

TORTS I Final Practice Hypo

Let's Dance! ("LD") is the hottest reality show on television. Millions of viewers tune in each week to watch "celebrities" participate in ballroom dancing with professional dance partners. Each week, the American public votes for its favorite couple, and the celebrity dancer with the lowest number of votes leaves the show. Although some of the celebrities progress to become competent dancers, others are simply terrible. In fact, the public apparently enjoys this aspect of the show because ratings tend to rise when a celebrity embarrasses himself on the dance floor.

LD is filmed in BigCity, USA, which prides itself on being a caring and safe community. There are a number of ordinances in BigCity designed to foster this atmosphere, including one which requires owners of public establishments to (1) keep the floors clean in food service areas, (2) keep excessive noise under control; and (3) place "Caution: Slippery" signs out when floors are wet or otherwise create a hazard for the public.

Ten weeks into the current season, there are three contestants left vying to be the last dancer standing – Mary, a 50-year-old variety-show singer, Hank, a race car driver, and Spice, a pop singer. Each was eager to participate in the show because it provides exposure to a national audience. Each celebrity couple has practiced together intensely for at least forty hours each week of the competition.

Finally, the day of the final taping arrived. As they did for each of the last ten weeks, LD's staff scurried around the set to get things prepared. Katy the costume designer fitted each celebrity with scanty, tight fitting outfits made of spandex & sequins. Cal the custodian waxed the dance floor with a high gloss that, although slippery, would create a beautiful shine for the cameras. Refreshments were prepared and waiting for the studio audience.

One hour before show time, a crowd had gathered on the sidewalk around the studio waiting patiently to get tickets to the studio audience. A passing sixteen-year-old on a motorized scooter, Amy, was staring at the crowd to see what was happening when she lost her balance and spun out of control. She crashed into a parking meter, which fell and hit Betty's parked car. Amy was not hurt but Betty, who was sitting in the car, was injured when the meter crashed through the roof. Someone called an ambulance, but as a result of the traffic tie-up in the neighborhood from the large number of people traveling to the studio to try and get tickets, the ambulance was unable to reach Betty before she died.

The show, however, must go on. When filming was about to begin, Penny the production assistant ushered the lucky waiting fans chosen to be in the studio audience, including Freddy, through the back door, across the stage and into the theater. Once everyone was seated, Penny locked the back door and told the audience, "Thanks for coming. At this point, nobody goes in or out. You must stay in your seats until the show has reached its conclusion." Freddy, who panics when confined to an enclosed area, ran for the door and began throwing himself at it, screaming "Let me out! Let me out!" Penny stood there stunned for a few seconds before

running to unlock the door. Freddy ran out, his left side bruised and battered. And then, the cameras began to roll.

All went well until the final dance of the evening, involving Spice and her partner. The two had planned to do an intricate waltz with a spectacular running leap. Things, however, did not go according to plan. In her approach to the jump, Spice slipped on the floor, causing her to fall and break her ankle. Ted, a physician from a small, rural town who happened to be in the studio audience, ran up to the stage to help her. Although physicians in BigCity would immediately have stabilized the ankle, Ted manipulated it back and forth to determine the extent of the damage. When Spice later received treatment for the ankle, she was informed that Ted's manipulation worsened her injury and that it would require an additional 4 months to heal.

You are an attorney in BigCity who specializes in this type of high profile litigation. You anticipate that you will be contacted by someone involved in these events and want to prepare in advance. You decide to write a memo assessing the following: (1) All potential tort claims; (2) all potential defenses; and (3) the likelihood of success of each claims.

Sketch Answer

I. Betty v. Amy: Negligence for Damage to Car & Death

A. What is the duty of care?

1. Reasonable child of like age, intelligence & experience, unless adult activity

A. Scooter = adult activity

(1) Motorized, which typically is older activity

(2) She may have been driving on the road – perhaps a permit required

(3) May cause more damage than a bicycle – heavier & higher speeds

B. Scooter = child activity

(1) Scooters traditionally more a toy than transportation

(2) Perhaps can drive on sidewalks – not clear that this is more like a Vespa than a skateboard

(3) Age of driver is visible – others can take appropriate precautions.

B. Was duty of care breached by taking eyes off road to stare at celebrities?

1. If adult activity – reasonable person standard

A. High risk of even momentary distraction when moving at high speed

- B. Reasonable person probably would know that to do so jeopardizes operation of vehicle.
 - C. No real cost to requiring attention; potentially significant harm if no attention.
2. If child – reasonable child of 16, with same intelligence & experience?
- A. We would expect a 16 year old to be far more distracted by this kind of event
 - B. Unclear whether she has a lot of experience as prior operator of scooter
 - C. At her age, she is old enough to drive a car. Should know that have to pay attention & be able to do so.
- C. Causation
But-for her taking her eyes off the road, the accident would not happen.
- D. Proximate cause:
1. Type of harm foreseeable?
 - A. The reason it is dangerous to take eyes off road when operating a motorized vehicle is that you may lose control of vehicle and hurt people or property.
 - B. That is what occurred here; type of harm is foreseeable.
 2. Foreseeable plaintiff?
 - A. Anyone within the operating radius of the scooter would be within the expected radius of danger caused by P's taking her eyes off the road.
 - B. Betty clearly qualifies & is foreseeable.
 3. Although Betty died from a pole hitting her car rather than from being hit by the scooter, the manner in which the harm occurred is irrelevant.
 4. Amy would be liable for full extent of damage to Betty under the eggshell plaintiff rule.
 5. Is the failure of the ambulance to arrive a superceding cause breaking off proximate cause?
 - A. The reason for traffic tie up is unusual.
 - B. However, traffic itself is always foreseeable, and it is not unusual that an ambulance would be unable to arrive in time to save the plaintiff from an accident.
 - C. The ambulance is an intervening rather than superceding event.

II. **Freddy v. Penny/LD: False Imprisonment**

- A. False imprisonment is unlawful restraint, through force or threat of force, which confines someone to a bounded area.
 - 1. Intent – Penny/LD clearly desired to restrain the audience, as evidence by her action of locking the door & instructing the audience not to move.
 - 2. Confined to a Bounded Area – there was no obvious way out of the room.
 - 3. Awareness of restraint obvious given panic.
 - 4. Locked doors = force/restraint.

- B. Defense – Consent
 - 1. Consent = words or actions that give someone a reasonable belief that the plaintiff has assented to particular conduct
 - A. Waiting in line to see the show suggests acceptance of terms of taping.
 - B. Most people would understand that during taping of television show, no one is likely to be allowed in out.
 - C. He was immediately released when he expressed a contrary interest.
 - 2. Even if COA available, no damages are likely.
 - A. If only means of escape could cause phys. damage to P, and he could remain imprisoned with no threat of harm, may not recover for injuries suffered in making escape.
 - B. Here, no threat of any kind to remaining in seat, so not reasonable to slam himself against the door.

III. **Spice v. Jack/LD: Negligence per se**

- A. Duty: May try to import the ordinance requiring a sign when a surface is slippery.
 - 1. An ordinance is less likely to be imported as the standard of care in most jurisdictions.
 - 2. To import the standard, P must show:
 - A. Type of harm that occurred is type to be prevented by the ordinance
 - B. P is in the class of people intended to be protected by the ordinance.

- C. There are no major public policy objections to importing the statute.
3. Type of harm:
 - A. Yes: By plain words, purpose is to preclude harm of slipping on the floor, which occurred here.
 - B. No – ordinance meant to preclude harm from slipping in public places; stage really is not public. Not relevant to tv show stage.
 4. Class people:
 - A. Yes: anyone who might slip would be covered by ordinance
 - B. No – the need for a sign exists when the public is unaware that the floor is slippery & needs to take appropriate precautions. Here, she had danced on stage before; she knew. A sign would not have made any difference to her.
- B. Breach? Yes. Excuse? No.
1. Procedural Effect
 - A. negligence per se
 - B. Evidence of Negligence
 2. If evidence of negligence or statute does not apply, BPL
 1. TV show where appearances important
 2. Everyone knows about properties of floor
 3. But – still a risk to dancers in high heels
 4. Probably minimal risk of injury
- C. Causation:
1. Statute: but-for not placing the sign, the accident probably still would have happened. P was aware that was slippery – sign probably would not have made any difference.
 2. But-for P putting wax on the floor (BPL), the accident would not have happened.
- D. Prox. cause:
1. Type of harm is foreseeable: The reason it is dangerous to put wax on the floor is that people might trip & fall.
 2. P was on the wax floor and clearly within the foreseeable zone of danger.
 3. Actions of doctor are not a superceding cause – medical malpractice

always foreseeable.

- IV. Spice v. Ted: medical malpractice for improper treatment of ankle
- a. Duty: Ordinary professional acting in community; custom is determinative.
 - B. Breach: Looks like there may be a different custom in the rural community, in which case no breach. In BigCity, however, breach is clear. Will depend on which standard is applied to Ted.
 - C. But-for dr's manipulation of foot, she would have healed 4 months earlier.
 - D. Type of harm foreseeable – apparently this is why it is dangerous to manipulate the foot in this way. P was the patient and is clearly foreseeable.
 - E. Although extent of harm may not be foreseeable, irrelevant – you take the plaintiff as you find him.