



California First-Year Law Students' Examination

**Essay
Questions and
Selected Answers**

June 2023



ESSAY QUESTIONS AND SELECTED ANSWERS

JUNE 2023

CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the four essay questions from the June 2023 California First-Year Law Students' Examination and two selected answers for each question.

The selected answers are not to be considered "model" or perfect answers. The answers were assigned high grades and were written by applicants who passed the examination. They are reproduced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. These answers were written by actual applicants under time constraints without access to outside resources. As such, they do not always correctly identify or respond to all issues raised by the question, and they may contain some extraneous or incorrect information. The answers are published here with the consent of the authors.

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

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ESSAY QUESTION 1 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

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 situation 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 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 to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no 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 resolution of the issues raised by the call of the question.

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

QUESTION 1

As the mayor of Columbia City, Pat is negotiating a high-profile contract with Acme Co. for the construction of the Columbia City Public Library. Dana is Pat's neighbor. Pat and Dana are in the midst of a bitter civil suit pertaining to the determination of the property line separating their adjacent properties. After losing an important motion related to their civil suit, Dana warned Pat, "I will do whatever it takes to ruin you, even if I have to lie to do it."

Later that week, during a public question-and-answer period at a Columbia City Council meeting, Dana accused Pat of receiving a suitcase full of money from an Acme Co. representative. Pat vehemently denied the claim, and suffered a heart attack, collapsing on the podium.

The next day, the Columbia City Gazette published a news article recounting the city council meeting and reported Dana's accusation, quoting her word-for-word. The Gazette also published an editorial complaining about the rampant corruption in city government. The editorial did not name Pat directly, nor did it repeat Dana's false claims. However, alongside the editorial, the Gazette published a photo of Pat, lying next to the podium.

Pat filed suit against Dana claiming defamation and intentional infliction of emotional distress. Pat also filed suit against the Gazette claiming defamation and false light.

What are the likely results of Pat's claims against Dana for defamation and intentional infliction of emotional distress? Discuss.

If Pat prevails on either claim against Dana, what damages should he be awarded? Discuss.

What are the likely results of Pat's claims against the Columbia City Gazette for defamation and false light? Discuss.

QUESTION 1: SELECTED ANSWER A

Pat v. Dana

Defamation

Defamation is the publishing of a defamatory statement to a third party that causes loss to the plaintiff's reputation. When a public official is a plaintiff, the plaintiff must also prove that the statement is false and that the defendant acted with actual malice. Actual malice is defined as knowing or acting with reckless disregard for the truth. This second point is not mere recklessness, but requires showing that the defendant entertained serious doubts as to the truth of the statement.

Defamatory Statement

Here, Dana said in a public hearing that Pat had received a suitcase full of money from Acme. This is a defamatory statement because it lowers Pat's reputation.

Third Party

Dana said the statement during an open question and answer session heard by other councilmembers and the public at large. The councilmembers and the public at large are third parties.

Loss to Plaintiff's Reputation

Here, Dana's statement has the effect of making people believe that Pat is corrupt. This is evidenced by the later published Gazette op-ed implying that Pat was corrupt. Thus, Pat's reputation suffered.

The Plaintiff

A defamatory statement must be about a particular plaintiff or identifiable small group of plaintiffs. Here, Pat was named directly, so he is the identified plaintiff.

Public Official / Figure

Pat is the mayor of the city. Thus, he is a public figure and must show falsity and actual malice.

Falsity

Pat would have to prove that the statement is false. He can do that based on Dana's statement to him that she would ruin his reputation, even if she had to lie. Further, there is no proof that Pat actually received the briefcase full of money. Thus, Pat can prove falsity.

Actual Malice

Actual malice is defined as knowing or acting with reckless disregard for the truth. This second point is not mere recklessness, but requires showing that the defendant entertained serious doubts as to the truth of the statement.

Here, Pat can show that Dana knew her statement was false. Pat can point to her statement said privately to him about ruining him even if she had to lie. Specifically, it is the fact that she implied she would lie that shows she knew her statement to be false. Thus, Dana acted with actual malice.

However, if Dana did not know the statement to be false, she would be found to have acted with reckless disregard for the truth because she had no information that the statement would be false. Further, anger, spite, or such emotions are not enough for actual malice. So if Dana did not know she was not saying the truth, she would not be found to have acted with actual malice.

Defenses

Dana would argue that she has an absolute defense in saying what she did under the legislative exemption. That says that any speech during official legislative proceedings is absolutely privileged. However, this applies only to officials or witnesses. Dana is not an official or a witness, therefore she will not be protected by the legislative privilege. If she were privileged, then Pat's claim would fail.

Libel or Slander

Libel is when someone writes their defamatory statement and publishes it. Slander is when someone speaks their defamatory statement.

Here, Dana spoke her defamatory statement, so this is slander.

If one commits libel, general damages are presumed. When one commits slander, one must prove damages or show that this was slander per se, which includes defamatory statements that relate, among other things, to criminal conduct.

Here, Dana's defamation is that Pat was bribed by Acme. This is slander per se, thus Pat does not have to show actual damages. But even if he did, he can show actual damages because as a result of Dana's defamatory statements, he suffered a heart attack. Thus, Pat is not barred from recovery for Dana's slander.

Conclusion

Pat can prove his high bar to recovery for defamation, and Dana will be liable for defamation.

Intentional Infliction of Emotional Distress

Intentional Infliction of Emotional harm is when a person intentionally acts in an extreme and outrageous fashion to purposely cause severe emotional harm, and such harm results.

Here, Dana acted intentionally for the purpose of "ruining" Pat. Falsely accusing someone in front of public officials and the public at large can be extreme and outrageous. The standard is that it offends all bounds of sensibility and civility. Here, this occurred. She did this to "ruin" Pat, which shows that she wanted to purposely cause him severe emotional harm. This is what happened here, since this led to Pat's heart attack, which can be caused by severe stress, which is emotional harm.

Defense - Legislative Privilege

Supra.

Defense - First Amendment protections

When the First Amendment speech protections apply to defamation, they also apply to all similar torts. Here, intentional infliction of emotional distress is such a tort because speech is involved. Thus, because the speech was uttered against a public official, Pat would also have to prove actual malice. Actual malice is defined supra and discussed supra.

Conclusion

Thus, if Pat cannot show actual malice, his claim for defamation and intentional infliction of emotional distress would fail. But here, he can show actual malice, so he would succeed on both claims.

Damages

In an action for defamation, one can recover the damages to one's reputation, plus any damages for physical harm. Here, since Pat would be successful in his defamation claim, he would recover the damages determined by a jury to his reputation as an honest politician. He

would also recover medical bills, past and future, for the heart attack that he can reasonably claim.

In an action for intentional infliction of emotional distress, one can recover general damages for emotional distress and pain and suffering, as well as physical damages. So here, Pat could recover for the medical costs associated with the heart attack, as well as emotional damages.

In both cases, one can recover punitive damages if one can show that the defendant acted willfully and wantonly, recklessly, negligently, or intentionally. Here, Dana acted intentionally and willfully and wantonly, so Pat can recover punitive damages.

Further, Dana would also be liable for repetitions of the slander as this augments the harm to Pat's reputation.

Pat v. Columbia City Gazette

Defamation

Defined supra. Slander and Libel defined supra. Repetition of slander is itself actionable slander.

Here, in the news article recounting the incident, the Gazette repeated the slander, this time in writing, so it is libel. As Dana's speech is defamation for the reasons above, the Gazette committed defamation towards Pat.

Defenses - Reporting Privilege

Publishers have a qualified privilege in reporting legislative proceedings and reporting events. However, they are not privileged for errors in reporting.

As to the news article, the Gazette reported exactly what went on, with no deviation as Dana's slander was published "word-for-word," and this was occurred in the question-and-answer session, which is a legislative proceeding. The Gazette did not deviate from what actually happened. Thus, the Gazette is privileged and will not be liable for the news article that repeated Dana's defamation.

The editorial has to be analyzed separately.

Opinion cannot be defamation unless it is based on fact and the subject of the opinion can be identified. When a defamatory statement does not clearly identify a person, if a reasonable third party could identify the person, then the defamation claim will stick as to that identified plaintiff.

Opinion Identifies Plaintiff Pat

In the op-ed, Pat is not identified directly. Dana's claim was not repeated. Thus, Pat is not clearly identified as subject of the piece by its text. However, the photo of him lying next to the podium is right next to the article, linking the op-ed with the event that was separately reported in that news article. This is enough for a reasonable person to assume that Pat is the subject of the op-ed.

Defamatory Statement - Opinion Based on Fact

Here, the op-ed does not repeat Dana's statement. However, it talks about "rampant corruption" and links to Pat through the photo. Thus, this is clearly an opinion based on the fact of what occurred in the question-and-answer proceedings. It is an opinion based on fact and it reasonably implies that what it is talking about is Pat specifically. This is a defamatory

statement because it lowers Pat's reputation, since a reasonable reader would understand the article to mean that Pat is rampantly corrupt.

Publishing to a Third Party

The article was meant to be read by others as it is in a newspaper. Thus, this defamation was published to a third party.

Libel or Slander

Defined Supra. This defamatory statement was written, thus it is libel. This means that Pat does not have to prove damages; general damages are inferred.

Falsity

Supra.

Actual Malice

Defined supra.

Here, Pat would have to show that the Gazette either knew that Pat was not corrupt or entertained serious doubts. There is no proof that the Gazette knew that Dana's statement was false, nor that anyone informed it of the private encounter between Pat and Dana where Dana said she would ruin him even if she had to lie.

Thus, Pat cannot show actual malice.

Because Pat cannot show actual malice, he cannot sustain his defamation claim against the Gazette for either the news article or the op-ed.

Publishing Facts Placing the Plaintiff Under an Unreasonable False Light.

This tort is defined as when the defendant publishes facts intending to place the plaintiff under an unreasonable false light. False light is defined as implying or stating that the plaintiff acted

or holds beliefs contrary to what they actually believe or acted. This can be shown if the truth of what happened or was said is distorted to imply that the plaintiff meant something opposite of what the plaintiff meant.

Here, the Gazette reported exactly what happened. The Gazette accurately reported Dana's quote. It showed Pat's photo unedited. Pat can argue that he vehemently denied the claim, and that the photo implies that he collapsed due to embarrassment or shame. However, a reasonable person would not understand the photo to mean that. The Gazette did not distort what happened, unless implying that Pat is rampantly corrupt distorts that.

Even if Pat could prevail under this claim, he still runs against the First Amendment limitations on speech against public officials. As described above, actual malice will have to be proved.

And as described above, Pat will fail.

Thus, Pat's false light claim and defamation claim against the Gazette will fail, and he will recover nothing.

QUESTION 1: SELECTED ANSWER B

1. Pat vs Dana for defamation and intentional infliction of emotional distress

Defamation:

It is a false statement of fact on or concerning of plaintiff, made and published by Defendant, that hurts plaintiff's reputation.

False statement of fact that hurts reputation

During a public question-and-answer period at a Columbia City Council meeting, Dana accused Pat of receiving a suitcase full of money from an Acme Co. representative. Giving a statement during the council meeting is an oral statement. Pat denied such accusation, indicating it was false. Receiving money will definitely hurt a mayor's reputation, thus Dana made a defamatory false statement of fact.

Pat did not show any direct proof that he did not receive the money, but since Dana said, "I will do whatever it takes to ruin you, even if I have to lie to do it", Pat can argue from Dana's ill will that it can infer that Dana's statement is FALSE.

Defamation in the form of Slander per se

Dana made the statement during a public question-and-answer period at a Columbia City Council meeting, thus is likely an oral form, i.e. slander. When a slander is about a person's profession or business, it is slander per se. Here, saying Pat received money is about Pat's profession as a city mayor; thus it is a slander per se statement and damages are presumed.

Defense

Includes truth, consent, or absolute or qualified privileges.

Dana may assert that she is telling the truth, because Pat did not show any proof he did not receive the money, but since Dana said she was willing to lie in order to hurt Pat, Pat can argue from Dana's ill will that it can infer that Dana's statement is FALSE. Further, Dana may assert that the statement she made had qualified privilege, because it is for the city's public interest, and the citizens have a right to know about their mayor's behavior.

The Court may consider and grant Dana's defense of qualified privileges.

Malice

When plaintiff is a public official, a fault is needed on the defendant. When defendant is a non-news media, at least negligence is needed, which includes actual malice.

Here, Pat Dana said "I will do whatever it takes to ruin you, even if I have to lie to do it", showing her intent to lie; thus Pat likely would be able to show that Dana had actual malice.

Intentional infliction of emotional distress (IIED)

It is intentional or reckless infliction of severe emotional stress with outrageous and extreme conduct.

Dana said, "I will do whatever it takes to ruin you, even if I have to lie to do it." Then, Dana accused Pat of receiving money in a city meeting. Both Dana's acts are intentional. And Pat denied, showing that Dana's statement is untrue; thus Dana's conduct is atrocious and unacceptable by a decent society.

Therefore, Pat is able to show that Dana's conduct can be characterized as outrageous and extreme.

Severe Emotional Stress

Pat vehemently denied the claim, and suffered a heart attack, collapsing on the podium.

Getting a heart attack usually results from very severe and bad emotional stress; thus Pat can

show it is severe. The heart attack can be considered an actual manifestation of severe emotional stress.

Therefore, Pat is likely able to bring an IIED claim against Dana.

2. Pat's damages

Damages for defamation

Pat may recover general damages, special damages, and possibly punitive damages.

General damages

Refers to pain and suffering.

For defamation, the general damage is the pain, suffering and the damages related to hurt Pat's reputation. Pat as the victim of Dana's defamation, should be able to recover the above.

Special damages

It is the special cost or economic loss related to defamation.

Here Pat suffered a heart attack; thus Pat would have special damages for the medical cost resulted from the heart attack caused by defamation. The Court may also allow lost earnings due to missing work days.

Damages for IIED

General Damages

For IIED, the general damages are the pain and suffering due to severe emotional stress. Pat suffered emotional stress, thus he could recover the pain and suffering related with IIED.

Special Damages

Pat had manifested actual damages in the form of a heart attack; thus he could also recover the medical cost results from the heart attack caused by defamation. The Court may also

allow lost earnings due to missing workdays.

Punitive Damages

The Court may allow punitive damages for wanton or intentional conduct.

Since Dana admitted that "I will do whatever it takes to ruin you, even if I have to lie to do it", showing her ill will and bad intent to ruin Pat even with a lie, the court is likely to punish Dana's ill will by allowing punitive damages.

In conclusion, if Pat prevails in either defamation or IIED claims, he would be able to recover the general damages in the form of pain, suffering; and also special damages including medical cost and lost earnings. Further, due to Dana's malice act, the Court may allow punitive damages against Dana.

3. Pat vs. Columbia City Gazette for defamation and false light

Defamation:

Rule Supra.

A false Statement of fact that would hurt reputation

Here, Columbia City Gazette published a news article recounting the city council meeting and reported Dana's accusation, quoting her word-for-word. Since Dana's accusation is false, thus Columbia City Gazette made a false statement as well. Dana's accusation hurt Pat, thus hurtful to his reputation.

Additionally, Columbia City Gazette also made an editorial complaining about the rampant corruption in city government. Corruption would hurt one's reputation, thus it is also a hurtful reputation.

Republisher: Dana's Accusation

Republisher happens when defendant repeats the defamation from another person. It is liable as the original tortfeasor.

Here, Columbia City Gazette repeated Dana's accusation, "quoting her word-for-word". Thus, Columbia City Gazette is the republisher. Columbia City Gazette is liable for defamation just as Dana.

On or concerning of Plaintiff

For Dana's republishing, her statement clearly named Pat, thus is On or Concerning Pat.

Colloquium

External evidence needed to establish the person being defamed.

For Columbia City Gazette's editorial, since it is complaining about the corruption in city government, and Pat is the mayor, thus it can be reasonably inferred such corruption included Pat. Further, the editorial though it did not name Pat directly, but it showed alongside the editorial, a photo of Pat, further enhancing the idea that Pat is involved in the corruption. Thus, it is on or concerning Pat.

Defamation in the form of Libel

It is a permanent form of publication. Here, both recounting the event with Dana and editorial is in print form. Thus, it is the libel wherein damages are presumed.

Defenses

It includes truth or consent, absolute privilege and qualified privilege.

Here, Dana's bribery accusation is likely false, because Pat vehemently denied it, so there is likely no truth defense here.

Columbia City Gazette may assert qualified privilege for publishing a news article with public interest. The Court is likely to rule it is a valid defense.

Fault

When Defendant is a news media, and Plaintiff is a public figure, actual malice is required for defamation.

Since Columbia City Gazette is the news media and Pat is the mayor (a public official), Pat needs to show actual malice by providing evidence that Columbia City Gazette published the editorial knowing it was false, or reckless disregard as to its falsity. No direct evidence is given here, so Pat needs additional evidence in order to bring a successful defamation claim against Columbia City Gazette.

False Light

It is mis-portrait of a plaintiff in a highly offensive manner. Newsworthiness or public concern may be a valid defense unless it is with malice. Here, Pat was described by Columbia City Gazette as receiving a suitcase full of money from Acme Co., and had a corrupt city council. Pat denied this accusation vehemently, indicating it is likely not true; thus it is a mis-portrait of him. It is highly offensive because it was published in the Columbia City Gazette and accessible for all citizens.

Columbia City Gazette may assert the defense of newsworthiness, saying it would need to show its malice in order to find Columbia City Gazette liable.

Therefore, Pat may bring a false light claim, but needs to show actual malice.

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ESSAY QUESTION 2 OF 4

Answer All 4 Questions



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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 situation 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 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 to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions and discuss all points thoroughly.

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

QUESTION 2

Frank had a history of violence. He woke up one day and decided to get high, but he had no money for drugs. He saw his neighbor, Claire, pull into her driveway and get out of her car, which she had just purchased new. He ran over and told her he would hurt her if she did not hand over her car keys and the title to her car. She complied.

In Frank's haste, he did not have Claire sign the title to the car. Frank took the car to Slim's used car lot. When Slim saw that the title was in another person's name and unsigned, Slim offered to pay \$5,000 for the car even though he knew it was worth a lot more money. However, he told Frank he could not pay him until the owner signed the title. Frank stepped outside Slim's office and signed the title. He returned to Slim in less than a minute and gave him the signed title. Slim gave Frank the \$5,000. Slim then put the car on his lot with a sale price of \$20,000.

Frank bought drugs, which he ingested, and became high. He returned home where he learned that another neighbor, Jill, saw what happened with Claire and reported him to the police. Enraged, he went to Jill's house with a hammer and destroyed her porch furniture and bikes on her lawn. As Jill came out of her house with a baseball bat to confront Frank, a piece of metal from the furniture Frank was destroying struck Jill in the eye and blinded her.

1. With what crimes can Frank reasonably be charged and what defenses can he reasonably raise? Discuss.
2. With what crimes can Slim reasonably be charged and what defenses can he reasonably raise? Discuss.

QUESTION 2: SELECTED ANSWER A

1. Crimes of Frank

Assault of Claire

Assault is defined as the unlawful placing of another in reasonable apprehension of an immediate battery (supra).

Frank ran towards Claire while she was exiting her vehicle. It can be inferred that a woman seeing a grown man running towards her as she was exiting her vehicle would place her in reasonable apprehension of a harmful or offensive touch. Although there are no facts to indicate that Claire actually did see Frank coming towards her, if it can be shown through alternative evidence that Claire did see Frank coming, this would suffice as reasonable apprehension.

Moreover, if Claire was aware of Frank's violent tendencies, this would add more evidence to show reasonable apprehension from Frank.

Therefore, more facts would need to be present in order to charge Frank with assault of Claire.

Extortion

Extortion is defined as obtaining property with consent through intimidation.

Frank obtained the title to Claire's car through means of intimidation; threatening to hurt her.

Frank may be charged with extortion.

Larceny

Larceny is defined as the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive the owner.

Frank took the car belonging to Claire without obtaining consent. This would constitute a trespassory taking.

The slightest bit of asportation would suffice as a carrying. Frank drove the car to a used car

lot. This would constitute a carrying.

As mentioned, the car belonged to Claire, making it the property of another.

Frank's intent is evidenced by his need to get drugs. He was out of cash and was looking for a way to get quick money to fulfill his need to get high. Taking Claire's car and driving it to the used car lot shows his intent to permanently deprive Claire of her car. Attempting to sell someone else's car to a used car lot causes a substantial risk of loss to the owner, thus further showing the intent to permanently deprive Claire.

Therefore, Frank could be charged with larceny of the car.

Robbery

Robbery is defined as larceny (supra) committed with force or fear from the immediate presence of the person.

As mentioned above, all of the elements of larceny have been met.

Frank ran up to Claire and stated that he would hurt her if she did not give him the keys and title to the car. Threatening a woman with the potential use of force would constitute "fear" to a reasonable person. However, fear for robbery is a subjective standard. It can be inferred that Claire was in fact fearful of Frank as she did hand over her keys and title.

This was all done in Claire's immediate presence.

Therefore, Frank could be charged with robbery.

False Pretenses of the Car

False pretenses is defined as the fraudulent appropriation of title to another's property.

Frank did not use any type of fraud to obtain the title to Claire's car. Frank instead used fear by threatening Claire to hand him the title, as mentioned above.

Frank would not be charged with false pretenses.

Burglary

At common law, burglary is defined as the breaking and entering into the dwelling home at night of another with the intent to commit a felony therein.

The car of Claire would not be considered a dwelling home at common law, nor are there any facts to indicate that this was done at nighttime.

Frank would not be charged with common law burglary.

Modern Burglary

Modernly, burglary is defined as the unlawful entry into the protected structure of another with the intent to commit a crime therein.

Frank unlawfully entered the protected structure of Claire's car, as he did not have consent to be in it. There are no facts to indicate that Frank intended to commit a crime inside the vehicle. Frank's intent instead was to then sell the stolen car for cash to purchase drugs.

Therefore, as the intent will likely fail, Frank will not be charged with modern burglary.

False Pretenses of the Cash from Slim

Supra.

Frank obtained \$5,000 from Slim. Money has title. Frank obtained the title to this money through misrepresentation (infra.) of the car's title.

Misrepresentation (Fraud)

Misrepresentation is defined as the false assertion to a material fact in which the defendant knows is false and asserts in order to induce reliance.

Frank gave the title to Slim, a used car salesman, with the intention of selling the car. This shows that Frank impliedly misrepresented the title to be his own. Frank did so in order to have Slim believe the car was Frank's, and in turn receive the cash from Frank.

Therefore, as Frank used fraud to obtain the cash from Slim, Frank could be charged with false pretenses.

Forgery

The fraudulent altering or creating of a document of legal significance with the intent to defraud or deceive.

Frank signed his own name onto the title of Claire's car, an altering of the document. A title to a car would likely to be found to have legal significance.

Therefore, Frank could be charged with forgery.

Uttering

Uttering is defined as offering as genuine, an instrument known to be false with the intent to defraud or deceive.

Frank offered up the title, signed by himself, to Slim in an attempt to pass it off as his own. Frank knew this title did not belong to him, yet still offered it as genuine to Slim in order to deceive Slim.

Therefore, Frank can be charged with uttering.

Malicious Mischief

Malicious mischief is defined as the malicious infliction of injury onto another's property.

Frank took a hammer to Jill's porch and front lawn, causing damage to her property. Malice can be shown through willful/intent or through recklessness. Frank intentionally destroyed Jill's property, as he was angry that she called the police on him for the theft of Claire's car.

Therefore, Frank could be charged with malicious mischief.

Assault of Jill

Supra.

Frank was destroying Jill's property with a hammer, a dangerous weapon that could be used

to inflict serious bodily injury. Jill came outside with a baseball bat during this. This can be used as evidence to show that Jill was fearful of Frank and what he might do. Frank's continuing to destroy her furniture on her porch, which would be very close to Jill's front door where she was standing, would place in her a reasonable apprehension of being hit with the hammer.

Therefore, Frank may be charged with assault.

Battery of Jill

Battery is defined as the unlawful application of force onto another.

Frank committed a harmful touch onto Jill when he swung the hammer into her furniture and a piece of metal blinded Jill. Although Frank did not personally use his hands to apply the force onto Jill, he did so via instrumentality of the hammer. It would be reasonably foreseeable that aggressively hammering through metal might cause a piece to fly off and injure someone.

Therefore, Frank could be charged with battery.

Breach of the Peace

Breach of the peace is defined as the willful act of unreasonably disrupting the public peace.

Frank willfully went over to a neighbor's porch, in the public, and destroyed her porch and bicycles with a hammer. This would have caused a large commotion in the neighborhood and caused a disruption to the public peace. Frank had no reason to do this, other than spite.

Therefore, Frank could be charged with breach of the peace.

Defenses

Diminished Capacity

Frank may argue diminished capacity as he was in desperate need of drugs and might have been experiencing drug withdrawal. As an avid drug user, Frank might not be able to form the requisite intent to commit the crime he is charged with as his brain might be working on a lower capacity.

Voluntary intoxication - Specific Intent

Voluntary intoxication is a defense only to specific intent crimes. It is when the defendant voluntarily drinks alcohol or ingests drugs that impairs the defendant as to be unable to form the requisite specific intent.

Frank voluntarily ingested drugs. After doing so, Frank committed no specific intent crimes, only general intent. The specific intent crimes Frank did commit occurred prior to the ingesting of the drugs.

Therefore, this defense will fail.

Necessity

Necessity is defined as the lesser of two evils. Frank may argue that it was necessary for him to steal the car and commit the subsequent crimes, as he was in desperate need to retrieve drugs and get high. This is a weak argument and will likely fail.

2. Slim

Receipt of Stolen Property

Receipt of stolen property is defined as the obtaining of property known to be stolen with the intent to permanently deprive the owner.

The state must show that Slim believed the property to be stolen (subjective standard) and that the property was actually stolen. Slim was given a car by Frank in which the title was not in Frank's name. Slim acknowledged this. The title being in another person's name, unsigned,

would be the first bit of evidence that would lead Slim to believe the car is stolen.

Subsequently, upon telling Frank the title needed to be signed by Claire, Frank left for only one minute before returning with the signed document. This would be the next bit of evidence showing that the car was stolen. Furthermore, Slim was aware that the car was worth much more than \$5,000, yet only offered Frank the \$5,000. It can be inferred that Slim was aware the car was stolen and that is why he offered such a low amount.

Slim intended to permanently deprive the owner of the car, as Slim put the car on the lot for sale after the purchase.

As Slim would have reasonably known the car was stolen, as well as the fact that the car was in fact stolen property, and had the intent needed: Slim could be charged with receipt of stolen property.

Misprision

Misprision is defined as the concealment or non-disclosure of the felonious acts of another.

If it is found that Slim was aware that the car was stolen, Slim's non-disclosure to the police of Frank's felonious activity in stealing the car would give reasonable grounds to charge Slim with misprision.

Defenses

Mistake of Fact

Slim will argue that he was mistaken and actually believed the car to be rightfully entrusted to Frank. For general intent crimes, the mistake must be a reasonable mistake from an objective standard. However, for a specific intent crime, the mistake does not need to be reasonable in order to raise the defense.

Receipt of stolen property is a specific intent crime. Therefore, regardless of whether Slim

should have known the car was stolen or not, Slim can raise this defense.

Misprision is a general intent crime. Therefore, Slim's mistake must be reasonable in the eyes of the objective person. With all of the facts laid out above, it would be unreasonable for Slim to not know the car was stolen. Therefore, this defense will fail.

QUESTION 2: SELECTED ANSWER B

1. STATE V. FRANK

LARCENY

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

Here, Frank's actions constituted caption (taking) and asportation (carrying away) by taking Claire's car, which was the property of another. The taking was trespassory as it was obtained by threat and against Claire's will, and it also showed ownership interests adverse to Claire's. The fact that he wanted to use the funds from the sale of the car to fund his drugs shows he had intent to deprive Claire of her car forever, so the intent was shown.

Frank can reasonably be charged with larceny.

ROBBERY

Robbery is the trespassory taking of the property of another through force or intimidation from their presence with the intent to permanently deprive. Larceny is a lesser included offense, plus force or intimidation from their presence.

Larceny is established above. Frank used force in the trespassory taking of Claire's car in that he told her he would hurt her if she did not hand over her car keys and title to her car. The car was in her presence because Claire had pulled into her driveway just before and Frank had run over to her.

Frank can reasonably be charged with robbery.

EXTORTION

Extortion is obtaining the property of another through wrongful threat.

Here, Frank obtained possession of Claire's car, and attempted to obtain title, through the wrongful threat of injury to Claire.

Frank can reasonably be charged with extortion.

FALSE PRETENSES

False pretenses is the obtaining of title to the property of another through false representation of past or future fact with the intent to defraud.

Here Frank tried to obtain title to Claire's car when he robbed her as established above. However, he did not use false representation of past or future facts, he simply threatened her. Moreover, he did not have Claire actually sign the title over to him, so the title did not actually pass.

Accordingly, this would probably not be the best charge against Frank.

ATTEMPTED FALSE PRETENSES

An attempt is an act that, although with the intent to commit a crime, falls short of the completion of the crime. An attempt consists of (1) specific intent to commit the target crime and (2) an overt act towards the commission of the crime that goes beyond preparation into perpetration. Alternatively, an attempt is a crime that contains all of the elements of a completed crime, but misses some elements.

Traditional: Dangerous Proximity Test

Frank was dangerously close to obtaining the title to Claire's car, and he did have the intent to get her title. However, he was not using false representations of fact.

Modern/MPC: Substantial Step

Frank made a substantial step in obtaining title by use of force, but not by use of false pretenses.

This would likely not be the best theory to charge Frank with.

However, under the view that an attempt is a completed crime minus some elements, he could

reasonably be charged with false pretenses because all that was missing was the use of false pretenses.

Defenses to Attempt

Legal Impossibility Factual

Impossibility

These defenses would not be available because it was factually possible for title to pass; and the intended crime was indeed legally a crime.

LARCENY BY TRICK

Larceny, but when the consent was obtained by fraud.

Larceny is established above. Here, Claire's consent in handing over the car was obtained by threat. Robbery would be the more appropriate charge, as Frank made no false representations to Claire.

Not a likely charge.

EMBEZZLEMENT

The conversion of property rightfully entrusted to the defendant with the intent to defraud.

The property was never rightfully entrusted to Frank so this charge would not be appropriate.

SOLICITATION TO RECEIVE STOLEN PROPERTY

Solicitation is enticing or encouraging another to commit a crime with the intent that the crime be committed.

Frank solicited that Slim receive property known to be stolen (the car) to that he could sell it.

Frank can reasonably be charged with solicitation.

Merger

Solicitation merges with the solicited crime or with a conspiracy. As there is both a conspiracy

and a target crime completed, he would be charged with those crimes instead:

RECEIPT OF STOLEN PROPERTY

Receipt of stolen property is receiving or obtaining possession or control of property known to be stolen with the intent to permanently deprive the owner.

As shown below, as a result of the solicitation, Slim did commit receipt of stolen property. This was the crime that Frank solicited, so he would be criminally liable for that crime as well.

FORGERY

Forgery is the creating or altering of a document of legal significance with the intent to defraud.

Frank signed Claire's signature on the car title, thus altering it. Such is a document of legal significance because it affects ownership of a vehicle. He intended to defraud because he wanted to use the forged document to sell the vehicle that was not his.

Frank can reasonably be charged with forgery.

UTTERING

The presenting of a document of legal significance known to be forged with the intent to defraud.

When Frank presented the forged car title slip to Slim, he was presenting the slip, a document of legal significance as established above, with the intent to defraud by selling a vehicle that did not belong to him.

Frank can reasonably be charged with uttering.

CONSPIRACY OF RECEIPT AND SALES OF STOLEN PROPERTY

An agreement between two or more people to achieve a criminal objective or to achieve a lawful objective by unlawful means and overt acts towards perpetration.

Frank and Slim entered into a tacit agreement for receipt and sale of stolen property, which is the vehicle. Although there were no words, Slim should have known that the car was stolen

and that the title slip was forged, because Frank obtained signature from the purported owner, a woman (Claire) within less than a minute. Slim then put the car on his lot with a sale price of \$20,000, while giving Frank \$5,000, showing that both men had a stake in the operation, and showing an overt act in furtherance of the conspiracy.

Frank can reasonably be charged with conspiracy. Slim as well.

POSSESSION OF SCHEDULED DRUGS

Frank could be charged with possession of narcotics per state statute because he bought drugs and ingested.

MALICIOUS MISCHIEF

The malicious destruction or damage to the property of another.

When Frank went to Jill's house to get revenge for reporting him to the police, he took a hammer and destroyed her porch furniture and bikes. Such actions were malicious in that they were made with intent to destroy or harm the property. Also, such items were the property of Jill as they were in her house.

Frank can reasonably be charged with malicious mischief.

BREACH OF PEACE

Any act that unreasonably and unjustifiably breaches the public peace.

Seeking revenge, Frank destroyed Jill's belongings, thus breaching the peace in the community, and causing people to be concerned for their safety, without any justification.

Frank can reasonably be charged with breach of peace.

BATTERY

Frank, by causing shrapnel to hit Jill's face, acted recklessly/criminally negligently, and caused bodily injury upon Jill.

Frank would be liable for battery.

ASSAULT

In committing the battery above, if it can be shown that Jill apprehended the piece of metal from the furniture, such apprehension would be reasonable because it would put her in danger of injury. Frank would be liable for assault. However, he would likely be charged with battery instead.

MAYHEM

The malicious disfigurement of another.

While Frank was destroying furniture, he caused a piece of metal to strike Jill in the eye and blind her. This was a permanent disfigurement. Frank caused it maliciously because even though he may not have intended the disfigurement so that he could be held for aggravated mayhem, he did act with reckless disregard.

Frank can reasonably be charged with mayhem.

BURGLARY

There is no common law or modern burglary because Frank confined himself to the yard and porch; therefore, there was no entry. At least he committed CRIMINAL TRESPASS.

DEFENSES

Voluntary Intoxication

Voluntary intoxication can negate the mens rea of specific intent crimes.

Frank may argue he was intoxicated by ingesting drugs and therefore did not have the requisite intent to commit the specific intent crimes listed above (larceny, robbery, forgery).

However, the state will show that when he committed such crimes, he was not yet intoxicated. Moreover, the crimes against Jill, were committed when he was indeed intoxicated (malicious mischief, mayhem, breach of peace, etc.) were general intent crimes and as such, voluntary intoxication is not a good defense.

Diminished Capacity

Frank may argue he was laboring under mental defect short of insanity because he was suffering from withdrawal of his drug use. However, the facts do not show such case; he simply woke up one day and decided to get high.

Self-Defense

Self-defense would fail because Frank was not under any kind of danger from bodily harm from Jill,. He only wanted to exact revenge for her reporting him to the police.

Necessity

Necessity would fail as a defense because there was no "choice of evils" scenario. Frank's "necessity" was to purchase drugs, which is itself an illegal act and not sufficient for this defense.

2. STATE V. SLIM

RECEIPT OF STOLEN PROPERTY

Rule, supra.

As discussed under Conspiracy, Supra, Slim had plenty of reasons to know or at least highly suspect that the vehicle that he received and put up for sale was stolen: Frank's name was different than the one on the title, Frank took less than a minute to obtain the purported signature, and Slim knew that the car was worth a lot more money. He knew, or should have known, that cars that are sold for too cheap may be stolen.

Slim obtained possession and control over the vehicle and could reasonably be charged with

receipt of stolen property.

MISPRISION OF FELONY

Concealing the felony of another.

Slim could be charged with concealing the felony of another because he failed to report and concealed the obvious car theft committed by Frank.

CONSPIRACY

Rule, supra.

As established above, Frank and Slim were in a conspiracy to receive stolen property and to sell stolen property.

CONSPIRACY LIABILITY - PINKERTON

Conspirators are liable for all acts of co-conspirators done in furtherance of the conspiracy, and that were a natural and probable consequence of the conspiracy.

Here, the State may argue that Slim should be liable for the subsequent crimes of Frank after the conspiracy was formed. Such were the crimes committed against Jill (mayhem, malicious mischief, etc). However, all such crimes occurred after the objectives of the conspiracy were completed, and the stolen car had been put up for sale.

State would counter argue that both men were not yet in a "place of safety" as to the crimes, the crimes were ongoing because the car had not yet been sold, and Frank's crimes against Jill were made in an effort to avoid apprehension by the police.

However, Slim would have a good argument that such crimes were not foreseeable and were made because Frank was high on drugs, not in furtherance of a conspiracy.

ACCOMPLICE LIABILITY

The prosecution may also attempt to hold Slim liable for Frank's crimes occurring after his encounter with Slim, in a theory that Slim was an accomplice in that he facilitated Frank's

crimes of uttering, forgery, etc. As such, he would be liable for all foreseeable crimes arising from the target crime. But as discussed under conspiracy, Frank's subsequent actions were likely unforeseeable.

ACCESSORY AFTER THE FACT

Slim could be charged with the separate crime of accessory after the fact for giving Frank assistance in taking care of the vehicle after the robbery had been committed. That may be a viable charge.

DEFENSES

Mistake of Fact

Slim would argue mistake of fact against the receipt of stolen property charge because he did not know the car was stolen. He thought it was Frank's property. However, as discussed in detail above, such argument is without merit. Moreover, mistake of fact is only a defense if it negates the criminal intent, and in this case such intent was established, as Slim knew the car was stolen.

JUNE 2023

ESSAY QUESTION 3 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

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 situation 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 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 to the facts.

If your answer contains only a statement of your conclusions, you will receive little or no 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 resolution of the issues raised by the call of the question.

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

QUESTION 3

Developer, Inc. (Developer) completed construction of a 20-unit condominium complex and scheduled an open house for June 1 at 9:00 a.m. On April 15, its painter informed Developer that it would be unable to complete the painting in time for the open house and referred Developer to Paul, another painter. During in-person negotiations on April 21, Paul indicated that he would need to begin work no later than May 1 in order to complete it by May 31. Also on April 21, Paul quoted Developer a total cost of \$20,000 and stated, "Under normal circumstances I provide a 25% discount for multiple-unit projects."

On April 22, Paul signed the Written Agreement and emailed it to Developer. The agreement provided that Paul would begin work on May 1 and complete work by May 31, and Developer would remit four \$5,000 payments on May 1, May 7, May 14, and May 31. The agreement did not mention any discount and it contained the following clause: "This agreement constitutes the entire agreement between Paul Painter and Developer, Inc. and all prior communications shall be of no further effect or evidentiary value."

After not receiving Developer's signed copy of the agreement by April 30, Paul called Developer to confirm that he would start work on May 1 as planned. Developer stated, "We're good to go." Paul began work on May 1, and Developer made payments of \$5,000 on May 1, May 7, and May 14. Paul worked all day on May 31 to complete his work, but he did not finish until 12:05 a.m. on June 1. On June 2, Paul requested a final payment of \$5,000 from Developer. Developer responded that it owed Paul no more money. Paul sued Developer for breach of contract.

Did Developer accept the Written Agreement? Discuss.

Can Paul's statement regarding the 25% discount be allowed to vary the terms of the Written Agreement? Discuss.

What defenses, if any, can Developer raise? Discuss.

QUESTION 3: SELECTED ANSWER A

1. Applicable Law

The UCC governs transactions for goods. A good is moveable, tangible, and identifiable.

The Common Law governs transactions for services and real property.

The contract here is for painting a 20-unit condominium complex. While painting a condominium would require paint, a good, the predominant purpose of the contract is for the service of actually painting.

Therefore, the Common Law will govern.

Formation

In order for a contract to be valid, it must contain mutual assent (offer and acceptance) and be supported by consideration. It must also lack any defenses.

Offer - Oral Negotiation

An offer is an outward manifestation of present contractual intent that contains certain and definite terms and is communicated to an offeree.

During in-person negotiations on April 21, Paul discussed with Developer the terms in which he would need to manifest an intent to be bound. In that conversation there were terms of:

Quantity: one 20-unit condominium complex

Time for performance: May 1 to May 31

Identity of the Parties: Painter and Developer

Price: \$20,000

Subject Matter: Painting

This was communicated to Developer in person and orally. Therefore, there was a valid offer.

Acceptance

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

In their in-person negotiations, there are no facts to indicated that Developer ever assented to terms of the offer made by Paul. Silence is not a valid form of acceptance, unless otherwise indicated by a history of the ability to accept by silence or otherwise indicated by the offeror. As Paul is not the regular painter of Developer, they do not have a prior history of working together.

Therefore, Developer did not accept the offer made by Paul during their in-person negotiations.

Offer - Written Agreement

On April 22, Paul signed and emailed a Written Agreement to Developer. The terms matched the oral offer made the day before, except that it did not include the statement by Paul that "Under normal circumstances I offer a 25% discount for multi-unit projects." Furthermore, it added a schedule for payments divided between the four dates as well as a merger clause that will be discussed infra.

Therefore, there was a new offer made to Developer from Paul on April 22.

Acceptance

After not receiving Developer's signed copy of the agreement by April 30, Paul called Developer to confirm that he would start work on May 1. Developer will argue that this was a substitute contract in that he did not respond to the email with the Written Agreement. However, Paul will contend that he was simply following up with Developer as to his acceptance. While Developer will argue that his statement, "We're good to go," was in reference to Paul simply starting work on May 1. Furthermore, Developer would contend that Paul did not ask if Developer had received the email, reviewed the email, or agreed to the written agreement in the email. Instead, Paul simply asked to confirm that

he would start work on May 1 as planned.

Objective Theory of Contracts

The objective theory of contracts is used to examine the objective intent of the parties rather than the subjective meaning they may apply.

While we do not have facts indicating what was discussed in the phone call on April 30, a reasonable person may understand the statement "We are good to go" to be an acceptance of the Written Agreement sent by Paul. Perhaps if Developer had made an objection to the contrary, the court may find otherwise.

Therefore, the court will likely determine that Developer made an unequivocal assent to the terms of Paul's offer.

Consideration

Consideration is a bargained for exchange of legal detriment. The promise must induce the detriment and the detriment induce the promise.

Here, Paul will be facing the detriment of having to paint the 20-unit condo complex for the return promise of Developer paying \$20,000. Developer will have the detriment of paying \$20,000 for the promise of Paul painting the complex.

Therefore, there is valid consideration.

2. Parol Evidence

If the parties to a contract intend for the written agreement to be the entire agreement between the parties, evidence of prior oral or written, or oral agreements made contemporaneously, with the agreement will not be admitted if they vary, change, or materially alter the agreement.

Merger Clause

Parties to an agreement may manifest their intention to fully integrate an agreement with a merger clause.

Here, the Written Agreement between P and D includes the statement, "This agreement constitutes the entire agreement between Paul Painter and Developer and all prior communications shall be of no further effect or evidentiary value." This would be an express form of limiting the contract between Paul and Developer to the terms of the offer.

Developer may argue that Paul's statement that he offers 25% off for multi-unit projects was a condition precedent to his acceptance of the Written Agreement. However, Paul will argue that the statement was never intended to be integrated into their agreement. He will likely contend that the words "Under normal circumstance," would indicate the never intended to be contractually bound by a 25% discount and it was merely to induce Developer to use him in the future, as Paul was not the normal painter for Developer.

As such, to admit the statement regarding the 25% discount would materially alter the Written Agreement and would be barred by Parol Evidence.

3. What defenses, if any, can Developer raise?

Statute of Frauds

Generally, a contract may be oral unless they fall under the statute of frauds. This includes contracts for marriage, real estate, paying the debt of another, contracts that cannot be completed in one year, or goods over \$500.

Developer may try to contend that this is a real estate transaction and since he never signed the written agreement, as the party to be charged, the agreement would be void. However, this contract is for the painting of real estate and would not fall under the statute of frauds. Therefore, this defense will not work.

Mutual Mistake/Ambiguity

When a mutual mistake as to a basic assumption on the contract has a material effect on the contract, the contract can be avoided.

Developer may try to argue that there was mutual mistake as to what agreement Developer was making with Paul. Developer will contend that he was simply agreeing to the earlier oral agreement of April 21. However, this will likely fail as Developer made regular payments of \$5,000 on May 1, 7, and 14 as indicated by the contract that was sent on April 22. This shows that Developer knew of the contract and agreed to it.

Condition

A condition is an event the occurrence of which creates or extinguishes an absolute duty to perform.

Developer was to pay Paul on the condition that Paul finished painting on May 31.

Developer will argue that Paul failed to meet the final condition of finishing the painting before the May 31 deadline. However, all parties to a contract are to operate under good faith. Paul finishing his painting 5 minutes late would not extinguish Developer's duty to pay Paul the final \$5,000.

Therefore, Paul completing his painting creates the condition for Developer to pay the final payment of \$5,000.

Breach

A breach is a failure to perform a legal duty.

Paul made a minor breach of finishing 5 minutes late. Developer was a major breach by not paying Paul the final \$5,000.

Remedies

Paul will be able to expect damages of \$5,000 from Developer.

QUESTION 3: SELECTED ANSWER B

Governing Law

Contracts for sale of goods are governed by the UCC, all other contracts are governed by common law.

Here, the contract is for Paul to paint the units of the developer's building. Thus, the predominant purpose of the contract is for services even though there may be some paint costs (the paint itself would be a good) associated with the job.

Common law will govern.

Valid Contract

A valid contract requires offer, acceptance, consideration, and no formation defenses.

Offer

Express intent to enter into an agreement communicated to an identifiable offeree with certain and definite terms.

Here, Paul sent an offer to Developer in the form of the written agreement. This agreement laid out dates, services rendered, payment amount, and the reasonably necessary elements to constitute an offer.

Thus, there was an offer.

Acceptance - see below.

Consideration

A bargained for exchange of legal value where each side suffers a detriment.

Here, Paul has to provide labor and time; Developer has to pay for the services.

There is consideration.

1. Did Developer accept the written agreement?

Acceptance

Acceptance is the manifestation of unequivocal assent to the terms of the offer by the offeree.

Here, Developer does not sign the agreement when Paul sends it to them. This would constitute an acceptance if they had as they assented to the terms of the contract. When Paul calls Developer to inquire about the contract, he asks if they are set to proceed with the work being done. The developer says that they are "good to go." So long as the agreement is one that is not required to be in writing, this would count as acceptance.

Silence

Silence is not typically acceptance unless the parties have past dealings and silence has in the past been held to mean acceptance.

Here, Developer was silent when the offer was sent. This would not likely constitute acceptance prior to the phone conversation between Paul and Developer.

Oral acceptance

Contracts can be accepted orally, without having a signed writing if the conduct of the parties establishes that a contract was in fact present.

Here, when Developer says they are set to proceed, they are in effect accepting the offer. Further, when Paul begins to paint, they do not stop him, and even pay him \$5,000 for the first three dates on which the painting was completed. In paying Paul for the work he has

done on the Developer's real estate, the Developer has in fact consented to the contract and accepted the terms offered by Paul.

By paying Paul for his service, Developer has in fact accepted the offer made by Paul through their conduct.

Mirror Image Rule

For contracts governed by the common law, the acceptance of a contract is expressly conditioned upon the acceptance mirroring the exact terms of the offer.

Here, given that there was acceptance of the contract, we can assume that given the contract is governed by common law, Developer agreed to all terms and conditions within the contract as written by Paul.

There is acceptance.

2. Can Paul's statement regarding the 25% discount be allowed to vary the terms of the written agreement?

Modification - Common Law

Under the common law for a contract to be modified, additional consideration must be offered. Here, the 25% discount does not have any additional consideration being provided by Developer, only Paul is offering additional consideration (in terms of offering a discount without receiving anything in return). As such, modification may not be appropriate under common law.

Oral Modifications

Oral Modifications may be allowed if they are not expressly prevented by a contract.

Here, the evidence of the prior statement about the discount may be barred from entry into evidence based on the Parol Evidence Rule.

Parol Evidence Rule

The Parol Evidence Rule serves to prevent evidence of past or contemporaneous statements or writings from being introduced as evidence to contradict, vary or add to a completely integrated contract. A contract which appears to be more complete on its face will typically be viewed as such by the Court.

Complete integration

A contract is completely integrated when the parties have agreed to all terms and conditions and it is a complete expression of the agreement between the parties.

Integration clause

Generally, an integration clause is valid to have in a contract.

Here, within the written agreement provided by Paul to Developer, he noted that the contract constituted a complete integration of the parties' agreement and barred the entry of additional evidence about the conversations had during the bargaining process.

The court would likely view the agreement as completely integrated.

This would mean that due to the Parol Evidence Rule, the discussion regarding the 25% discount could not be allowed to be introduced to vary or contradict the terms of the written agreement. Due to the mirror image rule (see supra), at common law, acceptance is conditioned upon total agreement to the offer. In this case, the offer included the integration clause as well as no mention of the price reduction while specifically naming the price to be

paid in the contract.

As such, unless an exception applies, the parol evidence rule would bar previous discussion about a discount.

Exceptions to the Parol Evidence Rule

Exceptions to the parol evidence rule, when evidence may be admissible which would otherwise not, include when there is ambiguity in the contract, when there may be defenses to formation, and extrinsic evidence is always allowed.

Here, it does not appear that any exception to the parol evidence rule applies that would allow for the admission of any evidence of previous conversations between Paul and Developer.

The conversation about the terms of the contract on April 21 was a previous conversation during the bargaining process, it would be used to contradict the terms of the agreement which were accepted expressly by Developer. There is no ambiguity in the contract as there are certain, definite terms as discussed above. The conversation would not constitute extrinsic information either as it relates directly to the agreement between Developer and Paul.

As such, no exception applies.

The parol evidence rule would bar the conversation about the 25% discount from being entered as evidence.

3. What defenses, if any, can Developer raise?

Divisible Contract - Breach occurring to discharge performance due to pay Paul.

A divisible contract can be broken into separate instances where a duty to perform arises for both parties on multiple occasions and for the same number of occasions. Each instance of

when performance is due is treated as a separate part of the contract and performance is only due when each separate portion of the contract is fulfilled.

Condition Precedent

A condition which must occur before an absolute duty to perform arises for the other party. Here, Developer may argue that their payment to Paul was only due based on the condition precedent that he complete the work in the agreed upon timeline. When Paul failed to perform by 11:59 PM on May 31, they would argue he breached that portion of the divisible contract, so they should not be held liable.

Time is of the Essence

It is not typically a material breach to not perform by the time noted unless time is of the essence only when explicitly stated in a contract as a condition.

Here, there is no time is of the essence clause in place. Paul would argue that he finished the job before the open houses on June 1 at 9 AM. This may be an example of efficient breach where despite Developer claiming that timeliness was a condition for their performance of payment, they suffered no actual harm by Paul finishing five minutes past the deadline (which was not a condition in the contract).

As such, this defense would not likely allow Developer to escape liability for the final payment.

Statute of Frauds - Formation

Certain contracts must be signed by both parties and in writing to be valid. For the common law, this includes contracts pertaining to marriage, land, surety, executorship, and contracts that cannot be completed within a year.

Here, while Developer may argue that the contract was not enforceable as there was no writing signed by them, this contract does not fall into one of the five categories under common law to be used as a valid defense. Additionally, the payments made to Paul suggest that there is in fact a contract.

Unilateral Mistake

Unilateral mistake is a defense to formation when one party is mistaken about a material element of a contract and the other party knew or should have known of the mistake.

Here, Developer could argue they were not aware that the discount was given, however:

Duty to Read

A party has a duty to read a contract.

Here, the Developer had a duty to read so they should have known that the discount was not given and addressed the issue then.

Under the duty to read, there is no defense for mistake.

Misrepresentation

Misrepresentation occurs when one party misrepresents a material fact regarding a contract to induce the other party to enter the contract and it works.

Developer could argue that Paul misrepresented the discount that he would give them which induced them to enter into the contract, thinking they would receive a deal on the work Paul was to perform. Paul would argue that the discount was clearly not in the contract, which Developer should have read and been aware of.

Due to the fact developer should have been aware of the lack of a discount when they entered the contract, this defense would not likely succeed.

JUNE 2023

ESSAY QUESTION 4 OF 4

Answer All 4 Questions



California First-Year Law Students' Examination

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 situation 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.

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Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the resolution of the issues raised by the call of the question.

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

QUESTION 4

Doug is an employee of Bob's Bakery. While working as a delivery driver for Bob's Bakery, Doug is required to wear the company uniform, which he dislikes. Doug is required to use his own car for deliveries, but Bob's Bakery compensates him for that use. While working, Doug must display a removable "How am I Driving?" sign in his car window with a contact number for people to report on Doug's driving. Bob's Bakery received numerous complaints about Doug's driving, but took no action on the complaints.

After making a delivery for Bob's Bakery, Doug was supposed to return directly to the bakery. Instead, Doug decided to visit a friend before returning to the bakery. His friend's house was not on the way back to the bakery. Doug removed the "How am I Driving?" sign from his car window, changed into his own clothes, and headed to his friend's house. On the way to his friend's house, Doug failed to stop at a stop sign and crashed into Polly's car in an intersection, injuring her and damaging her car. Local law requires complete stops at stop signs. Polly had made a complete stop at the stop sign before proceeding into the intersection, but she was illegally using her cellphone at the time of the accident.

What claims, if any, can Polly reasonably assert against Doug and what defenses, if any, can Doug reasonably raise? Discuss.

What claims, if any, can Polly reasonably assert against Bob's Bakery and what defenses, if any, can Bob's Bakery reasonably raise? Discuss.

QUESTION 4: SELECTED ANSWER A

#1

Negligence

Negligence requires the plaintiff to prove the defendant owed her a duty, he breached that duty, he was the actual and proximate cause of her harm, and damages.

Duty

The plaintiff must show the defendant owed her a duty of care. Under the Cardozo majority opinion, a duty is owed to foreseeable plaintiffs within the zone of danger.

Under the minority Andrews approach, a duty is owed to all plaintiffs harmed by Doug's conduct.

In this case, Doug harmed Polly when he failed to stop at a stop sign and entered into the same intersection as her. Thus, she was within Doug's direct zone of danger.

Therefore, Polly was a foreseeable plaintiff in the direct zone of danger and is owed a duty under either opinion.

Standard of Care

The general standard of care is to act as a reasonably prudent person would under the same or similar circumstances. In this case, Doug would need to act as a reasonably prudent driver would, which would entail carefully stopping at each stop sign.

Negligence Per Se

Negligence per se can set the standard of care when a defendant violates a statute.

His violation of the statute will satisfy the breach element. In order to apply negligence

per se as the standard of care, the Defendant must have violated a statute that was intended to prevent the type of harm that the Plaintiff experienced, and Plaintiff must be within the class of people the statute intended to protect.

Violation

In this case, Doug violated a statute because he failed to stop at a stop sign as required by the local law. Doug has no excuse for this violation, such as a sudden emergency or heart attack. Thus, Doug has violated a statute and Polly can seek to set the Statute as the standard of care.

Class of Persons? /Type of Harm

The statute required that Doug come to a complete stop at the stop sign. One can reasonably deduce that the statute was intending to prevent this exact type of harm of drivers crashing into each other at an intersection because they failed to stop.

Thus, the statute intended to protect against the type of harm Polly suffered.

Furthermore, it's also reasonable to deduce that the statute was intended to protect drivers crossing through the intersection from car accidents resulting from someone failing to stop.

Since Polly was harmed as she crossed through this intersection, she is of the class of persons the statute was intending to protect.

Thus, the statute will apply to set the standard of care.

Breach

A breach is the failure to conform one's conduct to the applicable standard of care.

Under the reasonably prudent driver standard of care analyzed supra, Doug will have breached his duty by failing to stop at the stop sign as a reasonably prudent driver would do. Nevertheless, the court will find that Doug automatically breached his duty of

care when he violated the statute under Negligence per se.

Therefore, Doug has breached his duty to Polly.

Actual Cause

Actual cause is the "but for" cause of the defendant's harm.

In this case, but for Doug failing to stop at the stop sign, Polly would not have been harmed in the resulting collision.

Thus, Doug is the actual cause.

Proximate Cause

Proximate cause limits the defendant's legal liability to acts that were a foreseeable result of his negligent conduct.

In this case, Polly was directly harmed by Doug when he negligently failed to stop at the stop sign. There were no intervening superseding events to disrupt this chain since it was a direct consequence of his failure to stop.

It is foreseeable that when one fails to stop at a stop sign before driving through an intersection, they may collide into another car that is also crossing into the intersection.

Thus, Doug proximately caused Polly's harm.

Damages

The plaintiff must allege prima facie damages of personal injury or property.

Here, Polly was injured and her car (property) was damaged. Thus, damages are established.

Defenses

Contributory Negligence

In a contributory negligence jurisdiction, a plaintiff cannot recover if they are found to be negligent at all. However, since this was found to be an exceedingly harsh rule, the courts in contributory negligence jurisdictions will still allow the plaintiff to recover if

the defendant had the last clear chance to prevent Polly's harm.

In this case, Doug will assert a contributory negligence defense since Polly was contributorily negligent by illegally using her cellphone at the time of the accident. Her negligence would completely bar her recovery in these jurisdictions, except that Doug had the last clear chance to prevent Polly's harm by stopping at the stop sign.

Since he failed to prevent the harm by stopping at the stop sign when he had the last clear chance to do so, this defense will not bar Polly's recovery and she will be entitled to her full damages.

Comparative Negligence

In pure comparative negligence jurisdictions, a plaintiff will be allowed to recover damages from the defendant even if their negligence is found to be greater than that of the defendant. In partial comparative negligence jurisdictions, a plaintiff can only recover if their negligence is less than or equal to that of the defendant's, depending on the court. The plaintiff's recovery will be reduced by the percentage of fault apportioned to them.

Doug will assert a comparative negligence defense since Polly was also negligent by illegally using her phone while driving.

Doug will be successful in this defense and Polly's damages will be reduced by the percentage of fault apportioned to her for her negligence in illegally using a cellphone while driving.

Assumption of the Risk

Assumption of the risk is a full defense in negligence causes of action if the plaintiff knowingly assumed and voluntarily consented to the risk.

Here, Polly had no prior knowledge that Doug was going to run a stop sign. As such, she did not voluntarily encounter the risk.

#2

Polly can assert a negligent hiring claim against Bob's Bakery. In addition, she will attempt to hold Bob's Bakery Vicariously Liable for Doug's tort.

Vicarious Liability

Vicarious liability imposes liability on a principal for the acts of their agent.

Under **Respondeat Superior**, an employer will be held vicariously liable for the tortious acts of his employee committed within the scope of employment.

Independent Contractor v. Employee

An exception to this rule is when an independent contractor commits a scope while performing a delegable duty for his contractor. To determine if an agent is an employee or independent contractor, courts look to many factors. These factors include who is providing the tools used by the agent to perform the duty, if the agent is paid hourly or per contract, and most importantly, the extent of control exerted by the Employer over the agent's work.

In this case the facts indicate that Doug is, in fact, an employee of Bob's Bakery. Bob's Bakery exerts sufficient control as evidenced by Doug's requirement to wear the company uniform, which he dislikes. Although Doug is required to use his own car for deliveries, Bob compensates him for that use and requires him to display a removeable driving sticker with Bob's contact number. It is evident that Doug is an employee of Bob as evidenced by Bob's control in the way he requires Doug to do his job, wear his uniform, and requiring the placement of the sticker. Thus, since Doug is an employee, Bob will be liable for torts committed by him during the course of his employment. In this case, Doug committed the tort while on the job between deliveries and returning to the bakery.

Frolic and Detour

When an employee commits a tort while engaging in a frolic and detour from his employment, the employer will not be liable.

In this case, Doug was on a frolic and detour from his employment as evidenced after making a delivery for Bob, Doug decided to visit a friend before returning to the bakery. His friend's house was not on the way back to the bakery. In addition, Doug removed the "How am I Driving" sign from his car window, changed into his own clothes, and headed to his friend's house. These acts sufficiently evidence that Doug was on a frolic from his job duties since he removed his uniform, removed the sign and took a sufficient detour from his job duties by stopping at his friend's house instead of returning to work as he was supposed to.

Since Doug was on a frolic and detour when he committed the tort against Polly, Bob will not be held vicariously liable.

Negligent Hiring

An employer can be held directly liable for their own negligence if they fail to properly hire, train, and supervise employees who engage in inherently dangerous activities.

Duty

Bob has a duty to hire, train, and supervise Doug since Doug's job duties include the inherently dangerous activity of driving on public roads where other drivers or passengers can be injured or killed if Doug is not careful.

Breach

Rule, supra.

Bob breached his duty to properly supervise and train Doug because he received

numerous complaints about Doug's driving, but took no action on the complaints. A reasonably prudent employer would have either retrained Doug to drive carefully or ended his employment after receiving these numerous complaints.

Since Bob failed to do so, he breached his duty to Polly.

Actual cause

Rule, supra.

But for Bob allowing Doug to continue driving after hearing numerous complaints about Doug's dangerous driving, Polly would not have been harmed.

Proximate cause

It is foreseeable that an employee who receives numerous complaints about their dangerous driving will ultimately crash.

Thus, he is the proximate cause of Polly's injury.

Damages

Polly has damages.

Thus, Polly can recover from Bob for his direct negligence in failing to properly supervise, train, or fire his employee Doug.

Bob will assert the same defense as Doug, discussed supra, of comparative negligence, contributory negligence, and assumption of the risk.

QUESTION 4: SELECTED ANSWER B

1. Polly v. Doug

Negligence

Negligence implies liability on a defendant for their carelessness when that carelessness causes harm or injury to a person or their property. Negligence requires that the plaintiff show duty, breach, causation, and damages.

Duty

All persons are under a duty to prevent undue risk of harm to others. Drivers on the road are under a duty to prevent undue risk of harm to other drivers and act as a reasonably prudent driver would on the road. Here, Doug is driving on a public road, also where Polly is driving and thus is under a duty to drive as a reasonably prudent driver. Polly is a foreseeable plaintiff in that she is also on the road with Doug.

Thus, Doug owes a duty to Polly.

Breach

A breach occurs when a defendant's actions fall below the required standard of care. Here, when Doug failed to stop at the stop sign and crashed into Polly's car at the intersection his actions fell below the standard of care that would be required of a driver.

Thus, Doug breached his duty.

Negligence Per Se

Negligence per se can establish duty and breach when there is a law that imposes such on a defendant. The (1) plaintiff must be in class of people the statute is intended to protect and (2) the harm must be of the type the statute was intended to

prevent.

Here, the statute requires complete stops at stop signs. Polly is in the class of people the statute is intended to protect, as she is a driver on the road and specifically at an intersection where stop signs are located. The harm is of the type the statute is meant to prevent in that the failure of Doug to comply with the statute resulted in a vehicle crash which resulted in harm. The statute is in place in order to prevent such intersection collisions and the harm associated with them, such as injury to persons or damages to property.

All of the elements of Negligence per se are established, thus duty and breach are established.

Causation

The defendant's actions must be the actual and proximate cause of the plaintiff's injuries.

Actual cause

Actual cause is the link between the act and the harm. The "but for" test is used to establish actual cause. But for the defendant's conduct, would the harm have occurred. Here, but for Doug failing to stop at the stop sign he would not have crashed into Polly's car. Doug may try to argue that Polly being on her cellphone while driving was an intervening act that cuts off the chain of causation. However, the facts indicate that Polly made a complete stop at the intersection and additionally Doug's behavior is a substantial factor in causing the harm. Nonetheless, the accident would not have occurred "but for" Doug's failure to stop at the stop sign.

Thus, actual cause is established.

Proximate Cause

Proximate cause is based on foreseeability.

Here, it is foreseeable that when you are driving and you do not stop at a stop sign, someone can be injured.

Thus, Proximate cause is established.

Damages

Damages are the harm to property or the injury to persons.

Here, Polly was injured, and her car was damaged.

Thus, the damages element is satisfied.

Thus, Polly has a valid claim of negligence against Doug.

Defenses of Doug

Contributory Negligence

Contributory Negligence bars recovery if the Plaintiff contributed to their own injuries.

Here, Doug will assert that Polly was illegally using her cellphone at the time of the accident and thus she contributed to her own injuries. He will assert that, had Polly been paying attention, it is possible she could have seen Doug coming.

Polly may be barred from recovery in a jurisdiction that follows contributory negligence.

Last Clear Chance Doctrine

If the Plaintiff had the last clear chance to avoid the harm and did not, the plaintiff may be barred from recovery.

Here, there is nothing in the facts to indicate that Polly had the last clear chance to avoid the harm of Doug's collision. Thus, this defense will not apply.

Comparative Negligence

Comparative negligence is the more modern approach and allows for the fault to be

apportioned between the defendant and the plaintiff. If the court finds that Polly was 50% negligent and Doug was 50% negligent, they will apportion damages and allow recovery based on the apportioned fault.

This defense will likely succeed.

2. Polly v. Bob's Bakery

Vicarious Liability

Vicarious liability occurs when a third person becomes liable for the tortious acts of another person. Polly will try to assert that Bob's Bakery is vicariously liable for the acts of Doug based on the doctrine of respondeat superior.

Respondeat Superior states that an employer will be vicariously liable for the tortious act of his employees if committed within the scope of the employment. Generally, employers are not liable for the tortious acts of their independent contractors unless the duties are non-delegable or they are engaged in inherently dangerous activities. Here, Polly will assert that Bob's Bakery is liable for the Negligence of Doug.

Is Doug an Employee?

Polly will claim that Doug is an employee of Bob's Bakery because he works as a delivery driver for them, he wears a uniform, he is compensated for the use of his car, and he has a sign on his car that states that people should call Bob's Bakery if they want to report Doug's driving. Additionally, the facts state that Doug is an employee of Bob's Bakery.

Thus, Doug is an employee.

Within the scope of the employment?

The question is whether Doug was acting within the scope of his employment when he

crashed into Polly. Frolic and detours which are large in time and geographic distance will not be considered to be within the scope of the employment. Doug took his uniform off, removed the "How am I Driving?" sign from his car and drove to his friend's house instead of returning to the bakery. Polly will try to argue that Doug was out making a delivery at the time that he crashed into her and thus he was acting within the scope of the employment. However, Doug's friend's house was not on the way back to the bakery, he was supposed to return directly to the bakery and those facts combined with the other facts of him taking off his uniform and removing the sign indicate that he was engaging in a frolic and detour.

Thus, Doug was not acting within the scope of the employment.

Negligence

Discussed supra. Polly will use the same claim of negligence that she used for Bob for her vicarious liability claim against Bob's Bakery for Doug's negligence.

Thus, Polly can bring a claim of Vicarious Liability against Bob's Bakery for Doug's Negligence. However, it is unlikely that she will succeed.

Negligence - Direct Negligence - Polly v. Bob's Bakery.

Defined supra.

Duty

Defined supra.

Here, Polly will claim that Bob's Bakery owed a duty to act as a reasonably prudent employer and to protect the safety of other drivers on the road. They owed Polly the duty to prevent her from undue risk of harm.

Thus, Bob's Bakery owed Polly a duty.

Breach

Defined supra.

Here, Polly will claim that when Bob's Bakery received many calls complaining of Doug's driving and failed to take any action on the complaints, that they breached their duty. Bob's Bakery may try to argue that they had no way of knowing the validity of the complaints.

However, Bob's Bakery had a duty to at least look into Doug's driving, and when they failed to do anything about that, they breached their duty.

Thus, Bob's Bakery breached their duty to Polly.

Causation

Defined supra.

Actual Cause

Defined supra.

Here, "but for" Bob's Bakery failing to do anything about the complaints, Polly would not have been injured. The court might see this as a bit of a stretch. There are no facts that indicate that if Bob's Bakery had taken action on the complaints that Polly would not have been injured.

Nonetheless, Bob's Bakery's failure to do anything about the complaints is a substantial factor in bringing about the harm to Polly.

Thus, actual cause is established.

Proximate Cause

Defined supra.

It is foreseeable that if you are an employer who is aware of your employee's bad driving and you fail to do something about that, that someone could be injured by their driving.

Thus, proximate cause is established.

Damages

Defined supra; discussed supra.

Polly suffered injuries and damages to her car. Thus, damages are established

Thus, Polly has a valid claim of negligence against Bob's Bakery.

Defenses

Defined and discussed supra.

Bob's Bakery will bring the same defenses claims against Polly as Doug did.