

TORT HYPO

Kelly, twelve, and Duncan, her nineteen-year-old next door neighbor, both lived in Podunk, Georgia. The two were polar opposites. Kelly, a sharp girl, was first in her class at Cowtown Middle School and the President of the Student Council. Duncan, a grumpy boy who had flunked out of high school twice and could not keep a job, was generally considered “slow.” Despite their differences, the two were great friends and enjoyed spending time together.

Because of the rural terrain, many families in Podunk own ATVs (All Terrain Vehicles). It is not uncommon on any given day to see the city’s teenagers driving these vehicles off-road. One blizzard-like day in December, Kelly and Duncan decided to ride on Duncan’s ATV, while their friend, Jo, rode a second vehicle. Duncan let Kelly drive (which he did on occasion). Kelly & Jo decided to race each other, and the two ATVs sped along at high speed. As they were racing up an icy hill, however, Kelly gunned the accelerator, causing her to spin out of control and overturn the vehicle. Kelly was knocked unconscious, and Duncan broke his leg in the fall. Jo loaded Kelly on to his ATV and raced off. While driving at the vehicles top speed over ice, he too lost control and ultimately crashed into a tree. Kelly was not injured, but the ATV was destroyed. Jo also broke his hand. Shortly thereafter, everyone was discovered and made a full recovery.

You are an associate at a local law firm who expects to be consulted about the days events. Your boss asks you to draft a memo indicating (1) all potential causes of action; (2) potential defenses; and (3) the likelihood of success of these claims.

