guilty of arson. If the property was destroyed due to smoke damage, then arson would not be present.

ATTEMPT TO COMMIT ARSON:

Attempt is when an individual take a substantial step in the actual perpetration of committing the target offense.

Specific Intent:

Here, Heather did have specific intent to commit arson as she squirted the flammable fluid on the windowsill. Additional intent can be determined based upon her insurance coverage idea.

Legal Ability:

Here, Heather did have the legal ability to commit arson.

Actual Ability:

Here, Heather did have an actual ability to commit arson.

Preparation v. Perpetration:

Here, Heather's actions of squirting flammable fluid on the windowsill would go beyond preparation and satisfy the element of preparation.

Therefore, Heather would be guilty of an attempt crime, unless the court finds that she completed the crime of arson. Then the attempt crime would be consolidated with the actual completed crime.

Malicious Mischief:

Intentional causing of damage of personal property of another.

Here, the State may argue that Heather's actions constituted malicious mischief as she caused damage to Tom's tools by squirting the flammable fluid on her windowsills. If it can be argued that her intent was to destroy Tom's tools, then this charge would be applicable.

I believe that Heather is guilty of malicious mischief.

QUESTION 4

While working in the produce section of a supermarket, Albert accidentally dropped a watermelon, which broke open, making the floor wet and slippery. Betty, the produce manager, immediately approached Albert and loudly criticized him for being “clumsy.” Albert, who was humiliated, told Betty, “I quit!” and pushed her in order to get past her and leave the store. As a result, Betty slipped on the spilled watermelon, fell and hit her head on the floor, and suffered a debilitating brain injury.

As Albert was leaving the store, he grabbed a shopping cart and pushed it violently at Carl, the store manager, who was standing nearby and who jumped out of the way.

The cart missed Carl but struck Duane, an elderly shopper, on his back side. Duane, who had an unstable heart condition, suffered a heart attack as a result.

In the parking lot, Albert walked around a car he believed was Betty’s, and used his car key to leave a deep gouge in the finish on all four sides of the car. As it turned out, the car belonged to Edna, not Betty.

Under what theories of intentional tort could Betty, Carl, Duane, and Edna bring claims against Albert, and what damages, if any, are likely to be awarded in a lawsuit brought by:

1. Betty against Albert? Discuss
2. Carl against Albert? Discuss
3. Duane against Albert? Discuss
4. Edna against Albert? Discuss

QUESTION 4: SELECTED ANSWER A

1. Betty v. Albert

Battery

Battery is an intentional tort where one intends and so causes the harmful or offensive touching of another.

While working in the produce section of a supermarket, Albert accidentally dropped a watermelon on the floor which broke open and made the floor wet and slippery. Betty, the produce manager, loudly criticized him for being "clumsy". Albert was humiliated and told Betty, "I quit!" and pushed her in order to get past her. Betty slipped on the wet floor and hit her head, suffering a debilitating brain injury.

Intent

Intent is shown if the defendant desired the touching or knew with substantial certainty that the touching would occur. Albert pushed Betty in order to move her out of his way. Therefore, he desired the touching and knew that it would occur. Albert had sufficient intent for battery.

Causation

Causation is shown if the result was caused by the defendant or some act that the defendant set in motion. The touching was caused by Albert's act of pushing Betty. Therefore, Albert did cause the touching.

Harmful or Offensive

A touching is harmful if it injures or causes pain to any part of the body. Albert's touching caused Betty to fall and hit her head, causing brain injury. Because the touching caused an injury, it is sufficiently harmful.

Of Another

Betty is another human being, therefore, another.

Damages

While actual damages are not required for intentional battery, in this case Betty fell and hit her head on the floor, suffering a debilitating brain injury. Betty will be entitled to **special damages** of actual medical expenses and lost wages. She is also entitled to **general damages** flowing directly from the tort of pain and suffering. **Punitive damages** may also be recoverable if Betty can show that Albert acted with malice.

Conclusion

Albert committed an intentional battery against Betty and will be liable for special damages, general damages, and possibly punitive damages.

2. Carl v. Albert

Assault

Assault occurs when one intends and so causes the apprehension of an imminent harmful or offensive touching of another.

As Albert was leaving the store, he grabbed a shopping cart and pushed it violently at Carl who was standing nearby. Carl jumped out of the way.

Intent

Intent will be shown if Albert desired to make Carl apprehensive of an imminent touching, or if he knew with substantial certainty that the apprehension would occur. Albert was upset because of his argument with Betty and pushed the cart violently at Carl, which suggests that he did have the desire to make Carl apprehensive of the touching. Intent is shown.

Causation

Defined supra. Carl's apprehension was caused by the violently rolling shopping cart, which was a force that Albert set in motion. Therefore, causation is present.

Apprehension

The facts do not say if Carl was actually apprehensive. The tort of assault does not require that the plaintiff actually be apprehensive as long as the defendant desired the apprehension and the plaintiff was aware of the volitional act that was intended to cause the apprehension. We know Carl was in fact aware of the violently rolling shopping cart because he jumped out of the way. Because of Carl's awareness, the apprehension element is satisfied.

Imminent Harmful Touching

Imminent means about to happen right this minute. Harm from the shopping cart was imminent because Carl had to jump out of the way to avoid it. Therefore imminency is satisfied.

Harmful touching is defined supra. A violent collision with the shopping cart is likely to cause injury and pain to the plaintiff. Therefore, it satisfies the element of "harmful" touching.

Damages

Carl jumped out of the way of the cart and was not actually injured. Therefore he will be able to recover **general damages** flowing directly from the tort for the apprehension of the injury. **Punitive damages** are also possible if it can be shown that Albert acted with malice.

Conclusion

Albert will be liable for assault against Carl; Carl can recover general damages and probably punitive damages.

3. Duane v. Albert

Battery

Battery is defined supra.

The shopping cart missed Carl, but struck Duane, an elderly shopper, on his backside. Duane had an unstable heart condition, suffered a heart attack, and died.

Transferred Intent

Albert pushed the shopping cart with the intention of scaring Carl, not with the intention to hit Duane. Therefore, Albert will argue that he is not liable for Duane's injuries. However, the doctrine of transferred intent will allow intent for intentional torts to "transfer" from tort to tort and from victim to victim. This means if Albert intended to do the act of violently pushing the shopping cart, his intent will transfer to satisfy any other intentional tort that occurs as a result of this conduct. As discussed supra, Albert did intend to violently push the shopping cart as an assault on Carl. Therefore, intent will sufficiently transfer to the battery of Duane.

Causation

Defined supra. Duane was hit in the backside by the violently rolling shopping cart, which was a force that Albert set in motion. Therefore, causation is present.

Harmful or Offensive Touching

Harmful touching is defined supra. The cart hit Duane in the backside. Duane suffered a heart attack and died. The touching caused the heart attack, a injury. Therefore a harmful touching occurred.

Additionally, an offensive touching is a touching that would assault the senses of a reasonable person. It is reasonable for an ordinary person to be offended by being hit in the backside with a shopping cart at the grocery store. Therefore, Albert's act also qualifies as an offensive touching.

Damages - Eggshell Plaintiff

Duane had an unstable heart condition. When he was hit by the cart, he suffered a heart attack and died. Albert will argue that he should not be liable for the unforeseeable results from Duane's heart condition. However, the law of intentional torts allows that the defendant take the victim as he finds him, which means Duane is in fact liable for all the proximate damages resulting from Duane's pre-existing conditions. The damages related to the pre-existing condition will be included with general damages.

Other Damages

Albert will be liable to Duane for **special damages** in the form of medical bills and lost wages. Albert will also be liable for **general damages** of pain and suffering and fear of death. These damages are still awardable even if the death happened immediately, if it can be shown that Duane did suffer or have fear prior to dying. Additionally, **punitive damages** may be awarded if Duane can show malice. However, since Albert's intent transferred from another tort such malice is harder to prove.

Conclusion

Albert is liable for battery on Duane through the doctrine of transferred intent. Albert is liable for the unforeseeable results of Duane's heart condition and will pay special damages and general damages.

4. Edna v. Albert

Trespass to Chattels

Trespass to chattels occurs when one intends and so causes the interference with the chattels of another resulting in damage or dispossession.

In the parking lot, Albert walked around a car he believed to be Betty's and used his car key to leave a deep gouge in the finish of all four sides of the car. The car belonged to

Edna, not Betty.

Intent

Intent for trespass to chattels looks to whether the defendant intended to deal with the chattel as he did in fact deal with it. Albert intended to damage the car and he did in fact damage it. Therefore intent is shown even though Albert was mistaken as to who owned the car.

Causation

Causation is defined supra. Albert's act caused the damage to the car. Therefore, causation is shown.

Chattels of Another

The car belonged to Edna, another. Therefore, the car is chattel of another.

Damage or Dispossession

Albert's act caused a deep gouge on all four sides of the car. Therefore, damage to the chattel did occur.

Damages

Albert will be liable to Edna for general damages flowing directly from the tort in the form of property damage. He may also be liable for punitive damages if malice can be shown. However, since he mistakenly believed the car was Betty's, he may be able to avoid punitive damages.

Conclusion

Albert is liable to Edna for trespass to chattels and will owe general damages for property damage.

QUESTION 4: SELECTED ANSWER B

Albert Employee of Supermarket

1 Betty v. Albert

Did Albert commit battery on Betty? What damages are available?

Battery is the unlawful application of force to the person of another causing harmful injury or offensive contact. Here, we are told that Albert "pushed Betty in order to get past her and leave the store". Here, Albert voluntarily pushed Betty to get past her. Pushing is an application of force. While we are not told if the push caused Betty a direct injury, a reasonable person would consider being pushed an offensive contact. Albert will argue that he has provoked, but this is not a valid defense. There is no evidence presented here that Albert has a special sensitivity to being insulted as he was.

Further, as a result of being pushed, "Betty slipped on the watermelon and hit her head on the floor", suffering a brain injury. We are told that Albert dropped the watermelon and created the unsafe condition. Albert is an employee of the store and will be jointly and severally liable for the dangerous condition. Albert will argue that slipping and falling on the floor was an intervening act and that he should not be liable for Betty's subsequent injury. Here, the slipping and falling was foreseeable. Albert caused the original spill, and it was foreseeable that pushing Betty would result in her falling, as being pushed on a slippery surface makes it hard to maintain your balance. Therefore the slipping and falling will be a dependent intervening act and Albert will be liable.

Therefore Albert will be liable for battery against Betty.

Damages

As discussed above, the intervening act of slipping and falling on the watermelon was

foreseeable and dependent on the battery. Therefore, Albert will be liable to Betty for damages. Albert will be liable for compensatory damages for Betty's pain and suffering, as well as special damages for her future medical bills and potential future lost income due to injury.

2. Carl v. Albert

Is Albert liable to Carl for assault?

Assault is the creation of reasonable apprehension of the application of imminent harm or offensive touching. Here, we are told that Albert "grabbed a shopping cart and pushed it violently at Carl". Violently pushing a shopping cart at someone will create reasonable apprehension of harm because shopping carts are large, generally heavy, and often made of metal. An object like that "violently" pushed at someone is likely to be coming at a high rate of speed, and impact with such an object moving fast is likely to cause great injury. Further, we are told that Carl jumped out of the way. Carl would only jump out of the way if he saw the cart coming, so there was an "apprehension" of imminent harm. Therefore, Albert is liable for assault on Carl.

Damages

We are not told that Carl sustained any damages or injuries from jumping out of the way of the cart. If this is the case, Carl may only receive nominal damages (\$1) in a claim against Albert.

3. Duane v. Albert

Is Albert liable to Duane for battery and his subsequent injuries?

Battery

Battery is the unlawful application of force to the person of another causing harmful injury or offensive contact. The battery must be intentional. Albert will argue striking

Duane was not intentional. As discussed above with respect to Carl, Albert was liable for assault on Carl. Here, we are told that the cart that missed Carl hit Duane. The intent from the assault on Carl will transfer to the battery on Duane. Here, we are told that the cart "struck" Duane. Being struck by a heavy shopping cart, as discussed above, has the capacity to cause a harmful injury. We are told, that Duane did, in fact, get knocked onto his backside from the cart. Therefore Albert is liable for battery against Duane.

Further, here we are told that Duane has a heart condition and did, in fact, suffer a heart attack as a result. Here, the health conditions of Duane are treated as an "eggshell" plaintiff, and the defendant will be liable for the plaintiff as he found him. But for being struck by the cart, Duane would not have fallen and suffered the heart attack. It was foreseeable that an elderly man could have a heart condition. Therefore Duane's pre-existing heart condition is not an intervening condition that cuts off liability for Albert.

Damages

As discussed above, Duane is an eggshell plaintiff and Albert will be liable for injuries resulting from the battery. Therefore, Albert will be liable for compensatory damages for Duane's pain and suffering, as well as special damages for his future medical bills and potential future lost income due to injury.

4. Edna v. Albert

Is Albert liable to Edna for Trespass to Chattels?

Trespass to Chattels

Trespass to Chattels is the intentional interference with the property rights of another. Here we are told that Albert intended to key Betty's car, but mistakenly keyed Edna's. Keying a car and causing a large scratch will diminish the value and appearance of a car. Therefore, the property rights to the car have been interfered with. Albert will argue that he was mistaken as to the owner, and that a mistake is a defense to the

intentional tort of trespass to chattels. Albert's argument will fail, as his mistake was as to the owner of the car, but not to his intent to commit the tort. He intended to commit the tort of trespass to chattels by keying "a" car. It doesn't matter that the owner of the car was not whom he believed it to be. Albert is liable to Edna for trespass to chattels.

Damages

Albert will be liable to Edna for the cost to repair the damage from the deep gouge.