



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

**Essay Questions  
and  
Selected Answers**

**June 2015**



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

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## **ESSAY QUESTIONS AND SELECTED ANSWERS**

**JUNE 2015**

### **CALIFORNIA FIRST-YEAR LAW STUDENTS' EXAMINATION**

This publication contains the four essay questions from the June 2015 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.	Criminal Law
2.	Contracts
3.	Torts
4.	Torts

**June 2015**

**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

Arthur and Cassie worked at an art gallery. They wanted to make some extra money by selling art from the gallery on eBay. They intended to share the proceeds with the owner of the gallery, but did not tell him about it because Arthur and Cassie did not think the owner would approve.

The building in which the gallery was located was undergoing earthquake renovations, which resulted in the building being open through the roof to the building next door. Arthur approached Woody, an employee of the building contractor, and offered him \$500 to take a wrapped package from the gallery and stash it in the building next door so that Arthur and Cassie could pick it up later.

Arthur gave the wrapped package and \$500 to Woody after the gallery had closed for the evening. Woody took the package up to the roof and, as he was crossing into the next building, he fell through the gap and tumbled three stories, landed on the package and was killed. The art in the wrapped package was destroyed.

Cassie was waiting outside the building to get the package from Woody. When Woody did not arrive with the package, Cassie went back into the gallery, took several more paintings and took them home.

Woody's body was found by a construction worker. Arthur and Cassie were arrested.

1. What criminal offense or offenses, if any, can be reasonably argued were committed by Arthur? Discuss.
2. What criminal offense or offenses, if any, can be reasonably argued were committed by Cassie? Discuss.
3. What defenses, if any, can each of them raise? Discuss.

## QUESTION 1: SELECTED ANSWER A

### 1. State v. Arthur

#### Solicitation

Asking or enticing another to commit a crime with specific intent for that person to commit the crime.

The State will contend that when Arthur approached Woody and offered him \$500 to take a wrapped package from the gallery and stash it in the building next door, Arthur committed the act of asking Woody to steal the painting thus satisfying the asking of another to commit a crime. In addition, Arthur had the specific intent for Woody to steal the painting because he had the conscious desire to "make some extra money by selling art from the gallery on eBay" thus satisfying the specific intent requirement.

Therefore Arthur will be liable for solicitation.

#### Merger

Solicitation will be merged with the conspiracy or any of the intended crimes as discussed infra.

Therefore the solicitation will be merged.

#### Conspiracy

Agreement between two or more persons to commit a crime, with specific intent to commit that crime. Modernly, an overt act is required.

### Agreement between two or more persons

The State will contend that when Arthur gave the wrapped package and \$500 to Woody and that "Woody took the package up to the roof", there was an implied agreement between Arthur and Woody because Woody carried the package with the intent to help Arthur commit the stealing of the art.

Arthur will counter that Woody did not expressly state that he agreed to help Arthur; thus there should not be a conspiracy present. However, the fact that Woody took the package and the \$500 from Arthur implied that Woody had the intent to help.

Moreover, Arthur and Cassie formed the idea to make extra money by selling art from the gallery on eBay; therefore there was an agreement between Arthur and Cassie to steal the painting from owner.

Therefore an agreement was present.

### Specific intent to commit crime

Arthur had the intent to sell the art from the gallery on eBay; therefore Arthur had the specific intent for Woody to commit the crime.

Therefore Arthur had the specific intent to commit the crime.

### Overt Act

Here, Woody took the wrapped package from Arthur and the \$500 and took the package up to the roof.

Therefore Woody committed an overt act in furtherance of the conspiracy.

## Larceny

Trespassory taking and carrying away the personal property of another without consent, with specific intent to permanently deprive.

### Trespassory taking

The State will contend that when Arthur gave the wrapped package to Woody and Woody took the package up to the roof, Arthur did not have the consent of owner for the taking and selling because if he had consent, he would not have to take the painting through the roof.

Therefore a trespassory taking occurred.

### Carrying away (Asportation)

Woody took the package up to the roof; thus the package moved from one location "from the gallery" and was moved to the roof.

Therefore there was a carrying away.

### Personal property of another

The package from the art gallery belonged to owner.

Therefore the property of another.

### With specific intent to permanently deprive

As discussed supra, Arthur had the intent to make some extra money and sell the art on eBay; thus he had the specific intent to permanently deprive because owner's art

would be sold and owner would have lost the property.

Therefore Arthur will be liable for Larceny.

### **Burglary - Common law**

Breaking and entering the dwelling house of another, at night, with the specific intent to commit a felony therein.

Here, there was no dwelling because it was a gallery. In addition, the nighttime requirement was not present because the fact stipulated that Arthur gave the wrapped package to Woody after the gallery had closed for the evening, and not nighttime.

However, Arthur may be liable for burglary under modern law.

### **Burglary - modernly**

Trespassory entry into any structure with intent to commit a crime therein.

### **Trespassory entry**

The State will contend that when Arthur entered the gallery to remove the art to give to Woody to carry to the building next door, Art did not have the consent from owner to enter the gallery to remove the package because a reasonable person in owner's shoes would not have consented for such entry.

Therefore a trespassory entry occurred.

### **Any structure**

Here, Arthur took the art from the gallery thus satisfying the any structure requirement.

### Intent to commit a crime therein

As discussed supra, Arthur had the intent to steal the art to sell in on eBay but did not tell the owner; thus Arthur had the intent to steal the art from the gallery.

Therefore Arthur will be liable for burglary under the modern law.

### **Murder**

Unlawful killing of a human being with malice aforethought. Malice can be shown by the following: (1) intent to kill; (2) intent to cause grave bodily harm; (3) wanton/reckless disregard to an unjustifiable high risk to a human life, and (4) felony murder.

Here, Arthur was found liable for the burglary under modern law; thus he may be found liable for felony murder if all the elements are met.

### **Felony murder**

At common law, any killing during the commission of a felony is a felony murder. Today, the law classifies felony murder under two types: (1) first-degree felony murder; and (2) any other felony murder.

### **First-degree felony murder**

Any death during the commission of an enumerated felony that is inherently dangerous. Enumerated felonies consisted of: Burglary, Arson, Rape, Robbery, and Mayhem.

Arthur was found supra to be guilty of burglary; thus Arthur may be liable for felony murder if all the elements of felony murder are met.

## Elements of felony murder

To be convicted of felony murder, the following must be met (1) the defendant is guilty of the underlying felony, (2) the killing is distinct from the felony, (3) foreseeable risk of death, and (4) the killing occurred during the commission of the felony.

### Guilty of the underlying felony

As discussed supra, Arthur was found guilty of the burglary.

Therefore Arthur is guilty of the underlying felony.

### Killing is distinct from the felony

Here, the killing occurred when Woody fell through the gap and tumbled three stories and was killed; thus the killing is distinct from the felony of burglary and larceny.

Therefore the killing was distinct from the felony.

### Foreseeable risk of death

The State will contend that the death of Woody was foreseeable because tensions are usually high during larceny and burglary because the defendants are on edge and expect things to go wrong. In addition, the building was open through the roof because of an earthquake; thus it was foreseeable that the foundation was unstable.

Therefore this element is met.

### Killing occurred during the commission of the felony

Here, Woody fell through the roof when he was carrying the package taken from Arthur;

thus he had yet to reach a safe zone. Thus the felony of burglary was still in process.

Therefore the killing occurred during the commission (res gestae).

Therefore Arthur will be found guilty of felony murder.

### **1<sup>st</sup>-Degree murder**

Specific intent to kill with premeditation and deliberation, or first-degree felony murder.

Here, the fact does not stipulate that Arthur had the intent to kill Woody nor that there was any premeditation or deliberation present.

However, Arthur will be found guilty of felony murder under the first-degree felony murder.

### **2<sup>nd</sup>-Degree murder**

Arthur may be found guilty of second-degree murder if the first-degree murder is not applicable.

### **Involuntary Manslaughter**

Should the Court not find Arthur guilty of the underlying burglary, then Arthur may be found liable for involuntary manslaughter because of his reckless behavior of attempting to steal the art from the gallery to sell for his own profits.

### **Defenses**

Arthur does not have any defenses and will be liable for the above crimes.

## QUESTION 1: SELECTED ANSWER B

### I. Crimes of Arthur:

**A. Conspiracy:** At Common Law, a Conspiracy was an agreement between two or more people to do an unlawful act (crime) or lawful act by unlawful means with both the intent to agree and the intent that the target act be made to occur. Modernly, acts for conspiracy are limited to crimes, and many jurisdictions require an overt act in furtherance of the conspiracy.

1. The agreement: Here, it appears that we have two agreements: One between Arthur and Cassie to sell art from the gallery and then sell it, and one between Arthur and Woody to take and move the wrapped package from the gallery and put in into the building next door.

a. The Agreement between Arthur and Cassie: In this situation, the Agreement to do a crime (Larceny/Embezzlement and possibly Burglary as discussed below). The facts tell us that Arthur and Cassie both "wanted to make some extra money by selling art from the gallery." Thus, it appears that both

b. The Agreement between Arthur and Woody: In this situation, it is less clear that Woody shared Arthur and Cassie's intent to commit any crime. Arthur paid Woody \$500 to take the wrapped package from the gallery, but it is not clear whether Woody knew that such an act was intended to help Arthur and Cassie commit any crime. Since Arthur and Cassie were art gallery employees, it may not have been immediately apparent to Woody that they were working to commit any crime. Under majority rules, a Conspiracy requires two guilty minds. Only if Woody shared Arthur and Cassie's intent that a theft crime be committed, not merely acting as an innocent agent, will there be two guilty minds in this case. Under the Minority Model Penal Code (MPC) rules, one can be guilty of a Unilateral Conspiracy with only one guilty mind. In this case, Arthur could still be guilty under these facts. It appears likely, therefore, that a conspiracy will not be found in these circumstances.

2. Intent: Arthur clearly had both the intent to agree with both Cassie and Woody and the Intent that the theft crime be committed.

3. Overt Act: An overt act clearly occurred when Arthur gave the wrapped package to Woody. This act would count under either above noted agreement.

4. Conclusion: It appears most likely that Arthur will be found guilty of Conspiracy at based on his agreement with Cassie if not also for his agreement with Woody.

**B. Larceny:** A Larceny is the trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

1. Trespassory Taking and Carrying Away: Arthur took and carried away (asportation) the wrapped art when he handed it to Woody. Here, it appears most likely that Arthur, if he had any possessory right to art at all, only had mere custody from his employer, the art gallery, to handle the art. This would make the taking trespassory. It does not appear that Arthur had any lawful possession of the art, but, if he did, the crime would be Embezzlement as noted below.

2. Personal Property of Another: The Wrapped Art was clearly the personal property of the art gallery and not Arthur.

3. With the Intent to Permanently Deprive: Arthur had the intent to sell the art later on eBay. Even if the art gallery could get it back later, the high risk that they would not be able to would still constitute the intent to permanently deprive.

4. Conclusion: It appears most likely that Arthur will be guilty of Larceny since all of the elements appear to be established.

**C. Embezzlement:** An Embezzlement is the Unlawful Conversion of the property of another already in one's lawful possession.

This will only apply if, as noted above, Arthur already had lawful possession of the art in the wrapped package when he decided to steal it, and this does not seem likely. Larceny appears to be the better theft crime here.

**D. Burglary:** At Common Law, Burglary was the trespassory breaking and entering of the dwelling house of another at night with the intent to commit a felony. In Modern jurisdictions, the dwelling house requirement has been expanded to cover all protected structures (structures with a roof), the nighttime requirement has been eliminated, and the Breaking requirement has been limited in favor of an expansion of the Trespassory Entry.

1. Trespassory Breaking and Entering: Here, it appears that Arthur waited inside the art gallery until it closed for the evening. At Common Law, this would not have constituted a trespassory breaking and entering since Arthur appears to have lawfully entered the gallery when he came to work that day. By remaining inside after closing, however, Arthur may have committed a "Constructive Breaking" in many jurisdictions.

Additionally, assuming that Woody is Arthur's innocent agent, the acts of Woody can be imputed to Arthur. Here, Woody climbed through an opening in the roof. Since the roof was already open, at Common Law, this could not constitute a breaking. In Modern jurisdictions, the breaking requirement has often been eliminated or severely limited such that a Burglary might still be found here.

2. Dwelling House of Another: At Common Law, the art gallery could not be considered the dwelling house of another. Under Modern Law, this has been expanded to cover all protected structures, structures with a roof, so this requirement would be satisfied.

3. At Night: It appears that this event occurred "after the gallery had closed for the evening," so most likely the Common Law nighttime requirement (after sundown) would be satisfied.

4. Intent to Commit a Felony: At Common Law, a larceny was a felony, but under modern law it is often not. In this situation, however, most modern jurisdictions expand the felony requirement to include larceny and other theft crimes, so this requirement could still be satisfied.

5. Conclusion: It appears most likely that in a modern jurisdiction, but not in a Common Law jurisdiction, a Burglary would be found. Arthur would also vicariously liable for the crimes of Cassie in taking the painting directly after Woody did not show up. Depending on the value of the paintings stolen, some jurisdictions would also consider Grand v. Petty larceny for this crime.

## **E. Murder:**

Murder is a homicide committed with Malice.

Homicide: A homicide is the killing of another human being.

Causation: Here, it appears that the acts of Arthur may not have directly caused the death of Woody; however, Arthur did set the events in motion that eventually lead to Woody's death and could be liable for his death here.

Malice: Malice can be established in any of four ways: 1. Intent to Kill, 2. Intent to Cause Serious Bodily Injury, 3. Wanton or Willful Conduct., and 4. Felony Murder. Only the last two could apply here since there is no evidence of any intent to kill or seriously injure on the part of Arthur.

3. Wanton or Willful Conduct: In order to have Wanton or Willful Conduct, the defendant must 1. Create the risk, 2. Know of the Risk, and 3. Consciously disregard the high risk of serious bodily injury or death resulting from these actions. It is not clearly that Arthur was aware of any risk to Woody as a result of his actions in carrying the package across the roof to the other building, but it is clear that walking across a roof at night and

crossing between buildings possesses some risk of serious harm. In addition, Arthur did not create the gap; however, he could still be said to have created the risk based on his agreement with Woody to carry the art. Based on the above, it is also not perfectly clear whether Arthur could have consciously disregarded any risk he was not aware of; however, if he was aware, he seems to have disregarded it. It appears most likely, therefore, that the actions of Arthur rose to the level of Wanton or Willful Conduct.

4. Felony Murder: The Felony Murder Rule states that one who kills during the commission of an inherently dangerous felony is guilty of murder.

a. Inherently Dangerous Felony: In most jurisdictions and at Common Law, Burglary is considered an inherently dangerous felony. See above for a consideration of whether a Burglary occurred. No other crime noted could generally satisfy this requirement.

Some jurisdictions also consider the manner in which the crime was committed but even there it would be clear that walking across a roof at night and crossing between buildings possesses some risk of harm and might still constitute an inherently dangerous felony.

b. During the Perpetration: Woody clearly died as he was carrying the art to the other building, which was during the perpetration of (flight from) the Burglary if the did in fact occur.

Degree: If a Felony Murder was found to have been committed, the Murder would be First-Degree. If only Wanton and Willful Conduct can be established, the Murder will be second-degree.

Conclusion: It appears most likely here that a Felony Murder occurred, and Arthur will be charged with First-Degree Murder.

## **F. Involuntary Manslaughter:**

If Arthur's Conduct did not rise to even Wanton or Willful Conduct, Arthur could still be found liable for the death of Woody under Involuntary Manslaughter for his Criminally Negligent Conduct in suggesting the actions of Woody or based on Misdemeanor-Manslaughter if the theft is a misdemeanor or a non-dangerous felony (larceny).

## **II. Crimes of Cassie:**

Cassie, as a co-conspirator and accomplice (Aiding, Abetting, or encouraging with the Intent to Aid, Abet, or encourage and the Intent that the crime be committed), will be guilty of the Conspiracy and Larceny/Embezzlement under the same facts as noted above for Arthur. Additionally, Cassie will be liable for Larceny/Embezzlement for the taking of the paintings in the gallery directly after Woody did not arrive with the packages. We are also not told how Cassie "went back into the gallery." If such an entry could constitute a Burglary, especially under Modern Law as noted above, Cassie could also be independently liable for Burglary.

## **III. Defense of Cassie and Arthur:**

**1. Impossibility:** Cassie and Arthur might raise the defense of impossibility, that is, that it was impossible for them to steal the paintings that Woody was carrying since he never was able to deliver them and the art was destroyed. As noted above, this will not constitute a valid defense since the larceny occurred with Arthur handed Woody the package even though the entire criminal scheme was not complete.

**2. Unforeseeable actions:** Arthur may claim that he should not be liable for the actions of Cassie in taking the paintings after Woody did not arrive; however, Cassie and Arthur were clearly co-felons and Cassie's taking the paintings was clearly in furtherance of the Conspiracy (Pinkerton Rule), so Arthur should be vicariously liable for his actions.

Overall, it does not appear that Arthur or Cassie will have any affirmative defenses to their criminal conduct.

## QUESTION 2

Betsy owns a business in South City. Her friend, Walter, lived in Northville, some distance away. Over the years, Betsy had often suggested to Walter that he move to South City and work for her. A short time ago, Walter decided to follow Betsy's suggestion. He called Betsy and asked if she was still interested in hiring him. Betsy replied, "Of course. Get down here as soon as possible and we can see where you would fit in." Walter agreed and told her that he would give notice at his current job and would be in South City by the end of the month.

Walter gave notice at work and shipped his furniture to South City at a cost of \$5,000 and bought a one-way plane ticket for \$250.

When Walter called Betsy upon his arrival in South City, she told him that she had just lost a major customer and had to impose rigorous cost-cutting. She therefore could no longer employ him.

Walter tried for two months to find another job in South City but nothing was available. Walter's previous employer was willing to rehire him, so he moved back to Northville, paying another \$5,000 for movers and \$250 for airfare.

1. What claim or claims, if any, does Walter have against Betsy? Discuss.
2. What damages, if any, should Walter be awarded? Discuss.

## QUESTION 2: SELECTED ANSWER A

Walter v. Betsy

Common Law governs

The uniform commercial code (UCC) does not apply to this transaction since this transaction does not deal with goods since this contract instead deals with employment and services. Therefore, the common law principles of law will apply.

Formation

In order to have a valid contract, there must be a valid offer, valid acceptance, valid consideration and no valid defenses.

Preliminary Negotiations

Communications that do not express a present contractual intent to be bound but rather to discuss likely negotiations.

The facts indicate that Walter and Betsy have communicated over the years in which Betsy suggested Walter move to South City and work which does not adequately show a present contractual intent to be bound since terms are not definite and they are simply expressly an interest to deal. Therefore, the parties have not yet made an offer or are not bound by any obligations at this point.

Is Walter's phone call to Betsy a valid offer?

Offer is defined as an outward manifestation of present contractual intent to be bound by terms that are definite and certain and communicated to the offeree.

The facts state that Walter called Betsy, which is an oral communication for Walter, the offeror, to Betsy, the offeree, of present intent to work for Betsy indicated by asking Betsy if she is still interested in hiring him.

However, the communication does describe the subject matter and intended parties of Walter working for Betsy, which is a potential employment opportunity, but does not

sufficiently define the essential terms since it fails to describe with certainty when Walter will begin working for Betsy, for how long, does not specify price of how much Walter will be paid.

Furthermore, it lacks the present contractual intent since Walter is only asking if Betsy is interested and does not make any promises or commitments to be bound.

Therefore, this will not be considered an offer since it is not sufficiently definite and certain in terms and lacks present contractual intent.

Is Betsy's phone call response to Walter a valid offer?  
offer defined supra.

The facts state that Betsy, the possible offeror, orally communicated to Walter, the possible offeree, to "Get Down here as soon as possible and we can see where you would fit in;" however, this communication does not show a present contractual intent to be bound by terms that are definite and certain since it does not sufficiently define with certainty a price term of how much Walter would be paid, does not state a time of performance of when Walter would begin working or for how long. The phrase we can see where you fit in also does not describe the subject matter and nature of what is being bargained for.

Therefore, Betsy's call to Walter was not a valid offer.

Acceptance?

A valid acceptance is a voluntary unequivocal assent to the terms of the offer.

The facts state that Walter agreed, but there was no valid offer for Walter to agree or assent to since there was no communication sufficiently definite in terms manifesting a present intent to be bound.

Therefore, there was no acceptance, and no mutual assent required for a contract.

## Consideration

There is no mutual assent resulting from offer and acceptance, nor is there sufficiently defined consideration since neither party is sufficiently bound by any definite bargained-for term in exchange of a promise.

## Promissory Estoppel

Promissory Estoppel is a substitute where consideration is lacking. A promise made by the promisor which should reasonably expect to induce action or forbearance on the part of the promisee and does induce such action or forbearance (Restatement 90 includes of a substantially certain nature) is binding if injustice can only be avoided by the enforcement of the promise.

Walter expressed his willingness to work for Betsy and suggested being hired by Betsy and agreed to Betsy's communication "Get Down here as soon as possible and we can see where you would fit in," indicating that Betsy, as the promisor, was making a promise to Walter that he could move down and work for her, and Betsy had a reason to expect to foreseeably induce Walter, as the promisee, into moving from Northville, which is known by both to be some distance away, to South City where Betsy is located and relocating all of his personal items with him is so doing.

Furthermore, Walter told Betsy that he would give notice at his current job, indicating that Betsy should reasonably expect to induce action on the part of Walter, the promisee, to quit his job in reliance on Betsy's promise that she will provide him with a job if he moves down.

That state that Walter was so induced by Betsy's promise because he in fact did give notice to his job, and quit, shipped his furniture to South City at a cost of \$5000 and bought a one-way place ticket for \$250.

The facts then state that Betsy revoked her promise to Walter to work at her business located in South City because she had lost a major customer and had to impose rigorous cost-cutting and therefore could no longer employ Walter.

However, Walter had already relied on the promise to detriment by relocating himself and all of his things to South City and quit his job in Northville. Therefore, there was injustice to Walter that resulted from his reliance on Betsy's promise as a result of relocating himself and quitting his job reasonably expecting to have a job with Betsy in South City.

The nature of the induced action and forbearance is reasonably certain and definite since it can be shown that Walter quit his job, and paid money to relocate himself and his belongings to South City from Northville.

Injustice could only be avoided by enforcing the promise since Walter was unable to work for Betsy since she revoked her promise and Walter was unable to find a job elsewhere in South City since he looked for two months and found nothing, indicating that he moved himself and all his belongs and quit his job for no gain or benefit to his detriment in reliance on Betsy's promise.

Furthermore, Walter was forced to relocate himself back to Northville and pay another \$5000 for movers and \$250 for airfare to get himself back to the place had the promise not occurred and back to the only place in which he could reasonably find other employment.

#### Reliance Damages

Since Walter relied to his detriment on Betsy's promise, see promissory estoppel supra, Walter would be entitled to reliance damages which are out-of-pocket expenses incurred to put Walter in the position he was in had he not relied to his detriment on the promise by Betsy.

These damages include the cost of relocating himself and his belongings from Northville to South City including the initial \$5000 cost of shipping his furniture, plus the \$250 plane ticket which is \$5250 dollars since he would not have paid for this had he not relied to his detriment on the promise by Betsy.

Furthermore, it is possible to show that reliance damages would also include the additional cost of moving back to Northville including the \$5000 cost of shipping his furniture, plus the \$250 plane ticket to move back to work for his previous employer since this would put Walter in back in the position he would be in had he not relied to his detriment on Betsy's promise to quit his job with the previous employer and move himself to South City in reliance of having other employment and the need to relocate himself and all his things back to Northville.

Therefore, it is possible for Walter to recover reliance damages from Betsy, based on promissory estoppel, in the total of \$10,500, including the cost of relocating himself back and forth from Northville to South City in reliance of Betsy's promise to work for her to his detriment. It is noted that there was no valid contract between Walter and Betsy; therefore Walter was not entitled to expectancy damages, and had to rely on reliance damages for recovery limited to out-of-pocket expenses to put him in the position Walter would be in had he not relied on the promise to his detriment.

## QUESTION 2: SELECTED ANSWER B

### 1. Walter v. Betsy

#### Applicable Law

The Uniform Commercial Code (UCC) governs all contracts for the sale of goods. All other contracts, including service contracts, are governed by the common law.

Goods are defined as tangible moveable property. This fact pattern does not concern tangible moveable property, but a service contract for at-will employment. Therefore the common law will govern.

#### Valid and enforceable contract

For Walter to have a claim of action against Betsy, he must demonstrate that there was a valid and enforceable contract. Absent an enforceable contract, Walter may argue that he is entitled to damages under a theory of detrimental reliance.

A valid and enforceable contract must have a clear offer, acceptance, consideration, and lack any valid defenses to formation.

#### Offer

An offer is a manifestation of present intent to contract, with clear and definite terms, communicated to an offeree. At common law, the following terms are generally required in an offer to be considered valid: parties to be bound, subject matter, duration, time of performance, and price. The offeror is considered "master of the offer" and may indicate a specific method of acceptance.

According to the facts, Walter recently called Betsy and "asked if she was still interested in hiring him." This is likely to be considered by a court as a request for an offer, rather than an offer itself, because it does not contain any clear terms and is not a clear and

unambiguous manifestation of intent to contract. It appears merely as a request or an inquiry, which courts have typically found to be negotiations rather than offers. Walter's initial question is likely not an offer.

However, Betsy's reply to Walter's inquiry may be considered a valid offer if it is found to contain the requisite terms. Her statement "of course," in reply to Walter's inquiry likely indicates a manifestation of present intent to be bound as a clear and unambiguous statement. It was made in conversation with Walter, so it is clearly communicated to an offeree. "Get down here as soon as possible" indicates a time for performance (as soon as possible). "We can see where you would fit in" likely indicates the subject matter (employment at Betsy's business). However there are two significant missing terms: price and duration.

Modern courts are split on how to treat offers of at-will employment such as this. Following traditional common law rules, Betsy has indicated an intent to contract but has not made a fully valid offer, lacking the essential terms of price and duration.

### Acceptance

A valid acceptance is an unambiguous manifestation of assent communicated in a timely manner.

The facts state that Walter "agreed" to the offer, and further, that he would take immediate steps to perform by giving notice at his current job and moving to South City by the end of the month. This is both an unambiguous statement of assent, and a timely response.

Therefore there is likely a valid acceptance if there has been a valid offer.

### Consideration

Consideration is evidence of a bargained-for exchange of legal detriment or legal

benefit. At common law, both parties must demonstrate valid consideration, though courts do not generally judge the value of the consideration itself. In an executory bilateral contract, the exchange of promises to perform is sufficient consideration.

In this case, both Walter and Betsy have made promises: Walter to quit his current job, move to South City, and work for Betsy; Betsy to hire Walter and "see where (he) would fit in." These promises may be sufficient consideration, although as mentioned supra, some courts tend to treat promises of at-will employment to be merely negotiations until employment has begun. Depending on how a court views at-will employment promises, there may be valid consideration.

### Detrimental Reliance - Promissory Estoppel

This scenario is a clear case of detrimental reliance, a theory that allows a court to enforce promises that have not created a valid and legally enforceable contract. Detrimental reliance requires that i) one makes a promise with the intent to induce reasonable reliance on the other party, ii) the other party foreseeably and justifiably relies on that promise to his detriment, and iii) unenforcement of the promise would create injustice.

The theory of promissory estoppel is often invoked to estop one party from claiming no contract exists as an excuse to perform where there has been clear detrimental reliance.

Walter will argue that Betsy's specific offer of employment, coupled with her repeated suggestions over the years that Walter move to South City and work for her, were promises made with the intent to reasonably induce reliance. Indeed, it was foreseeable that Betsy's repeated suggestions and clear offer would foreseeably induce reliance on the part of Walter. Thus this element is met.

Walter did in fact reasonably and justifiably rely to his detriment on Betsy's promise when he i) gave notice at work, ii) shipped his furniture to South City, iii) spent \$5,250

on shipping and plane tickets, and iv) moved to South City. Thus, the element of actual reliance is met.

If a court finds that there was no valid offer made by Betsy to Walter, a theory of detrimental reliance can be used to prevent injustice and either enforce the promise as if a contract existed or provide Walter with reliance damages.

### Statute of Frauds

Certain contracts, including ones that will take over a year to perform, must be contained in a signed writing to be enforceable. Since this agreement was for at-will employment, which theoretically could be completed at any time if either party decides to quit or cancel the contract in good faith, this agreement is not covered by the statute of frauds.

### Breach

A material breach is found where one party has been substantially deprived of the benefit of the bargain, has had commercially reasonable expectations frustrated, or has suffered significant economic loss as a result of one party's failure to perform.

Walter will argue that he has been substantially deprived of the benefit of the bargain and suffered a loss of reasonable expectations and economic benefit when Betsy changed her position and said she could no longer employ him since he took substantial steps and made significant expenditures expecting to be hired. Betsy's refusal to hire Walter strikes to the essence of the agreement and therefore will be considered a material breach if there is a valid and enforceable contract in existence.

### Excuses to Performance - Unforeseeable Event

Betsy may argue that her failure to perform is excusable based on unforeseeable change in circumstances.

## Commercial Impracticability

Commercial impracticability requires that circumstances not contemplated or reasonably foreseeable at the time of contracting have occurred, causing severe economic hardship to one party.

As a businessperson, Betsy will likely be held responsible for reasonably foreseeing that she might lose a major customer. The loss of one customer may be significant to her, but it likely will not create severe enough economic hardship to convince a court to excuse her duty to perform if there is an enforceable contract.

In conclusion, if there is a valid and enforceable contract in existence, a court will likely find Betsy in breach of that contract. More likely, a theory of detrimental reliance will be used to prevent injustice absent a valid contract, and promissory estoppel will prevent Betsy from backing out of her promise since Walter relied on her promise to his detriment.

## **2. Damages**

In a general breach of contract situation, expectation damages are the standard remedy.

### Expectation Damages

Expectation damages are calculated to place the non-breaching party in the position he would have been had there not been a breach. This might be calculated as the difference between what Walter is able to earn and what he expected to earn under the agreement with Betsy. Since Walter was able to find employment with his previous employer, his expectation damages might ultimately be very little. He will have a duty to mitigate his losses if he elects to seek expectation damages, which is likely satisfied because he "tried for two months to find another job in South City but nothing was

available."

Thus, he may only be able to recover potential lost wages during the course of his two-month unemployment if he is able to prove with certainty what those losses are under a theory of expectation damages.

### Reliance Damages

Alternatively, the doctrine of detrimental reliance entitles Walter to reliance damages absent a valid and enforceable contract. Reliance damages are calculated to restore the plaintiff to the status quo ante, or the position he was in before the agreement/breach occurred.

Under a reliance damages theory, Walter would be entitled to recover his reasonable expenses on shipping his furniture to and from South City ( $\$5,000 * 2$ ) and his roundtrip airfare ( $\$500$ ), but likely not his living expenses during those two months nor his potential lost wages. Thus, Walter can recover  $\$10,500$  in reliance damages.

### **QUESTION 3**

Tommy is fourteen years old. Tommy plays golf every day at his local golf course, using a golf cart. Although children are generally not allowed to rent carts at the course, Tommy has a special relationship with the owners of the course, who consider him to be of unusual maturity. He is generally allowed to use the golf carts as long as they are available.

One day, while driving a cart from the first to the second hole of the golf course, Tommy failed to watch where he was going and ran into Dana just as she was swinging her golf club. Because of the accident, Dana's shot left the golf course, and the ball fell into an air intake at nearby Power Plant, causing it to cease operations. Power Plant had failed to attach the required screen on the air intake when it opened the plant.

Perry lives ten miles from the golf course. He relies on a constant supply of oxygen in order to stay alive. When Power Plant shut down, Perry's equipment stopped supplying the needed oxygen, and he suffered brain damage.

What possible tort causes of action does Perry have against Tommy? Discuss.

### QUESTION 3: SELECTED ANSWER A

Is Tommy liable in Negligence to Perry for his damages?

In order for Perry to succeed in his negligence claim against Tommy, he has to prove every element of negligence (Duty/Standard of care, Breach, Causation, and Damages) by a preponderance of evidence.

**Duty:** Did Tommy owe a duty of care to Perry? In other words, did Tommy have to conform to certain standard of care to prevent or avoid unreasonable risk of harm to Perry?

**General Duty Rule:** If the majority view (Cardozo View) is used, a defendant owes a duty of reasonable care only to foreseeable plaintiffs in the zone of danger created by the negligence of the defendant. If the minority view (Andrews' view) is used everyone owes a duty of reasonable care to the world at large to exercise reasonable care to avoid unreasonable risk of harm to others.

In this case, Tommy did owe a duty of reasonable care to Perry if the minority view is used because he was engaged in the game of golf and he hit the ball that could reasonably hit someone and cause damage. If the majority view is used then it would be difficult to establish that duty, because Perry lived 10 miles away from the golf course.

Assuming that the minority view is used, then Duty is established.

**Standard of Care:** Generally the standard of care is that of a reasonable prudent person of the same physical capabilities, same age, same skills or knowledge and in like circumstances. In this case, since Tommy is 14, he would be held to the standard of a 14-year-old of the same physical capabilities, same skills, same experience and in the like circumstances. In other words, under normal circumstances he will be held to

the standard of a 14-year-old who plays golf. However, because he was driving a cart he would be held to the standard of an adult who plays golf and drives a golf cart.

**Breach;** is unreasonable conduct. In other words, a defendant would breach his duty when his conduct falls below the standard of care and it could be established by the use of, 1. Unreasonable conduct Test; 2. Negligence Per Se, or 3. Res Ipsa Loquitur.

In this case, the Unreasonable Conduct Test would be applicable to determine breach and we can also use the Learned Hand Test to address breach.

Did Tommy fail to act reasonably towards Perry? Tommy was driving a golf cart that is generally reserved for the use by adults. However, the owner of the course had allowed him to use it (even though it is deemed an adult activity). While driving the cart, Tommy failed to watch where he was going as a result of which he ran into another player, Dana, when she was swinging her golf club. In other words, Tommy failed to pay attention while driving a cart, which is a motorized vehicle and by failing to pay attention he ran into Dana.

Using the Unreasonable Conduct Test it would be established that he failed to act reasonably while driving a motorized vehicle when he did not pay attention where he was going.

By using the Learned Hand Test ( $B < LP$ ) we could also establish whether the burden on him to pay attention while driving a cart was less than the likelihood of harming someone times the seriousness of the harm while considering the social utility of the activity.

Driving a cart in a golf course is very common and almost every player uses one to get from one hole to another. Thus the social utility is established. However, when driving a cart the likelihood of running into another player or another cart is also high if one is not paying attention and/or is distracted for any reason. Once the driver runs into someone then there is a good chance of causing damages to property and/or the

person who is engaged in the game or driving another cart. Since carts do not go very fast, the magnitude is not as high as driving a regular car on the streets. Nevertheless, the driver of a cart has to use care to avoid unreasonable risk of harm to others. The burden on the defendant to drive carefully and slowly while paying attention to where he is going is far less than the harm that could be caused by driving carelessly causing accident.

Thus, Breach is established.

**Causation:** The plaintiff must also prove that the defendant's negligent act was but the actual and proximate cause of his injury

**Actual Cause:** In order to show that there was a causal relationship between the act of the defendant and the injury suffered by the plaintiff we can use the "But-for Test". In other words, but for Tommy running accidentally into Dana, her ball would not have left the golf course and fall into the air intake of the power plant causing the electricity to be ceased that the power plant to be shut down that led to the oxygen to be cut off for Perry, who suffered damages.

**Proximate Cause:** Even if the P could show the actual cause he should still show that the act of the defendant was the legal or proximate cause of his injury. In other words, was the injury suffered by the P the foreseeable consequence of the D's act that he could have reasonably foreseen with no superseding intervening act that would cut off his liability?

Was the injury suffered by the P a foreseeable consequence of the D's act? This would be very difficult to establish because of its remoteness. In other words, there are two intervening acts/events that have to be addressed that may or may not cut off the defendant's liability, depending on many factors that would be discussed below.

**Intervening act/event:** any act or event (act of God, act of a third party or animal) that occurs after the D's act that combined with the act of the D would be the cause of the injury suffered by the plaintiff.

In this case, there was first the intervening act of Dana's golf ball leaving the golf course and falling into the air intake of the power plant. Was this a dependent intervening act? The answer is yes, because there are other golf players who are on the golf course that Tommy could have run into as a result of his negligence when driving the cart.

Was the intervening act a foreseeable one? Yes, because as noted above, golfers are on the course playing golf and hitting their balls and if hit by another cart it is reasonably foreseeable that their ball would go in a different direction than it is intended. It is also foreseeable that the other golfer herself or himself may miss the intended target and hit the ball elsewhere than it is intended.

The next question to address is whether the injury suffered by the plaintiff was foreseeable or unforeseeable? If foreseeable then liability is present, because the intervening act was dependent and the injury was foreseeable. However, if unforeseeable, like in this case, was it the type of injury that was unforeseeable or the extent of it. The extent would not be an issue based on the "eggshell concept."

However, if the type of is unforeseeable, it would depend on whether the Polemis jurisdiction is applicable or Wagon Mound jurisdiction. If Polemis is used, then as long as the defendant's act was the direct cause then the type of injury even if it is unforeseeable the liability is present. However, if the Wagon Mound is used, then only the foreseeable injury would cause the liability.

In this case, the factor that questions the liability of the defendant is that Perry has a special problem that requires 24 hours use of oxygen. Although this is not an usual condition, the fact that the way and the manner in which caused the failure of the power was fairly unusual and too remote, because he lived 10 miles away from the golf course, and it would be an impossibility for a golf ball go that far to hit a person and injure him. The only way Perry was injured was because of the power failure that cut off his electricity and thus his oxygen.

**The next intervening act** or event was the air intake of the power plant not having screen to prevent anything from falling into the machine that caused the failure. Thus, the second intervening act was the failure of the power plant that is reasonably unforeseeable and independent that does cut off the liability of the D.

In other words, had the power plant placed a screen over the air intake of the machine the ball would not have fallen inside causing the power failure. This negligent act of the power plant is a superseding intervening act that would cut off the liability of Tommy.

**Harm:** Perry did certainly suffer a cognizable harm, as evidenced by the facts of the case, because after his oxygen was cut off by the power failure in the area, he suffered brain damage.

**Defenses:** Although in a negligent act the D may exercise Contributory negligence, comparative fault and Assumption of Risk, in this case, it would be very difficult to assume that Perry was in any way contributing to his injury or assumed to risk or was comparatively at fault.

However, if one assumes that he was so dependent on his oxygen that he should have taken other precautionary measures, such as having a reserve tank of oxygen, just in case there is a power failure, or that his tank runs out, or to have a backup power source, then he may be comparatively at fault in which case, his recovery would be reduced by the percentage of his fault. If in the jurisdiction contributory negligence is applied and he is found liable then he would be barred from recovery if his contributory negligence was in any way the proximate cause of his injury. Assumption of care would not apply because he did not knowingly assume the specific risk of harm he suffered.

### QUESTION 3: SELECTED ANSWER B

#### Perry v. Tommy

**Negligence** - Negligence can be established by showing duty, breach of duty, causation and damages.

Duty - Under the majority rule general duty of due care is owed to all possible tortfeasors.

However, the majority rule states that a duty is owed to all foreseeable tortfeasors within the zone of danger. If this case were being tried in a jurisdiction following the minority rule, a very strong argument could be made that given Perry lived ten miles from the golf course, he was not within the zone of danger and Tommy would owe no duty to Perry.

We will assume that this is in a jurisdiction following majority rules and Tommy owes Perry a general duty of due care.

Breach of duty - Breach of duty can be established using negligence per se, res ipsa loquitor, the Learned Hand theory, and by using the reasonably prudent person test.

In this situation, the reasonably prudent person test applies best.

Because Tommy is only 14 his standard of care will be measured against a child of similar age, experience and intelligence. However, when a child is engaged in an adult activity, they will be held to the adult standard of care. Because we are told that at the golf course where Tommy was, children are not generally allowed to rent carts on the course, it could be considered an adult activity and therefore Tommy should be held to the standard of care of a reasonably prudent adult.

Tommy may try to assert the argument driving a golf cart is not specifically an adult activity like driving a car or operating equipment. However, because this golf course

limited the driving of golf carts to adults only, it would be considered an adult activity in this situation and he would therefore be held to the standard of an adult.

There is an argument to be made that perhaps a reasonably prudent adult may have failed to watch where he was going while driving the golf cart, causing him to run into Dana. However, a stronger argument can be made that a reasonably prudent adult knows that when they are driving a golf cart on the course, where there are likely to be other players, they should be paying special attention to their surroundings. Therefore, it can be said that Tommy breached his duty owed.

Causation - For Perry to be successful in his cause of action it must be shown that Tommy was the actual and proximate cause of his injuries.

Actual Cause - For Tommy to be the actual cause of Perry's injury it must be shown that but for his negligence, Perry would not have been injured.

But for Tommy failing to watch where he was going and as a result hitting Dana, causing the ball to go into the air intake at Power Plant, Perry would not have lost the power to his equipment which supplied him with oxygen.

However, had Power Plant attached the required screen on their intake, the golf ball would not have fallen into the air intake. Had Tommy not failed to watch where he was going and had Power Plant not failed to attach the required screen, Perry would not have been injured. Based on this, it can be said that Tommy's conduct of failing to see Dana and running into her just as she swung her club was a substantial factor in contributing to Perry's injuries.

Proximate Cause - For Tommy to be the proximate cause of Perry's injuries it must be shown that the type of harm sustained was reasonably foreseeable and that there were no intervening acts.

Type of harm - When one causes a golf ball to go astray, one could reasonably expect

to hit someone causing injury, or to break a window or a car parked close by. However, because we are told that Perry lived ten miles from the golf course, it could be argued that it would not be reasonable to expect that someone would sustain injuries as a result of negligent conduct on Tommy's part while on the golf course. Additionally, one would not reasonably foresee that as a result of running into someone on the golf course, a golf ball would go into a power plant intake causing the plant to cease operations resulting in Perry losing power supply to his equipment that supplied him with oxygen.

Intervening act - The fact that Power Plant had failed to attach the required screen on the air intake would be considered an intervening act. For it to cut off Tommy's liability it must be a type of act that was not foreseeable. An argument could be made that because this screen was a requirement, it was not a foreseeable intervening act. One would expect Power Plant to have the necessary equipment on their plant and follow what was required of them. However, because there are many instances in which people fail to follow requirements of them, this could be considered a foreseeable event which would not cut off Tommy's liability.

However, because of the type of injury Perry suffered and because of the fact that he was 10 miles from golf course, Tommy would not be found to be the proximate cause of Perry's injuries, which would cut off his liability for Perry's injuries.

Had liability been established on Tommy's part, he could assert the defense of contributory negligence/comparative fault.

**Contributory Negligence** - One must act reasonably to protect themselves from harm.

**Comparative Fault** - See rule for contributory negligence.

A very strong argument can be made that a reasonable person, who relied on their oxygen to stay alive, would have some type of backup plan to ensure that their supply of oxygen was always available. Because there is no indication that Perry had a backup

plan or acted in a reasonable manner to ensure that he had oxygen at all times, he could be found negligent and have contributed to his injuries.

In a jurisdiction using contributory negligence, if Perry were found to have contributed to his injury through his own negligence, his recovery would be barred.

In jurisdictions using comparative fault, a plaintiff's recovery will be decreased by the amount that their own negligence is determined to have contributed to their injury. Because Comparative Fault is used in the majority of jurisdictions, Perry's recovery will be reduced by the percentage that his own negligence is determined to have contributed to his injury.

## QUESTION 4

Abe was the head coach of the fifth-grade girls' basketball team at Elementary School. Bob, the assistant coach, blamed Abe for the team's poor performance. Seeking to have Abe fired, Bob accused Abe after a game of stealing money from the team fund. Bob made the accusation while standing in a crowd of students and parents. Bob knew the accusation to be untrue.

In retaliation, Abe threw a basketball at Bob, who ducked to avoid being hit. The basketball missed Bob but struck Carl, a parent, in the face. Abe then went up to Bob and told him, "You'd better watch your back," which subsequently caused Bob to have nightmares.

Abe was thereafter fired from his position as head coach, based on Bob's accusation that Abe had stolen money from the team, and he was unable to obtain a job in his chosen profession.

1. Under what theories, if any, and against whom, might Abe sue for damages? Discuss.
2. Under what theories, if any, and against whom, might Bob sue for damages? Discuss.
3. Under what theories, if any, and against whom, might Carl sue for damages? Discuss.

## QUESTION 4: SELECTED ANSWER A

Abe v Bob

Defamation

A defamatory statement made by D concerning of P published to a third party that causes damages to P's reputation.

Here Abe was the coach of the basketball team and was being blamed for the team's bad performance. Bob made an accusation in front of the crowd of students and parents. Bob knew the accusation to be false. This would constitute a defamatory statement because it was known to be false.

Concerning of P

Here the statements were about Abe because he was mentioned directly.

Published to a third party

Here Bob made the statements in front of the students and parents who presumably understood.

Damages to P's reputation

Here being accused of stealing money would damage one's reputation because it implies that you are a dishonest person and reflects on your character as a person and morals. The facts indicate that due to the defamation Abe was fired and was not able to obtain a job in his profession.

Slander per se

Slander is spoken defamation. It is per se if it falls within the following categories:

business, crime involving moral turpitude, chastity of a woman and loathsome disease.

Here the statements were regarding theft and dishonesty. This would constitute moral turpitude crime because it tarnishes the P's reputation as an honorable and honest person and alludes that P is a criminal who stole money from the team fund.

Additionally it also falls within the business and profession category because as a head coach he was held in a trust position to dispose of the team funds and entrust in training the girls. This accusation would reflect badly on his ability to do his job and on his trustworthiness.

Therefore the defamation is slander per se and if there are no damages they would be presumed.

### Constitutional Issues

If the P is a public figure you need to prove actual malice which is falsity and fault as to the defamation. If it is a private person you only need to establish a prima facie case.

A public person is one who gains notoriety or thrust himself into the public eye.

Here Abe seems to be public person amongst his peers because he is the head coach and is known by the students and teachers. Usually all the students and parents know the sport coaches. Not only was he known by his peers from the school he coached since he was the head coach but was also known by other schools that compete against the coach's team. Among the sports community the coaches know of other school coaches thus other schools would know of Abe and his work as a coach, whether he is a good coach and has won games or a bad one and lost championships.

Therefore in this regard Abe will be considered a public person.

## Falsity and Fault

There needs to be intentional or reckless disregard for its truth or falsity. If the matter is private then there needs to be at least negligence.

The facts state that Bob knew the statements to be false nevertheless Bob intentionally made the statements in front of everyone with the purpose to damage Abe's reputation.

Therefore there is malice and Abe would be entitled to recover actual damages and may recover punitive damages.

## Damages

Here the facts state that Abe lost his job due to the defamation and was not able to get other jobs because his reputation was tarnished.

Therefore Abe will be entitled to recover damages.

## Defenses

### Qualified Privilege

Bob will raise that his statements were privileged because they were for the public interest. Because it was in the interest of the school and the parents to know the type of coach Abe was.

However this defense will not hold because the statements were made intentionally with malice since he knew the statements were not true.

### Intentional Infliction of Emotional Distress

An extreme and outrageous intentional act that causes severe emotional distress on P. Here the accusation of Abe to be a thief who stole the money of the team's fund would

be considered extreme and outrageous because it transcends the boundaries of decency because one does not call another a thief in such a manner in front of parents and students in a big crowd. It would be embarrassing to a reasonable person and would cause severe emotional distress.

Therefore Bob will be liable for IIED and would have to pay damages that Abe incurred due to the severe emotional distress.

Bob v Abe

Assault

Intentional act that causes reasonable apprehension of imminent harm to another person.

Here Bob will argue that when Abe threw the basketball it caused him to be apprehended because he believed he was going to be hurt by the ball. Indeed one can be hurt when a basketball is thrown at you, Bob even ducked which shows that he was reasonably apprehended.

Therefore Abe will be liable for assault.

Assault for the Statement made by Abe

Here Bob will argue that the statement made by Abe of "you'd better watch your back" caused him apprehension. However words of future harm are not enough to constitute assault. There was no apprehension of imminent harm because it was a future threat.

Therefore there would be no assault for the statement made by Abe.

## Battery

Intentional act that causes harmful or offensive touching to another person.

Here Abe threw the ball towards Bob; however the ball never touched him. Therefore there was no harmful or offensive contact and he will not be liable for battery.

## Intentional Infliction of emotional distress (IIED)

Supra definition.

Here Bob will argue that Abe's words of "you'd better watch your back" caused him severe emotional distress. However these words alone are not extreme and outrageous to cause emotional distress. Abe is not accusing him of a crime nor calling him names. However the court may find this to be extreme and outrageous because it was coupled with the throwing of the basketball. Additionally the facts state that Bob suffered nightmares which are physical symptoms of the severe emotional distress.

Therefore Abe may be liable for IIED.

## Defenses

### Self Defense

It can be used to protect but it has to be reasonable force necessary under the circumstances.

Here Abe will argue that he threw the ball to Bob because he had made defamatory statements about him in front of everyone. However a physical contact is not a reasonable response to a defamation.

Therefore this defense will not hold.

Carl v Abe

Assault

Supra definition

Here the facts do not state whether Carl saw the ball coming towards him. If he did it was reasonable for him to be apprehended because a ball coming towards you is an imminent harm.

Therefore if Carl saw the ball and was apprehended, Abe will be liable for Assault.

Battery

Supra definition

Here the facts state that Abe threw the ball towards Bob but instead hit Carl. Thus causing Carl a harmful contact.

Transfer Intent

Under this doctrine the intent to cause a tort to one may be transferred to another person, or if it caused a different tort than the intended.

Here the intent to Abe to hit Bob will be transferred to Carl. When Bob ducked the ball hit Carl instead. This presumably caused him harm or at least an offensive touching.

Therefore Abe will be liable for Battery.

Carl v Elementary School

Vicarious Liability

When an employer is liable for the conduct of his employees that are within the scope

of the employment.

Here Carl will try to sue the school because he was injured in the game organized by the school when Abe hit him with the basketball. Abe is the school basketball coach thus the school employee and he injured Carl while doing his job while coaching a game which is within the employment scope.

However most courts do not impute liability to employers when the employee's conduct is intentional.

Here Abe's conduct was an intentional tort, a battery. Therefore the school will not be liable for Abe's conduct.

## QUESTION 4: SELECTED ANSWER B

### I. Abe's Claims

#### Abe v. Bob

A. Defamation: when a defendant makes a false statement about another that he knows to be false or is negligent as to its truth or falsity, and it is communicated to a third party, he is liable to that person for all harm caused thereby.

False Statement: a statement that is untrue about the plaintiff.

In the current case, the facts tell us that Bob made statement about Abe stealing from the team fund that he knew to be false. Therefore this element is met.

Communicated to a third party: This is either accomplished by libel (printed matter) or slander (verbally communicated) where the defendant says it directly to a third party or in manner which they are reasonably certain the third person will hear or read it.

In the current case, Bob made the false statement while standing in a crowd of students and parents. Bob was reasonably certain that this false statement would be heard by third parties. Therefore the element of communication is met.

Plaintiff is harmed thereby: In the current case the facts tell us that Abe was fired as a result of the false statement made by Bob and was not able to find another job. Clearly Abe was harmed thereby.

Slander per se: When the false statement made was such that would shock the conscience and hold the subject of the statement up to ridicule, scorn, hate and contempt, especially one that impacts one's work and job, this can be slander per se.

In the current case, the type of slander made by Bob was one that accused him of being a thief, something that would shock the conscience of a regular person. It clearly

caused Abe to be scorned and hated as he was fired as a result of it and could not find another job in his chosen profession.

Therefore Bob would clearly be liable to Abe for Defamation.

Defenses: There do not appear to be any good defenses for Bob to use.

## B. Abe v. Elementary School

Wrongful Termination: If an employer terminates an employee for wrongful reasons, they may be liable for damages.

Abe will claim that the school only fired him because of the false statement made by Bob. Since the statement was untrue, the firing as a result was wrongful. However, in the current case, the facts are not clear. Abe may very well have been an 'at-will' employee and therefore Elementary School could fire him at any time (so long as the termination was not based on race, religion or gender). Therefore there does not appear to be a good claim here against Elementary School for wrongful termination.

## II. Bob's Claims

### Bob v. Abe

A. Assault: When the defendant intentionally puts the plaintiff in fear of an imminent battery, this is an assault.

Battery: An intentional act which causes the harmful or offensive touching with the body of another or something closely connected to it.

Intentional: when the act is done voluntarily and not as a result of a reflex or lack of control.

### Throwing of the basketball:

In the current case, the facts tell us that Abe in retaliation threw a basketball at Bob. This was clearly a volitional act with the intent of hitting Bob, that would thereby create a battery. However, Bob saw the ball coming and ducked. The fear of the imminent battery of the basketball thrown at him qualifies as an assault.

Therefore Bob has a good claim against Abe for assault.

### Saying "You'd better watch your back":

The facts tell us that as a result of this statement Bob had nightmares. However, an assault has to be the fear of an imminent battery. Just making a statement or threat that pertains to some time in the future would not suffice. In the current case, Abe's words to Bob cannot be classified as a proper fear of an imminent battery and therefore the element of assault will not be met in this regard.

B. Intentional infliction of Emotional Distress (IIED): when the defendant does an extreme and outrageous conduct that causes severe emotional distress to the plaintiff.

Extreme and outrageous conduct: an action by defendant that would shock the conscience of a reasonable person. Words alone do not suffice.

In the current case, while nightmares may be classified as severe emotional distress (provided that Bob could somehow prove that they resulted from Abe's statement), the facts tell us that Abe only said words and words alone do not suffice for IIED.

Therefore it does not appear that Bob will succeed against Abe for the claim of IIED.

## III. Carl's Claims

### Carl v. Abe

A. Battery: see above.

Transferred intent: If defendant intended to commit an intentional tort against one party and instead it was accidentally committed against another party, the intent element is transferred to the party that received the tort.

In the current case, the facts tell us that Abe intended to throw the basketball at Bob; however Bob ducked. When the ball struck Carl in the face, the intent of battery that Abe intended against Bob will transfer to Carl. Therefore, Abe will be liable for Battery against Carl.

B. Assault: see above.

If Carl saw the ball Abe threw coming and was in fear of the imminent battery, Abe will be liable for assault against Carl as well.

C. Negligence:

Duty: A person doing an action has a duty of care to all foreseeable plaintiffs.

In the current case, Abe threw a basketball. He therefore has a duty of care to anyone who may be harmed by the throwing of the basketball. This would clearly include Carl who was standing nearby when the ball was thrown.

Breach: where the likelihood of harm times the amount of harm is greater than the mitigation required to avoid such harm.

In the current case, Abe did not have to throw the basketball. He did it out of revenge against Bob. By throwing the basketball, he breached the duty of care that he could have easily avoided by not throwing it at all.

Causation: This requires two elements:

Actual cause: This is established by the 'but-for' method. But for the actions of

defendant, plaintiff would not have been harmed. In the current case, but for Abe throwing the basketball, Carl would not have been hit by it.

Proximate Cause: The damages had to be a reasonably foreseeable outcome of defendant's actions.

In the current case, it is reasonably foreseeable that when you throw a basketball, someone standing nearby can get hit by it.

Damages: The plaintiff needs to be harmed thereby.

In the current case Carl needs to show that he was damaged as a result of being hit by the basketball. The facts are silent as to whether Carl incurred damage. If Carl can prove that he incurred damages as a result, then he is entitled to them as a result of Abe's negligence in throwing the ball.

Defenses: There does not appear to be any good defenses that Abe can offer. The fact that he was goaded into it by Bob's defamatory statements would not excuse his behaviors as he has recourse for that in the courts.

It therefore appears that Carl has a good claim against Abe for negligence.