

I. General Comments:

The exam was designed to test your ability to recognize the intentional tort causes of action that a potential plaintiff could bring, and the relevant privileges that a defendant could assert to escape liability. In providing a complete answer, it was necessary for you to state the relevant cause of action, the elements of the cause of action, and then analyze how the defendant satisfied the elements. In addition, you were also expected to present the privilege that a defendant would have asserted in an attempt to escape liability.

A. Question I

In responding to question one, there were three causes of action that Alfred could have brought against others. Alfred could have brought causes of action for false imprisonment and battery against Mr. Nicholas, and a cause of action for battery against Mark.

Question # 1

Alfred can bring a number of causes of action resulting from his big day at his grandparents' farm. While some may be more successful than others, there are still a number of issues that he could possibly bring.

Alfred v. Mr. Nicholas – False Imprisonment

The first issue that Alfred could bring is a false imprisonment claim against Mr. Nicholas for locking him in the store. False imprisonment is defined as when an actor intentionally, without consent, and lacking a privilege, confines another person to a bounded area and that person is aware of the confinement or is harmed by the confinement. *The harm by the confinement element, however, would only be allowed in a minority jurisdiction. However, as the facts are presented and will be discussed below, there is no indication that Alfred was harmed by the confinement, thus it is only necessary to determine if he was in fact aware of the confinement.*

Nicholas intended to lock Alfred in, to which Alfred did not consent. *Mr. Nicholas' actions evidenced the requisite intent needed to commit the intentional tort of false imprisonment. When Mr. Nicholas locked the door and stood in front of it, Mr. Nicholas not only desired to cause the consequences of his act, confinement of Alfred to a bounded area, but he also knew with substantial certainty that Alfred would be confined to the store. The store is a bounded area and Alfred definitely knew he was being confined because Mr. Nicholas not only had a hold of his arm but also because of his statement that he was not "letting anyone in or out until the police arrive."* Alfred's cause of action, however, runs into trouble regarding the issue of whether Mr. Nicholas had a privilege to confine him.

Mr. Nicholas may try to argue that Alfred had other means of escape – the side door hidden by the pickle barrel. However, this, [*the existence of the exit*], does not negate Alfred’s false imprisonment claim because Alfred, as a guest in the town, is most likely unaware of the other exit. *Moreover, the pickle barrel weighed 70lbs., therefore the exit may not have been a reasonable means of escape even if Alfred was aware of its existence.*

Mr. Nicholas could possibly argue that it (*the false imprisonment*) was allowable under the privilege of recovery of property. This could fall under the shopkeeper’s privilege, where the shopkeeper is allowed to detain a person for a reasonable time while the authorities arrive in suspicion of a crime, as held in Bonkowski. However, no property was being recovered here. *It is reasonable to assume that Alfred had damaged some of the items in the store (the glasses) but he had stolen nothing so it is unlikely courts would allow this claim of privilege to stand as a defense for false imprisonment.*

Mr. Nicholas may be more likely to prosper (*succeed*) under the privilege of justification. In Shindle, the court held that the D’s action may be justified if the actions taken were reasonable and done to protect others from personal injury or to protect property. Nicholas has a good argument with this one. He kept Alfred in the store while he waited for the police to arrive, and as some of his property had already been destroyed, he could argue he was protecting his property. He could also *argue* that he did so to protect the other customers in his store.

Mr. Nicholas would probably prevail here due to his privilege of justification *or defense of property (discussed below)*, and Alfred would probably not succeed in his claim of false imprisonment.

Alfred v. Mr. Nicholas – Battery

The next issue Alfred could possibly bring is a battery claim against Nicholas for when he grabbed Alfred’s arm to pull the boys apart.

The rule regarding battery is that it is a volitional act that is intended to cause either harmful or offensive contact or imminent apprehension of such contact that directly or indirectly results in harmful or offensive contact to that person, *without consent or lacking a privilege.*

Mr. Nicholas’ act was clearly volitional, and he intended to cause the consequence – pulling the boys apart – and he knew with substantial certainty that the act could be considered an offensive contact. His grabbing of Alfred’s arm, Alfred could argue, was an offensive contact to him. Nicholas could possibly argue a defense of property privilege as a defense for the battery. One is allowed to use reasonable force to defend property, *as defined above*, but it must be reasonably apparent that the force is needed and proportioned to the protection of the possessor’s interest in preventing the intrusion. Since the boys had already damaged some of the items in Nicholas’ store, Nicholas could possibly argue that he grabbed Alfred’s arm in an attempt to protect his property. A

request to desist must precede the force, which Nicholas did when he told the boys to stop fighting prior to locking the door. However, the defense of property is usually used in cases regarding items having been stolen or taken from the owner. It may be a stretch to claim that it was necessary to separate *two* young boys who had not taken anything from the property.

Because Alfred had already damaged property inside Nicholas' store though, Nicholas will most likely prevail.

Alfred v. Mark – Battery

Another claim Alfred could possibly bring is a battery claim against Mark for their wrestling match.

Using the elements of battery stated above, it can be determined that Mark committed a volitional act when he continued to wrestle Alfred, he most likely intended to cause harmful or offensive contact with Alfred, had knowledge of substantial certainty that that could result, and that offensive contact did result to Alfred.

However, Mark has a pretty good defense to this claim: self-defense. A D is privileged to use reasonable force to defend himself against unprivileged acts that he reasonably believes will cause him bodily harm or offensive bodily contact. Alfred attacked Mark unexpectedly, and without reason. Alfred's initial attack upon Mark was a result of a mistake, which does not negate intent. Mark could argue that he used reasonable force (equal to the force being used by Alfred) and that he believed Alfred's force would cause him harmful bodily contact. *However, Mark would lose the availability of the defense if he became the aggressor and Alfred retreated. The facts do not indicate as such, therefore Mark would be able assert a privilege of self-defense to escape liability.* Alfred could not argue that he held more knowledge about the situation than the ordinary person – that the objective reasonableness could be based upon facts known to Alfred and not to others (i.e. that Mark was a bully) because Mark had done no act to warrant an action by Alfred. Mark was merely standing inside the store. More information about the fight could change these facts, though – such as if Mark used more force than reasonably appears necessary.

Because mark can assert a privilege of self-defense, Alfred will probably not prevail on his claim of battery against Mark.

II. General Comments:

In responding to question two, there are several causes of action that could be brought against Alfred. First, Mark could bring a cause of action for assault and battery of which the latter has the greatest likelihood of success because there is no indication that Mark saw the attack coming. Second, Mr. Nicholas could bring a cause of action for trespass to chattels. And finally, Lester could bring a cause of action for trespass to land and conversion.

A. Question II

In analyzing the causes of action for this question, you were expected to identify the causes of action. However, there was a level of difficulty with respect to the cause of action for trespass to chattels that involved an analysis of transferred intent.

Question # 2

Unfortunately for Alfred, a lot more causes of action can be brought against him for the day's activities.

Mark v. Alfred – Battery

The first is battery resulting from his tackle of and wrestling with Mark. A battery is a volitional act that is intended to cause either harmful or offensive contact or imminent apprehension of such contact that directly or indirectly results in harmful or offensive contact to the person, *occurring without the person's consent or in the absence of a privilege*.

Alfred satisfied the elements of battery when he acted volitionally and ran inside the store and tackled Mark. He also intended to cause the harmful contact because he desired to contact Mark in a harmful manner. And Mark would probably argue that being tackled to the ground without cause is an offensive contact. So Alfred at least committed a technical battery.

Does Alfred have any defenses to overcome (*escape liability for*) his action? He could possibly argue this issue of intent, and that as a minor, he did not desire or have knowledge with substantial certainty as to the consequences following. However, the rule for intent regarding minors is that when a minor has committed a tort with force he is liable to be proceeded against as any other person would be with exceptions. There is a caveat, though, that even though minors are liable for their intentional torts, there is some age below which a minor will not be held liable because the child is too young to form intent. However, at 13, Alfred will not be found too young to form intent. Also, it could be reasonably inferred that Alfred knew exactly what he was doing when he tackled Mark, and he understood its consequences.

A more viable claim could possibly be defense of others. However, Alfred acted through mistake. It does not matter that he mistakenly believed that Mark pushed his sister. Mistake does not negate intent. For a claim of defense of others, one has the same privilege he has while defending himself when he is defending someone else. In regards to the mistake, some courts, *in majority jurisdictions*, hold that the intervenor steps into the shoes of the person he is defending, and is privileged only when that person would be privileged to defend himself. If (*Alfred were in such a jurisdiction*) this rule held, Alfred would not be able to argue defense of others, because Barbara had no privilege to defend herself in this situation. Other courts, *in minority jurisdictions*, though, held that the defendant is privileged to use reasonable force to defend another even when he is mistaken in his belief that intervention is necessary, so long as his mistake was reasonable. The act had already occurred, and even if Mark had pushed Barbara, it was completed. *Therefore, Alfred's actions may be considered to be whether retaliatory or preemptive and this would negate the privilege of defense of others.*

Alfred will have a claim brought against him for the battery of Mark, and his arguments of consent and defense of others will not succeed.

Mark v. Alfred – Assault

Mark could bring a cause of action for assault against Alfred; however, Mark would most likely not prevail.

To prove a prima facie case for assault, the P must show that the D acted with intent to create an imminent apprehension in the P of physical contact that is either harmful or offensive. Furthermore, the P must be aware that the attack was imminent otherwise the cause of action will not prevail.

According to the facts, Alfred acted with intent, which is the desire to cause the consequences of one's act or possessing knowledge with substantial certainty that the consequences of one's acts will occur. Alfred ran into the store and proceeded to tackle Mark; however, it is unclear whether Mark was aware of the attack from Alfred. If Mark had been looking at the door when Alfred ran inside, then Mark would have a cause of action for assault. If, on the other hand, Mark was looking away and was unaware of the tackle until it occurred then there will not be a cause of action for assault.

Alfred could assert a privilege of defense of others (see above) to defeat this cause of action if Mark can demonstrate his awareness. Given the facts, it is not likely that Mark will prevail with this cause of action.

Lester v. Alfred – Trespass to land

Alfred can also have a claim brought against him for trespass to land, for when he entered Kringle's land and went swimming in the pond. A trespass to land is when the D physically invaded P's real property, D acted with intent to physically invade P's real property, and D was either the legal cause or set in motion that which caused the physical invasion of P's real property.

Alfred meets (*satisfies*) all these elements. He chose to go on the land and go swimming, and he did so. *When Alfred and Barbara ran past Lester's sign which was most likely on Lester's property, and jumped on the old tire swing, and landed in the pond, they committed a trespass. A cause of action for nominal damages will lie in a cause of action for trespass where there is not any damage, however, the killing of the koi was an act that occurred during the trespass and thus more than nominal damages resulted from Alfred's intentional act. Yet, Lester may wish to bring a cause of action for conversion (discussed below) in order to recover the fair market value of the koi.*

However, Alfred may have a defense against the trespass to land claim – consent via custom. If the D can show that it was customary for one in the P's position to consent to a certain *act* by the D, there will be consent even if the P made no objective manifestation of consent in this particular case. Here, it was custom for the local townspeople to swim in Kringle's pond. *In addition to the implied consent established by custom, Old Man Kringle subjectively manifested his consent to allow the townspeople to swim in the pond.*

Lester Dingle may be able to argue that he posted a notification that the offer (*or consent*) had changed (*been withdrawn*), and swimming was no longer allowed, but it may not be successful, especially since the sign only mentioned "No fishing" and did not disallow the customary swimming in the pond. A reasonable person could infer that there was still implied consent through custom for swimming in the pond. *However, when Lester announced in the general store that he had just ordered some koi was turning the old swimming hole into a koi pond and there would be no swimming or fishing, the revocation of the consent was completed.*

Alfred will most likely *not* succeed in overcoming Dingle's claim of trespass to land against him.

Nicholas v. Alfred – Trespass to Chattels

Nicholas may try to bring an action against Alfred for trespass to chattels from the broken drinking glasses that resulted from Alfred's wrestling match with Mark.

Trespass to chattels occurs when an act of the D interferes with the P's right of possession in the chattel, that the D intended to perform the act that interfered with the possession, that the D was the legal cause or set in motion that which caused the interference, and damages resulted.

Nicholas will have no problem proving that Alfred interfered with his right of possession in the chattel, that he intended to tackle Mark (perform the act that interfered with the possession), that he set in motion that which caused the interference (tackling Mark) and that damages resulted. *Although Alfred interfered with the chattel, the interference occurred as result of Alfred's intent to commit a battery on Mark. Therefore, Nicholas' prima facie case would prevail if he showed that Alfred's intent to cause harm to Mark transferred to the impairment of value of the glasses, assuming that the glasses broken when the display case was overturned. Transferred intent is the intent to cause harm to one person results in harm to another person instead of the intended target, the law transfers the intent to the actual person or property harmed. Therefore, Mr. Nicholas could prevail by showing that Alfred's intent transferred to his chattels.*

Alfred could attempt to escape liability by asserting the privilege of defense of others (see analysis above). As noted earlier, whether or not Alfred will be able to escape liability depends on the jurisdiction.

Nicholas *may* succeed in his trespass to chattels claim against Alfred.

Dingle v. Alfred – Conversion

Dingle may try to bring a conversion claim against Alfred for his killing of *Dingle's* koi fish. Conversion occurs when an act by the D interfering with the P's right of possession in the chattels is serious enough in nature and consequences to warrant that the D pay the *fair* market value of the chattel *at the time of the interference*, the D acted with intent, and the D is the legal cause or set in motion that which caused the interference.

Dingle could argue that Alfred's killing of the koi interfered with his possession in the fish seriously, and Alfred should pay the *fair market* value, and that he is the legal cause of the interference. *Dingle* runs into trouble, though, trying to prove Alfred intended to kill the fish. Alfred himself said he just meant to catch it, and accidentally squeezed a little too hard. *However, Alfred did exercise dominion and control over the fish even if for a brief moment. As a result, the nature of the interference is severe enough to constitute a forced sale.*

While Alfred could possibly try to argue the diminished intent for minors, he still won't succeed, because 13 is too old to be found to not have intent, but he can probably overcome this just by arguing he did not intend to kill the fish.

Dingle may be able to succeed in his claim for conversion due to his lost koi fish if he can find a way to prove that Alfred acted with intent to kill the koi fish, or that he knew with substantial certainty that that could occur.